

AGREEMENT

THIS AGREEMENT (“Agreement”) is made and entered into as of the date stated on the City’s signature page below (the “**Effective Date**”) by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado acting on behalf of its Department of Aviation (the “**City**”), and **DAKTRONICS, INC.**, a South Dakota corporation authorized to do business in the State of Colorado (“**Contractor**”) (collectively the “**Parties**”).

WITNESSETH:

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

WHEREAS, the City desires to obtain signage, equipment and associated professional services for the Great Hall Project at DEN; and

WHEREAS, the City has undertaken a competitive process to solicit and receive proposals for such good and services and has selected the proposal submitted by Contractor; and

WHEREAS, Contractor’s proposal was selected for award of the Dynamic Signage for the Great Hall Project; and

WHEREAS, Contractor is qualified, willing, and able to perform the services, as set forth in this Agreement in a timely, efficient, and economical manner; and

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

ARTICLE I. LINE OF AUTHORITY

The Chief Executive Officer of the Department of Aviation (the “**CEO**”), his/her designee or successor in function, authorizes and directs all work performed under this Agreement. Until otherwise notified in writing by the CEO, the CEO has delegated the authority granted herein to the Special Projects. The relevant Senior Vice President (the “**SVP**”), or his/her designee (the “**Director**”), will designate a Project Manager to coordinate professional services under this Agreement. Reports, memoranda, correspondence, and other submittals required of Contractor hereunder shall be processed in accordance with the Project Manager directions.

ARTICLE II. SCOPE OF WORK AND CONTRACTOR RESPONSIBILITIES

A. Scope and Cost. Contractor shall provide the signage, equipment, professional services, and other deliverables for the City as described in the attached *Exhibit B* (“**Scope of Work**”) and in accordance with schedules and budgets set by the City.

B. Standard of Performance. Contractor shall faithfully perform the work required under this Agreement in accordance with the standard of care, skill, efficiency, knowledge,

training, and judgment provided by highly competent professionals who perform work of a similar nature to the work described in this Agreement.

C. Time Is of the Essence. Contractor acknowledges that time is of the essence in its performance of all work and obligations under this Agreement. Contractor shall perform all work under this Agreement in a timely and diligent manner.

D. Subcontractors.

1. In order to retain, hire, and/or contract with an outside subcontractor for work under this Agreement, Contractor must obtain the prior written consent of the CEO or the CEO's designee. Contractor shall request the CEO's approval in writing and shall include a description of the nature and extent of the services to be provided, the name, address and professional experience of the proposed subcontractor, and any other information requested by the City.

2. The CEO shall have the right to reject any proposed outside subcontractor deemed by the CEO to be unqualified or unsuitable for any reason to perform the proposed services. The CEO shall have the right to limit the number of outside subcontractors and/or to limit the percentage of work to be performed by them.

3. Any final agreement or contract with an approved subcontractor must contain a valid and binding provision whereby the subcontractor 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 this Agreement and/or the subcontract.

4. Contractor is subject to Denver Revised Municipal Code ("D.R.M.C.") § 20-112, wherein Contractor shall pay its subcontractors in a timely fashion. A payment is timely if it is mailed to the subcontractor no later than seven (7) days after receipt of any payment from the City. Any late payments are subject to a late payment penalty as provided in the Denver Prompt Payment Ordinance (D.R.M.C. §§ 20-107 through 20-118).

5. This Section, or any other provision of this Agreement, shall not create any contractual relationship between the City and any subcontractor. The City's approval of a subcontractor shall not create in that subcontractor a right to any subcontract. The City's approval of a subcontractor does not relieve Contractor of its responsibilities under this Agreement, including the work to be performed by the subcontractor.

E. Key Personnel Assignments.

1. Contractor or its subcontractor(s) shall assign any key personnel identified in the Agreement, including but not limited to the Scope of Work to perform work under this Agreement ("Key Personnel"). Key Personnel shall perform the designated work under this Agreement, unless otherwise approved in writing by the SVP or his/her authorized representative.

2. It is the intent of the Parties that all Key Personnel perform their specialty for all such services required by this Agreement. Contractor and its subcontractor(s) shall retain Key Personnel for the entire Term of this Agreement to the extent practicable and to the extent that such services maximize the quality of work performed.

3. If, during the Term of this Agreement, the Project Manager determines that the performance of any Key Personnel is not acceptable, or that any Key Personnel is no longer needed, the Project Manager shall notify Contractor and may give Contractor notice of the period of time which the Project Manager considers reasonable to correct such performance or remove the Key Personnel, as applicable.

4. If Contractor fails to correct such performance, then the City may revoke its approval of the Key Personnel in question and notify Contractor that such Key Personnel will not be retained on this project. Within ten (10) days of receiving this notice, Contractor shall use its best efforts to obtain adequate substitute personnel who must be approved in writing by the Project Manager. Contractor's failure to obtain the Project Manager's approval shall be grounds for Termination for Cause in accordance with Article IV, Section C.3.

ARTICLE III. OWNERSHIP AND DELIVERABLES

Upon payment to Contractor, all records, data, deliverables, and any other work product prepared by Contractor or any custom development work performed by Contractor for the purpose of performing this Agreement on or before the day of payment shall become the sole property of the City. Upon request by the City, or based on any schedule agreed to by Contractor and the City, Contractor shall provide the City with copies of the data/files that have been uploaded to any database maintained by or on behalf of Contractor or otherwise saved or maintained by Contractor as part of the services provided to the City under this Agreement. All such data/files shall be provided to the City electronically in a format agreed to by the Parties. Contractor also agrees to allow the City to review any of the procedures Contractor uses in performing any work or other obligations under this Agreement, and to make available for inspection any and all notes, documents, materials, and devices used in the preparation for or performance of any of the scope of work, for up to six (6) years after termination of this Agreement. Upon written request from the City, Contractor shall deliver any information requested pursuant to this Article within ten (10) business days in the event a schedule or otherwise agreed-upon timeframe does not exist.

ARTICLE IV. WARRANTY

Contractor warrants and guarantees to City that all goods furnished under this Agreement are free from defects in workmanship and materials, are merchantable, and fit for the purposes for which they are to be used and further provides the warranty process specified in Exhibit B to the extent not superseded by this Agreement document, Articles I through XVII as specified in the Order of Precedence. For any goods furnished pursuant to this Agreement which become defective within twelve (12) months (unless otherwise specified) after date of receipt and final acceptance by City, Contractor shall either, at City's election and to City's satisfaction, remedy any and all defects or replace the defective goods at no expense to City within a reasonable time after the defect is discovered or accept the defective goods for full credit and payment of any return shipping

charges as provided in Exhibit B. Vendor shall be fully responsible for any and all warranty work, regardless of third-party warranty coverage. Vendor shall furnish additional or replacement parts at the same prices, conditions and specifications delineated herein.

ARTICLE V. TERM AND TERMINATION

A. Term. The Term of this Agreement shall commence on the Effective Date and shall expire on December 31, 2021, unless terminated in accordance with the terms stated herein (the “**Expiration Date**”). The Term of this Agreement may be extended for two periods of one (1) year each, on the same terms and conditions, by written notice from the CEO to Contractor. However, no extension of the Term shall increase the Maximum Contract Liability stated below.

B. If the Term expires prior to Contractor completing the work under this Agreement, subject to the prior written approval of the CEO or his/her authorized representative, this Agreement shall remain in full force and effect until the completion of any services commenced prior to the Expiration Date. Contractor has no right to compensation for services performed after the Expiration Date without such express approval from the CEO or his/her authorized representative.

C. Suspension and Termination.

1. Suspension. The City may suspend performance of this Agreement at any time with or without cause. Upon receipt of notice from the Director, Contractor shall stop work as directed in the notice and, as directed in the notice, shall submit an invoice for any work performed but not yet billed. Any milestones or other deadlines shall be extended by the period of suspension unless otherwise agreed to by the City and Contractor. The Expiration Date shall not be extended as a result of a suspension.

2. Termination for Convenience. The City may terminate this Agreement at any time without cause upon written notice to Contractor from the Director.

3. Termination for Cause. In the event Contractor fails to perform any provision of this Agreement, the City may either:

a. For any breach that the City deems by its nature unable to be cured, terminate this Agreement for cause with ten (10) days prior written notice to Contractor; or

b. Provide Contractor with written notice of the breach and allow Contractor an Opportunity to Cure.

4. Opportunity to Cure. Upon receiving the City’s notice of breach pursuant to Section C.3.b of this Article, Contractor shall have five (5) days to commence remedying its defective performance. If Contractor diligently cures its defective performance to the City’s satisfaction within a reasonable time as determined by the City, then this Agreement shall not terminate and shall remain in full force and effect. If Contractor fails to cure the breach to the City’s satisfaction, then the City may terminate this Agreement pursuant to Article IV, Section C.3.a.

5. Compensation for Services Performed Prior to Suspension or Termination Notice. If this Agreement is suspended or terminated, the City shall pay Contractor the reasonable cost of only those services performed to the satisfaction of the CEO or his/her authorized representative prior to the notice of suspension or termination. Contractor shall submit a final invoice for these costs within thirty (30) days of the date of the notice. Contractor has no right to compensation for services performed after the notice unless directed to perform those services by the City as part of the of termination process or as provided in Section 6 below.

6. Reimbursement for Cost of Orderly Termination. In the event of Termination for Convenience of this Agreement pursuant to Article IV, Section C.2., Contractor may request reimbursement from the City of the reasonable costs of orderly termination associated with the Termination for Convenience as part of its submittal of costs pursuant to Section C.5. In no event shall the total sums paid by the City pursuant to this Agreement, including Sections C.5 and C.6, exceed the Maximum Contract Amount.

7. No Claims. Upon termination of this Agreement, Contractor shall have no claim of any kind against the City by reason of such termination or by reason of any act incidental thereto. Contractor shall not be entitled to loss of anticipated profits or any other consequential damages as a result of termination.

D. Remedies. In the event Contractor performs services under this Agreement in violation of any provision herein, Contractor shall be liable to the City for all costs of correcting the work without additional compensation, including but not limited to additional costs incurred by the City, its tenants, or its other contractors arising out of Contractor's defective work. These remedies are in addition to, and do not limit, the remedies available to the City in law or in equity. These remedies do not amend or limit the requirements of Article VIII and Article IX of this Agreement.

ARTICLE VI. COMPENSATION AND PAYMENT

A. Maximum Contract Amount. Notwithstanding any other provision of this Agreement, the City shall not be liable under any theory for payment for goods and services rendered, including expenses incurred by Contractor under the terms of this Agreement for any amount in excess of the sum of **One Million, Nine-Hundred and Fifty Seven Thousand, and Fifty Six Dollars and No Cents (\$1,957,056.00)** ("Maximum Contract Amount").

B. Limited Obligation of City. The obligations of the City under this Agreement shall extend only to monies encumbered for the purposes of this Agreement. Contractor acknowledges and understands the City does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City. The City is not under any obligation to make any future encumbrances or appropriations for this Agreement nor is the City under any obligation to amend this Agreement to increase the Maximum Contract Amount above.

C. Payment Source. For payments required under this Agreement, the City shall make payments to Contractor solely from funds of the City and County of Denver Airport System Fund and from no other fund or source. The City has no obligation to make payments from any other source.

D. Basis for Contractor's Fee. Contractor's fee is based on the materials and the time required by its professionals to complete the services provided under this Agreement and as further specified in Exhibit B.

E. Payment Schedule. Subject to the Maximum Contract Amount, for payments required under this Agreement, the City shall pay Contractor's fees and expenses in accordance with this Agreement. Unless otherwise agreed to in writing, Contractor shall invoice the City on a regular basis in arrears and the City shall pay each invoice in accordance with Denver's Prompt Payment Ordinance, D.R.M.C. § 20-107, *et seq.*, subject to the Maximum Contract Amount.

F. Invoices. Contractor shall submit to the City invoices for goods provided and services rendered under this Agreement to be audited and approved by the City ("**Invoice**"). Each Invoice shall provide the basis for payments to Contractor under this Agreement. In submitting an Invoice, Contractor shall comply with all requirements of this Agreement and:

1. Include an executive summary and status report(s) that describe the progress of the services and summarize the work performed during the period covered by the Invoice;
2. Include a statement of recorded hours that are billed at an hourly rate;
3. Include the relevant purchase order ("**PO**") number related to the Invoice;
4. Ensure that amounts shown on the Invoices comply with and clearly reference the relevant services, indicate the hourly rate and multiplier where applicable, and identify the allowable reimbursable expenses;
5. For only those reimbursable costs incurred in the previous month, submit itemized business expense logs and, where billing is based upon receipts, include copies of receipts for all allowable reimbursable expenses;
6. Include the signature of an authorized officer of Contractor, along with such officer's certification they have examined the Invoice and found it to be correct; and
7. Submit each Invoice via email to ContractAdminInvoices@flydenver.com.
8. Late Fees. Contractor understands and agrees interest and late fees shall be payable by the City only to the extent authorized and provided for in the City's Prompt Payment Ordinance.
9. Travel Expenses. Travel and any other expenses are not reimbursable unless such expenses are related to and in furtherance of the purposes of Contractor's

engagement, are in accordance with this Agreement, and Contractor receives prior written approval of the SVP or his/her authorized representative.

G. Timesheets. Contractor shall maintain all timesheets kept or created in relation to the services performed under this Agreement. The City may examine such timesheets upon the City's request.

H. Disputed Invoices. The City reserves the right to reject and not pay any Invoice or part thereof, including any final invoice resulting from a Termination of this Agreement, where the SVP or his/her authorized representative determines the amount invoiced exceeds the amount owed based upon the work satisfactorily performed. The City shall pay any undisputed items contained in an Invoice. Disputes concerning payments under this provision shall be resolved in accordance with procedures set forth in Article IX.

I. Carry Over. If Contractor's total fees for any of the services provided under this Agreement are less than the amount budgeted for, the amount remaining in the budget may be used for additional and related services rendered by Contractor if the CEO or his/her authorized representative determines such fees are reasonable and appropriate and provides written approval of the expenditure.

ARTICLE VII. MWBE, WAGES AND PROMPT PAYMENT

A. Minority/Women Business Enterprise.

This project has been reviewed by the Division of Small Business Opportunity (“**DSBO**”) and it has been determined that it is not subject to Article III or Article V of Chapter 28, Denver Revised Municipal Code (“**D.R.M.C.**”), (the “**MWBE Ordinance**”) and any Rules or Regulations promulgated pursuant thereto, and therefore will not have an MWBE goal assigned. While the work performed under this Agreement is not subject to the MWBE Ordinance, the Director of DSBO encourages all participants in City projects to seek independent partnerships with SBEs, MBEs, WBEs, and other business enterprises in supply chain activities, prime/subcontractor partnerships, and joint ventures for all contracts and purchase orders. The City reserves the right to reevaluate the work under this Agreement and apply the requirements of the MWBE Ordinance to this contract if DSBO determines that the MWBE Ordinance is applicable.

B. Prevailing Wage. To the extent required by law, Contractor shall comply with, and agrees to be bound by, all requirements, conditions and City determinations regarding the Payment of Prevailing Wages Ordinance, §§ 20-76 through 20-79, D.R.M.C. including, but not limited to, the requirement that every covered worker working on a City owned or leased building or on City-owned land shall be paid no less than the prevailing wages and fringe benefits in effect on the Effective Date of this Agreement.

1. Prevailing wage and fringe rates will adjust on, and only on, the anniversary of the Effective Date of this Agreement. Unless expressly provided for in this Agreement, Contractor will receive no additional compensation for increases in prevailing wages or fringe benefits.

2. Contractor shall provide the Auditor with a list of all subcontractors providing any services under the Agreement.

3. Contractor shall provide the Auditor with electronically-certified payroll records for all covered workers employed under this Agreement.

4. Contractor shall prominently post at the work site the current prevailing wage and fringe benefit rates. The posting must inform workers that any complaints regarding the payment of prevailing wages or fringe benefits may be submitted to the Denver Auditor by calling 720-913-5000 or emailing auditor@denvergov.org.

5. If Contractor fails to pay workers as required by the Prevailing Wage Ordinance, Contractor will not be paid until documentation of payment satisfactory to the Auditor has been provided. The City may, by written notice, suspend or terminate work if Contractor fails to pay required wages and fringe benefits.

C. City Minimum Wage. To the extent required by law, Contractor shall comply with and agrees to be bound by all requirements, conditions, and the City determinations regarding the City's Minimum Wage Ordinance, §§ 20-82 through 20-84, D.R.M.C., including, but not limited to, the requirement that every covered worker shall be paid no less than the City Minimum Wage in accordance with the City's Minimum Wage Ordinance. By executing this Agreement, Contractor expressly acknowledges that Contractor is aware of the requirements of the City's Minimum Wage Ordinance and that any failure by Contractor, or any other individual or entity acting subject to this Agreement, to strictly comply with the foregoing D.R.M.C. Sections shall result in the penalties and other remedies authorized therein.

D. Prompt Pay. The City will make monthly progress payments to Contractor for all services performed under this Agreement based upon Contractor's monthly invoices. Such invoices shall be in a form acceptable to the City and shall include detail of the time worked by Contractor's own personnel, billings from subcontractors, and all other information necessary to assess Contractor's progress. Invoices shall be accompanied by documentation of expenses for which reimbursement is sought, and all other supporting documentation required by the City. The City's Prompt Payment Ordinance, §§ 20-107 to 20-118, D.R.M.C., applies to invoicing and payment under this Agreement.

1. Final Payment to Contractor shall not be made until after the Project is accepted, and all certificates of completion, record drawings and reproducible copies are delivered to the City, and the Agreement is otherwise fully performed by Contractor. The City may, at the discretion of the DSBO Director, withhold reasonable amounts from billing and the entirety of the final payment until all such requirements are performed to the satisfaction of the Director. However, no deductions shall be made from Contractor's compensation because of penalty, liquidated damages or other sums withheld from payments to contractor(s)/consultants.

2. For contracts of one million dollars (\$1,000,000.00) and over, Contractor is required to comply with the Contractor Prompt Payment provisions under § 28-72, D.R.M.C., with regard to payments by Contractor to MWBE subcontractors. The

Contractor shall make payments by no later than thirty-five (35) days from receipt by the Contractor of the subcontractor's invoice.

ARTICLE VIII. INSURANCE REQUIREMENTS

A. Contractor shall obtain and keep in force all of the minimum insurance coverage forms and amounts set forth in *Exhibit C* (“**Insurance Requirements**”) during the entire Term of this Agreement, including any extensions of the Agreement or other extended period stipulations stated in *Exhibit C* except that DEN Risk Management does not require Contractor to obtain Cyber coverage as specified in Exhibit C § 2.3.6 for the purposes of performing this Agreement. All certificates of insurance and any required endorsements must be received and approved by DEN Risk Management before any airport access or work commences.

B. Unless specifically excepted in writing by DEN Risk Management, if Contractor shall be using subcontractors to provide any part of the services under this Agreement, Contractor shall do one of the following:

1. Include all subcontractors performing services hereunder as insureds under its required insurance and specifically list on all submitted certificates of insurance required under *Exhibit C*; or

2. Ensure that each subcontractor provides its own insurance coverage in accordance with the requirements set forth in this Agreement.

C. The City in no way warrants or represents the minimum limits contained herein are sufficient to protect Contractor from liabilities arising out of the performance of the terms and conditions of this Agreement by Contractor, its agents, representatives, employees, or subcontractors. Contractor shall assess its own risks and maintain higher limits and/or broader coverage as it deems appropriate and/or prudent. Contractor is not relieved of any liability or other obligations assumed or undertaken pursuant to this Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types.

D. In no event shall the City be liable for any of the following: (i) business interruption or other consequential damages sustained by Contractor; (ii) damage, theft, or destruction of Contractor's inventory, or property of any kind; or (iii) damage, theft, or destruction of an automobile, whether or not insured.

E. The Parties understand and agree that the City, its elected and appointed officials, employees, agents and volunteers are relying on, and do not waive or intend to waive by any provisions of this Agreement, the monetary limitations and 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, its elected and appointed officials, employees, agents and volunteers.

ARTICLE IX. DEFENSE AND INDEMNIFICATION

A. 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 relating to the work performed under this Agreement (“**Claims**”), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Contractor or its subcontractors either passive or active, irrespective of fault, including City’s concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

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 Claimant has filed suit on the Claim. Contractor’s duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City’s negligence or willful misconduct was the sole cause of claimant’s damages.

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, including but not limited to time expended by the City Attorney Staff, whose costs shall be computed at the rate of two hundred dollars and no cents (\$200.00) per hour of City Attorney time. 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.

ARTICLE X. DISPUTES

All disputes arising under or related to this Agreement shall be resolved by administrative hearing under the procedures described in D.R.M.C. § 5-17 and all related rules and procedures. The determination resulting from said administrative hearing shall be final, subject only to Contractor's right to appeal the determination under Colorado Rule of Civil Procedure, Rule 106.

ARTICLE XI. GENERAL TERMS AND CONDITIONS

A. Status of Contractor. Parties agree that the status of Contractor shall be an independent Contractor retained on a contractual basis to perform professional or technical services for limited periods of time as described in § 9.1.1(E)(x) of the Charter of the City and County of Denver (the “**City Charter**”). It is not intended, nor shall it be construed, that Contractor or its personnel are employees or officers of the City under D.R.M.C. Chapter 18 for any purpose whatsoever.

B. Assignment. Contractor shall not assign, pledge or transfer its duties, obligations, and rights under this Agreement, in whole or in part, without first obtaining the written consent of the CEO or his/her authorized representative. Any attempt by Contractor to assign or transfer its rights hereunder without such prior written consent shall, at the option of the CEO or his/her authorized representative, automatically terminate this Agreement and all rights of Contractor hereunder.

C. Compliance with all Laws and Regulations. Contractor and its subcontractor(s) shall perform all work under this Agreement in compliance with all existing and future applicable laws, rules, regulations, and codes of the United States, the State of Colorado and with the City Charter, ordinances, and rules and regulations of the City.

D. Compliance with Patent, Trademark and Copyright Laws.

1. Contractor agrees that all work performed under this Agreement shall comply with all applicable patent, trademark and copyright laws, rules, regulations and codes of the United States, as they may be amended from time to time. Contractor will not utilize any protected patent, trademark or copyright in performance of its work unless it has obtained proper permission, all releases, and other necessary documents. If Contractor prepares any documents which specify any material, equipment, process or procedure which is protected, Contractor shall disclose such patents, trademarks and copyrights in such documents.

2. Pursuant to Article VIII, Contractor shall indemnify and defend the City from any and all claims, damages, suits, costs, expenses, liabilities, actions or proceedings resulting from, or arising out of, directly or indirectly, the performance of work under this Agreement which infringes upon any patent, trademark or copyright protected by law.

E. Notices.

1. Notices of Termination. Notices concerning termination of this Agreement, shall be made as follows:

by Contractor to:

Chief Executive Officer
Denver International Airport
Airport Office Building
8500 Peña Boulevard, 9th Floor
Denver, Colorado 80249-6340

And by the City to:

201 Daktronics Drive
Brookings, SD 57006

2. Delivery of Formal Notices. Formal notices of the termination of this Agreement shall be delivered personally during normal business hours to the appropriate

office above or by prepaid U.S. certified mail, return receipt requested, or by electronic delivery directed to the person identified above and copied to the Project Manager through the electronic or software system used at the City's direction for other official communications and document transmittals. Mailed notices shall be deemed effective upon deposit with the U.S. Postal Service and electronically transmitted notices by pressing "send" or the equivalent on the email or other transmittal method sufficient to irretrievably transmit the document. Either party may from time to time designate substitute addresses or persons where and to whom such notices are to be mailed, delivered or emailed, but such substitutions shall not be effective until actual receipt of written or electronic notification thereof through the method contained in Subsection E.2.

3. Other Correspondence. Other notices and day-to-day correspondence between the Parties may be done via email directed to the Project Manager or through the electronic or software system used for work-related communications and transmittals at the City's direction.

F. Rights and Remedies Not Waived. In no event shall any payment by the City hereunder constitute or be construed to be a waiver by the City of any breach of covenant or default which may then exist on the part of Contractor. The City making any such payment when any breach or default exists shall not impair or prejudice any right or remedy available to the City with respect to such breach or default. The City's assent, expressed or implied, to any breach of any one or more covenants, provisions or conditions of this Agreement shall not be deemed or taken to be a waiver of any other breach.

G. No Third-Party Beneficiaries. The Parties agree that 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 Contractor, and nothing contained in this Agreement shall give or allow any such claim or right of action by any third party. It is the express intention of the Parties that any person or entity other than the City or Contractor receiving services or benefits under this Agreement shall be deemed an incidental beneficiary and shall not have any interest or rights under this Agreement.

H. Governing Law. This Agreement is made under and shall be governed by the laws of the State of Colorado. Each and every term, provision and condition herein is subject to the provisions of Colorado law, the City Charter, and the ordinances and regulations enacted pursuant thereto, as may be amended from time to time.

I. Bond Ordinances. This Agreement is in all respects subject and subordinate to any and all the City bond ordinances applicable to the Denver Municipal Airport System and to any other bond ordinances which amend, supplement, or replace such bond ordinances.

J. Venue. Venue for any action arising hereunder shall be in the City and County of Denver, Colorado.

K. Cooperation with Other Contractors.

1. The City may award other contracts for additional work, and Contractor shall fully cooperate with such other contractors. The City, in its sole discretion, may direct Contractor to coordinate its work under this Agreement with one or more such contractors.

2. Contractor shall have no claim against the City for additional payment due to delays or other conditions created by the operation of other contractors. The City will decide the respective rights of the various contractors in order to secure the completion of the work.

L. Inurement. The rights and obligations of the Parties herein set forth shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns permitted under this Agreement.

M. Force Majeure. The Parties shall not be liable for any failure to perform any of its obligations hereunder due to or caused by, in whole or in part, fire, strikes, lockouts, unusual delay by common carriers, unavoidable casualties, war, riots, acts of terrorism, acts of civil or military authority, acts of God, judicial action, or any other causes beyond the control of the Parties. The Parties shall have the duty to take reasonable actions to mitigate or prevent further delays or losses resulting from such causes.

N. Coordination and Liaison. Contractor agrees that during the term of this Agreement it shall fully coordinate all services that it has been directed to proceed upon and shall make every reasonable effort to fully coordinate all such services as directed by the SVP or his/her authorized representative, along with any City agency, or any person or firm under contract with the City doing work which affects Contractor's work.

O. No Authority to Bind City to Contracts. Contractor 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 the City Charter and ordinances.

P. Information Furnished by the City. The City will furnish to Contractor information concerning matters that may be necessary or useful in connection with the work to be performed by Contractor under this Agreement. The Parties shall make good faith efforts to ensure the accuracy of information provided to the other Party; however, Contractor understands and acknowledges that the information provided by the City to Contractor may contain unintended inaccuracies. Contractor shall be responsible for the verification of the information provided to Contractor.

Q. Taxes and Costs. Contractor 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.

R. Environmental Requirements. Contractor, in conducting its activities under this Agreement, shall comply with all existing and future applicable local, state and federal environmental rules, regulations, statutes, laws and orders (collectively "**Environmental Requirements**"), including but not limited to Environmental Requirements regarding the storage,

use and disposal of Hazardous or Special Materials and Wastes, Clean Water Act legislation, Centralized Waste Treatment Regulations, and DEN Rules and Regulations.

1. For purposes of this Agreement the terms "Hazardous Materials" shall refer to those materials, including without limitation asbestos and asbestos-containing materials, polychlorinated biphenyls (PCBs), oil or any other petroleum products, natural gas, source material, pesticide, and any hazardous waste, toxic substance or related material, including any substance defined or treated as a "hazardous substance," "hazardous waste" or "toxic substance" (or comparable term) in the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Sec. 9601 *et seq.* (1990)), the Toxic Substances Control Act (15 U.S.C. Sec. 2601 *et seq.* (1990)), and any rules and regulations promulgated pursuant to such statutes or any other applicable federal or state statute.

2. Contractor shall acquire all necessary federal, state and local environmental permits and comply with all applicable federal, state and local environmental permit requirements.

3. Contractor agrees to ensure that its activities under this Agreement are conducted in a manner that minimizes environmental impact through appropriate preventive measures. Contractor agrees to evaluate methods to reduce the generation and disposal of waste materials.

4. In the case of a release, spill or leak as a result of Contractor's activities under this Agreement, Contractor shall immediately control and remediate the contaminated media to applicable federal, state and local standards. Contractor shall reimburse the City for any penalties and all costs and expenses, including without limitation attorney's fees, incurred by the City as a result of the release or disposal by Contractor of any pollutant or hazardous material.

ARTICLE XII. RECORD RETENTION AND OTHER STANDARD CITY PROVISIONS

A. Diversity and Inclusiveness. The City encourages the use of qualified small businesses doing business within the metropolitan area that are owned and controlled by economically or socially disadvantaged individuals. Contractor is encouraged, with respect to the goods or services to be provided under this Agreement, to use a process that includes small businesses when considering and selecting any subcontractors or suppliers.

B. Non-Discrimination Policy. In connection with the performance of services under this Agreement, Contractor shall not refuse to hire, discharge, promote, demote, or to discriminate in matters of compensation against any person otherwise qualified solely because of race, creed, color, religion, national origin, gender, age, military status, sexual orientation, gender variance, marital status, and/or physical and mental disability. Contractor further agrees to insert this provision in all subcontracts hereunder.

C. Advertising and Public Disclosures. Contractor shall not include any reference to this Agreement or to work performed hereunder in any of its advertising or public relations materials without first obtaining the written approval of the SVP or his/her authorized representative. Any oral presentation or written materials related to DEN shall include only

presentation materials, work product, and technical data which have been accepted by the City, and designs and renderings, if any, which have been accepted by the City. Contractor shall notify the SVP in advance of the date and time of any such presentations. Nothing herein, however, shall preclude Contractor's transmittal of any information to officials of the City, including without limitation, the Mayor, the CEO, any member or members of Denver City Council, and the Auditor.

D. Colorado Open Records Act.

1. Contractor acknowledges that the City is subject to the provisions of the Colorado Open Records Act (“**CORA**”), C.R.S. §§ 24-72-201 *et seq.*, and Contractor 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 Contractor asserts is confidential or otherwise exempt from disclosure. Any other provision of this Agreement notwithstanding, all materials, records, and information provided by Contractor to the City shall be considered confidential by the City only to the extent provided in CORA, and Contractor agrees that any disclosure of information by the City consistent with the provisions of CORA shall result in no liability of the City.

2. In the event of a request to the City for disclosure of such information, time and circumstances permitting, the City will make a good faith effort to advise Contractor of such request in order to give Contractor the opportunity to object to the disclosure of any material Contractor may consider confidential, proprietary, or otherwise exempt from disclosure. In the event Contractor objects to disclosure, the City, in its sole and absolute discretion, may file an application to the Denver District Court for a determination of whether disclosure is required or exempted. In the event a lawsuit to compel disclosure is filed, the City may tender all such material to the court for judicial determination of the issue of disclosure. In both situations, Contractor agrees it will either waive any claim of privilege or confidentiality or intervene in such legal process to protect materials Contractor does not wish disclosed. Contractor agrees to defend, indemnify, and hold harmless the City, its officers, agents, and employees from any claim, damages, expense, loss, or costs arising out of Contractor's objection to disclosure, including prompt reimbursement to the City of all reasonable attorney's fees, costs, and damages the City may incur directly or may be ordered to pay by such court, including but not limited to time expended by the City Attorney Staff, whose costs shall be computed at the rate of two hundred dollars and no cents (\$200.00) per hour of City Attorney time.

E. Examination of Records and Audits.

1. Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and records related to Contractor's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. Contractor shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of six (6) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit

of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require Contractor to make disclosures in violation of state or federal privacy laws. Contractor shall at all times comply with D.R.M.C. §20-276.

2. Additionally, Contractor agrees until the expiration of six (6) years after the final payment under the Agreement, any duly authorized representative of the City, including the CEO or his or her representative, shall have the right to examine any pertinent books, documents, papers and records of Contractor related to Contractor's performance of this Contract, including communications or correspondence related to Contractor's performance, 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.

3. In the event the City receives federal funds to be used toward the services performed under this Agreement, the Federal Aviation Administration ("FAA"), the Comptroller General of the United States and any other duly authorized representatives shall have access to any books, documents, papers and records of Contractor which are directly pertinent to a specific grant program for the purpose of making audit, examination, excerpts and transcriptions. Contractor further agrees that such records will contain information concerning the hours and specific services performed along with the applicable federal project number.

F. Use, Possession or Sale of Alcohol or Drugs. Contractor shall cooperate and comply with the provisions of Denver Executive Order 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 barring Contractor from City facilities or participating in City operations.

G. City Smoking Policy. Contractor and its officers, agents and employees shall cooperate and comply with the provisions of Denver Executive Order No. 99 and the Colorado Indoor Clean Air Act, prohibiting smoking in all City buildings and facilities.

H. Conflict of Interest.

1. Contractor and its subsidiaries, affiliates, subcontractors, principals, or employees shall not engage in any transaction, activity or conduct which would result in a conflict of interest. Contractor represents that it has disclosed any and all current or potential conflicts of interest, including transactions, activities, or conduct that would affect the judgment, actions, or work of Contractor by placing Contractor's own interests, or the interest of any party with whom Contractor has a contractual arrangement, in conflict with those of the City.

2. The City, in its sole discretion, shall determine the existence of a conflict of interest and may terminate this Agreement if such a conflict exists, after it has given Contractor written notice which describes such conflict. Contractor shall have thirty (30)

days after the notice is received in which to eliminate or cure the conflict of interest in a manner which is acceptable to the City.

I. Prohibition Against Employment of Illegal Aliens to Perform Work Under this Agreement.

1. The Agreement is subject to § 8-17.5, C.R.S., and D.R.M.C. § 20-90 and Contractor is liable for any violations as provided in said statute and ordinance.

2. Contractor certifies that:

a. 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.

b. It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

3. Contractor also agrees and represents that:

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

b. It shall not enter into a contract with a subcontractor or subconsultant that fails to certify to Contractor that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

c. 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.

d. 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.

e. 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 (3) days. Contractor will also then terminate such subcontractor or subconsultant if within three (3) 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.

f. 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. or the City Auditor under authority of D.R.M.C. § 20-90.3.

ARTICLE XIII. SENSITIVE SECURITY INFORMATION

Contractor acknowledges that, in the course of performing its work under this Agreement, Contractor may be given access to Sensitive Security Information (“SSI”), as material is described in the Code of Federal Regulations, 49 C.F.R. Part 1520. Contractor specifically agrees to comply with all requirements of the applicable federal regulations, including but not limited to, 49 C.F.R. Parts 15 and 1520. Contractor understands any questions it may have regarding its obligations with respect to SSI must be referred to the DEN’s Security Office.

ARTICLE XIV. DEN SECURITY

A. Contractor, its officers, authorized officials, employees, agents, subcontractors, and those under its control, shall comply with safety, operational, or security measures required of Contractor or the City by the FAA or TSA. If Contractor, its officers, authorized officials, employees, agents, subcontractors or those under its control, fail or refuse to comply with said measures and such non-compliance results in a monetary penalty being assessed against the City, then, in addition to any other remedies available to the City, Contractor shall fully reimburse the City any fines or penalties levied against the City, and any attorney fees or related costs paid by the City as a result of any such violation. Contractor must pay this amount within fifteen (15) days from the date of the invoice or written notice. Any fines and fees assessed by the FAA or TSA against the City due to the actions of Contractor and/or its agents will be deducted directly from the invoice for that billing period.

B. Contractor is responsible for compliance with Airport Security regulations and 49 C.F.R. Parts 1542 (Airport Security) and 14 C.F.R. Parts 139 (Airport Certification and Operations). Any and all violations pertaining to Parts 1542 and 139 resulting in a fine will be passed on to and borne by Contractor. The fee/fine will be deducted from the invoice at time of billing.

ARTICLE XV. FEDERAL RIGHTS

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 Denver Municipal Airport System. As applicable, Contractor shall comply with the Standard Federal Assurances identified in Appendix 1.

ARTICLE XVI. CONTRACT DOCUMENTS; ORDER OF PRECEDENCE

A. Attachments. This Agreement consists of Article I through XVII which precede the signature page, and the following attachments which are incorporated herein and made a part hereof by reference:

Exhibit A: Standard Federal Assurances
Exhibit B: Scope of Work
Exhibit C: Insurance Requirements

B. Order of Precedence. In the event of an irreconcilable conflict between a provision of Article I through XVII and any of the listed attachments or 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:

Exhibit A
Article I through XVII hereof
Exhibit B
Exhibit C

ARTICLE XVII. CITY EXECUTION OF AGREEMENT

A. City Execution. This Agreement is expressly subject to, and shall become effective upon, the execution of all signatories of the City and, if required, the approval of Denver City Council. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same.

B. Electronic Signatures and Electronic Records. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City and/or Contractor in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

[SIGNATURE PAGES FOLLOW]

Contract Control Number: PLANE-202056153-00
Contractor Name: DAKTRONICS, INC.

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of:

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

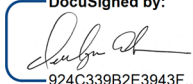
By:

By:

By:

Contract Control Number:
Contractor Name:

PLANE-202056153-00
DAKTRONICS, INC.

By:  924C339B2E3943F...

Name: Dewayne Anderson
(please print)

Title: Transportation Market Manager
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

EXHIBIT A

Standard Federal Assurances and Nondiscrimination Non-Federal Contract Provision

A5 CIVIL RIGHTS - GENERAL

A5.3.1 Clause that is used for Contracts

GENERAL CIVIL RIGHTS PROVISIONS

The Contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the Contractor and subcontractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

A6 CIVIL RIGHTS – TITLE VI ASSURANCE

A6.3.1 Title VI Solicitation Notice

Title VI Solicitation Notice:

The City, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that any contract entered into pursuant to this advertisement, will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

A6.4 CONTRACT CLAUSES

A6.4.1 Title VI Clauses for Compliance with Nondiscrimination Requirements

Compliance with Nondiscrimination Requirements:

During the performance 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 (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, 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, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- 3. Solicitations for Subcontracts, 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 will be notified by the Contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will 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 to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

A6.4.2 Title VI Clauses for Deeds Transferring United States Property

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of the Airport Improvement Program grant assurances.

NOW, THEREFORE, the Federal Aviation Administration as authorized by law and upon the condition that the (*Title of Sponsor*) will accept title to the lands and maintain the project constructed thereon in accordance with (*Name of Appropriate Legislative Authority*), for the (**Airport Improvement Program or other program for which land is transferred**), and the

policies and procedures prescribed by the Federal Aviation Administration of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 USC § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the (*Title of Sponsor*) all the right, title and interest of the U.S. Department of Transportation/Federal Aviation Administration in and to said lands described in (*Exhibit A attached hereto or other exhibit describing the transferred property*) and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto (*Title of Sponsor*) and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the (*Title of Sponsor*), its successors and assigns.

The (*Title of Sponsor*), in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) that the (*Title of Sponsor*) will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended[, and (3) that in the event of breach of any of the above-mentioned nondiscrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the Federal Aviation Administration and its assigns as such interest existed prior to this instruction].*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

A6.4.3 Title VI Clauses for Transfer of Real Property Acquired or Improved Under the Activity, Facility, or Program

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE AIRPORT IMPROVEMENT PROGRAM

The following clauses will be included in (deeds, licenses, leases, permits, or similar instruments) entered into by the (*Title of Sponsor*) pursuant to the provisions of the Airport Improvement Program grant assurances.

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add “as a covenant running with the land”] that:
 1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Nondiscrimination covenants, (*Title of Sponsor*) will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*
- C. With respect to a deed, in the event of breach of any of the above Nondiscrimination covenants, the (*Title of Sponsor*) will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the (*Title of Sponsor*) and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

A6.4.4 Title VI Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program

CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by (*Title of Sponsor*) pursuant to the provisions of the Airport Improvement Program grant assurances.

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, “as a covenant running with the land”) that (1) no person on the ground of race, color, or

national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.

- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above nondiscrimination covenants, (*Title of Sponsor*) will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*
- C. With respect to deeds, in the event of breach of any of the above nondiscrimination covenants, (*Title of Sponsor*) will there upon revert to and vest in and become the absolute property of (*Title of Sponsor*) and its assigns. *

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

A6.4.5 Title VI List of Pertinent Nondiscrimination Acts and Authorities

Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of

the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).

A17 FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

A17.3 SOLICITATION CLAUSE

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part-time workers.

The [***Contractor*** | ***Consultant***] has full responsibility to monitor compliance to the referenced statute or regulation. The [***Contractor*** | ***Consultant***] must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

A20 OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

A20.3 CONTRACT CLAUSE

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. The employer must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The employer retains full responsibility to monitor its compliance and their subcontractor’s compliance with the applicable requirements of

the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). The employer must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.



EXHIBIT B

Denver International Airport
 General Services Purchasing Airport Office Building
 8th Floor 8500 Peña Boulevard
 Denver, CO 80249-6340
 Aran Raz
 (303) 342-2113 | (720) 483-9970 (M)
 ArAN.RAZ@flydenver.com | www.flydenver.com

590415-3 REV 2
 9-July-2020
 Valid for 60 Days
 FCA: Destination
 Payment Terms: TBD
 Subject to credit review

RE: Denver International Airport - Great Hall Project - Phase 1 - Ticketing Dynamic Video Wall
 Master Agreement Pricing

Daktronics, Inc. ("Daktronics") appreciates the opportunity to provide a Quote to Denver International Airport ("Purchaser").

Equipment and Services

Model	Description	QTY	Price
DVN-2050-2.5MN-1000-BR-NM-600x21400-AUTOBR-LT-NR-FOR-PCA-CNTRL-CUSTOM CORNER WRAP		4	\$1,606,492.37
	DVN-2050-2.5MN-1000-BR-NM-200x200 Panels 100mmx100mm 2.5mm module Prolink Routers (PLR) Power Supply Power & Signal Interconnect Cables	1,308	
Spare Parts	Modules	262	\$58,462.10
	Power Supplies	66	
	Prolink Routers (PLR)	66	
	Receiver Cards	66	
Border Kits	Semi-Gloss Black border kit encompassing all edges of the display and support wall structure mounting frame	4	\$13,546.53
Wall Structure Mounting Frame	2"x4" Horizontal HSS with installation jigs and alignment tools.	4	\$28,304.58
Daktronics Content Management System Integration	Full Daktronics provided Content Management System (CMS) to take feeds from SITA System - Airport Vision with scaling and windowing capabilities. Hosted and supported in Daktronics provided rack-mounted infrastructure	4	\$164,188.26

Daktronics, Inc.
Contract No. 202056153-00

www.daktronics.com

201 Daktronics Dr. Brookings, SD 57006
 tel 800-325-8766 email: sales@daktronics.com
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 Quote 590415-3-0





Shipping	LTL Shipping from FOB Dak 57006 to Denver International Airport 80249	1	\$6,483.53
Service Warranty	One (1) year parts	1	\$25,722.80
SUBTOTAL			\$1903,200.17
Additional Services			
Control Training (includes travel and per diem expenses)	Full 8-hour Day Training (recommended)	1	\$7,418.33
Installation Supervision (includes travel and per diem expenses)	Daktronics On-Site Technical Supervision to provide installation support. See Installation Supervision SOW for details (recommended)	1	\$39,637.50
Daktronics Engineering & Design	Engineering design and certification for Equipment attachment design.	1	\$6,800.00

TOTAL PRICE (EXCLUDING TAXES) \$ \$1,957,056.00

(amount in USD)

FIRST YEAR OF SERVICE:

One Year Standard Parts Warranty DD1425983 (<http://www.daktronics.com/standardparts>) concurrent with Warranty and Limitation of Liability as provided in this Agreement.

The parties agree that due to the volatile market for materials, including but not limited to steel, copper wire, electrical devices, and other related components, Daktronics reserves the right to adjust the contract price prior to execution of the Quote.

This quote does not include permits, duties, taxes, foundations, structural beams, installation, identification panels, power, conduit, or electrical hookup to the equipment. Taxes: Buyer must provide a sales tax exemption certificate to claim exemption. Specifications subject to change; refer to shop drawings for exact dimensions prior to construction. ~~This quote is subject to the following:~~

- ~~[SL-02375 Standard Terms and Conditions of Sale](#)~~
 - ~~(<http://www.daktronics.com/terms-conditions/SL-02375.pdf>)~~
- ~~[SL-02374 Standard Warranty and Limitation of Liability](#)~~
 - ~~(<http://www.daktronics.com/terms-conditions/SL-02374.pdf>)~~

~~Due to the dynamic COVID-19 situation, the freight pricing and proposed schedule for delivery and performance of services are subject to change.~~



DAKTRONICS
QUOTE

Kyle Niemeyer
Regional Sales
970-413-4978
Kyle.Niemeyer@daktronics.com

or

Derek Dorow
Project Manager
605-695-8503
Derek.Dorow@daktronics.com

INSTALLATION RESPONSIBILITIES CHECKLIST

END USER | PROJECT NAME

DIA - Great Hall - Dynamic Ticketing Displays

	Responsible Party			Description
	Daktronics	Customer	Installer	
Admin		✓		1. Provide payment and performance Bond.
Admin			✓	2. Secure necessary construction permits.
Engr & Design	✓			3. Generate and issue site specific electrical and signal drawing submittals for video equipment.
Engr & Design	✓			4. Generate and issue site specific equipment shop drawing and attachment detail submittals for video equipment.
Engr & Design		✓		5. Provide approval of all engineering drawings, electrical drawings, shop drawings, equipment locations, color renderings, and ad copy layouts.
Engr & Design		✓		6. Customer is responsible to ensure the existing structure/building is adequate, including any necessary modifications, for the installation of the Equipment, including but not limited to (i) obtaining certified engineer drawings to the extent required by law and (ii) providing Daktronics, upon reasonable request, documentation relating to the existing structure and modifications necessary for Daktronics perform its work.
Engr & Design		✓		7. Engineering certification for electrical design.
Engr & Design	✓			8. Engineering design and certification for Equipment attachment design.
General Info		✓		9. Unobstructed access to equipment and control room installation site until display is 100%.
General Info		✓		10. Mark location of the new Equipment as delineated in the quote.
General Info			✓	11. Provide all required floor protection.
General Info			✓	12. Site clean-up after work.
Shipping	✓			13. Crating and shipping of all equipment to facility via common or independent carrier.
Shipping			✓	14. Accept, lift, unload, and inspect all video equipment and control equipment from carrier.
Shipping		✓		15. Provide storage of video equipment and control equipment in a safe, dry, and secure location until installation.
Installation	✓			Fabricate Horizontal Extruded Wall-Mounted Substructure.
Installation	✓ RECOMMENDED		✓	17. Install Horizontal Extruded Wall-Mounted Substructure.
Installation	✓ RECOMMENDED		✓	18. Lift and mount Equipment listed in this quotation.
Electrical		✓		19. Provide primary power feed up to and including demarcation point in the form of transformer and electrical disconnect with over current protection per all applicable electrical codes and regulations. Note: Maximum voltage of 120 volts line to neutral for all display systems.
Electrical		✓		20. Provide secondary power conduits, distribution panel, power cable and power hook-up from the demarcation point to all Daktronics supplied load centers/termination panel at/within the Equipment.
Signal			✓	21. Mount and install fiber patch panel as required by electrical and signal drawings.
Signal		✓		22. Provide and install signal cable conduit, with pull string, from control location to all Equipment locations/signal termination points, as delineated in the electrical and signal drawings.
Signal		✓		23. Communication responsibility (DSL line, Network, Static IP address and associated monthly fees) as necessary for this system. Supply static IP address five (5) days prior to installation.
Signal		✓		24. Provide all required building (wall/roof) penetrations for the installation of Daktronics provided wireless bridge and/or radio transmitter/receiver components. Mount Daktronics provided wireless bridge and/or radio transmitter/receiver components to the building in accordance with manufacturers recommendations.
Signal			✓	25. Furnish signal cable as delineated on the quote.
Signal			✓	26. Labor to pull all new signal cable (and remove existing cable, if required).
Signal			✓	27. Terminate signal cable at control location and video Equipment.
Control		✓		28. Provide a climate controlled and secure control room for all control systems (on/off venue site). Control room is to be climate controlled by Customer. Normal operating temperature should be between 65 and 75 degrees Fahrenheit. Normal operating humidity should be less than 80 percent non-condensing. Storage temperature should be between 40 and 95 degrees Fahrenheit. Storage humidity should be less than 95 percent non-condensing.
Control		✓		29. Provide high speed internet connection to control room equipment.
Control		✓		30. Required power outlets on clean dedicated circuit(s) for all video and control equipment.
Control	✓			31. Provide Display Interface for control equipment.
Control	✓ RECOMMENDED		✓	32. Unpack, set-up, hook-up, and testing of control system.
Training	✓ RECOMMENDED	✓	✓	33. Provide personnel for maintenance and operator training.
Closeout	✓	✓	✓	34. Perform final systems testing and commissioning.
Closeout		✓		35. Final acceptance, per DF-1252.
Closeout	✓	✓		36. Walk-thru inspection at Substantial Completion and identification of punch list items
Closeout			✓	37. Completion of punch list items.

✓ **RECOMMENDED** Daktronics recommends onsite Installation Supervision/Support for these installation responsibilities

Daktronics Parts Service

Attachment A

Daktronics Parts Service

Scope of Services

1. Daktronics Parts Coverage which includes:
 - 1.1. Daktronics Expedited Parts Processing: includes replacement parts, repair and return parts and exchange parts.
 - See Estimated Processing Times for Service Parts (DD#1428254) for estimated lead and delivery times.
 - 1.2 Shipping of repaired or replaced failed electronic components from Daktronics.
2. Technical Phone Support:
 - 2.1. General phone support hours 24/7/365.
 - 2.2. Remote assisted technical support.*
3. Account Services: Access to Daktronics Service Coordination 24/7/365.
4. Access to On-Site Field Services Response:
 - 4.1. On-site response between 48-72 hours of notification.
 - 4.2. On-site service is available as a billable service call only, at Daktronics' hourly service rate in effect at the time of service.

Daktronics Parts Service shall not include nor be construed to include any service or support that is not expressly stated above in the definition of the Daktronics Parts Service. Examples of services that are not within the scope of standard service include, but are not limited to, the following:

1. On-site labor to diagnose and/or replace failed electronic components.
2. Remote monitoring services.
3. Camera calibration.
4. Display washing.
5. Annual display and control system checks.

Above listed exclusions are available as billable services. Quotes may be provided upon request.

Purchaser Responsibilities

The items listed below are the responsibility of the Purchaser.

1. Purchaser is responsible for routine operator functions such as content creation or scheduling and all configuration, set-up, and operation for events/usage.
2. Purchaser is responsible for providing lift access to the display.
3. Purchaser is responsible for providing a secure internet connection.
4. Purchaser is responsible for the maintenance items listed below; failure to properly maintain equipment may, at Daktronics' sole discretion, relieve Daktronics of its responsibilities under the Terms and Conditions of Extended Service attached hereto.
 - 4.1. Throughout the term of this Agreement, Purchaser shall maintain site conditions within the common environmental range of all system devices as specified by Daktronics.
 - 4.2. Purchaser is responsible for routine, preventative maintenance functions; examples include the external cooling systems (filters, fans, air conditioning) for displays and control systems, and clean-up/maintenance of the control systems computer hard drives. Preventative maintenance is required to prevent dirt/dust and heat buildup as well as maintain peak performance.
 - 4.3. Purchaser is responsible for purchasing and maintaining antivirus software on all control devices connected to Daktronics equipment. (See Daktronics Knowledge Base for list of supported software. DD2079868 <https://www.daktronics.com/support/kb/Pages/DD2079868.aspx>)

Daktronics parts service effective for 12 months from the date of receipt and final acceptance by the City. ~~that extended service is effective.~~

* Available with internet connection.

~~This Service Agreement shall be subject to the following [Terms and Conditions of Extended Service.](#)~~

~~www.daktronics.com/terms-conditions/SL-05662.pdf~~

EXHIBIT C

CITY AND COUNTY OF DENVER INSURANCE REQUIREMENTS FOR DEPARTMENT OF AVIATION OWNER CONTROLLED INSURANCE PROGRAM (OCIP/ROCIP) PROJECT

1. General Information

City and County of Denver and Denver International Airport (hereinafter referred to collectively as “DEN”) has arranged for certain construction activities at DEN to be insured under an Owner Controlled Insurance Program (OCIP) or a Rolling Owner Controlled Insurance Program (ROCIP) (hereinafter collectively referred to as “ROCIP”). A ROCIP is a single insurance program that insures DEN, the Contractor and subcontractors of any tier, and other designated parties (Enrolled Parties), for work performed at the Project Site. Certain trade contractors and subcontractors are ineligible for this program; see Excluded Parties under the definitions Section 7 for a general list of excluded parties. Insurance requirements are determined based on the scope of work.

1.2 ROCIP Manuals

Below are links to access the current reference manuals related to DEN ROCIP III. These manuals are part of the Contract Documents.

[DEN ROCIP III Insurance Manual](#)

[DEN ROCIP III Safety Manual](#)

[DEN ROCIP III Claims Guide](#)

2. Insurance Requirements for Non-ROCIP Contractors and Subcontractors (Excluded Parties)

Contractor and subcontractors of any tier shall require all Excluded Parties, as defined in Section 7 or confirmed as excluded by DEN, to provide and maintain insurance of the type and in limits as set forth in the Contractor Subcontract Agreement and such insurance shall include the minimum defined coverages and be evidenced to DEN as required in this Section 2.

2.1 Certificate Holder

Certificate(s) shall be issued to: CITY AND COUNTY OF DENVER
Denver International Airport
8500 Peña Boulevard, Suite 8810
Denver CO 80249
Attn: Risk Management

2.2 Acceptable Certificate of Insurance Form and Submission Instructions

Please read these requirements carefully to ensure proper documentation and receipt of your certificate(s) of insurance.

- ACORD FORM (or equivalent) certificate is required.
- SUBMIT via emailed in pdf format to: contractadmininvoices@flydenver.com
- ELECTRONIC CERTIFICATES are required, hard copy documents will not be accepted.
- THIRD PARTY SOFTWARE may be implemented during the term of this Agreement to manage insurance compliance and documents with required use by Vendor of such system.
- REFERENCE on the certificate must include the DEN assigned Contract Number.

2.3 Coverage and Limits

2.3.1 Commercial General Liability

Contractor shall maintain insurance coverage including bodily injury, property damage, personal injury, advertising injury, and products and completed operations in minimum limits of \$1,000,000 each occurrence, \$2,000,000 products and completed operations aggregate and \$2,000,000 annual aggregate.

2.3.1.1 Coverage shall include Contractual Liability covering liability assumed under this Agreement (including defense costs assumed under contract) within the scope of coverages provided.

2.3.1.2 Coverage shall include Mobile Equipment Liability.

2.3.2 Business Automobile Liability

Contractor shall maintain a minimum limit of \$1,000,000 combined single limit each occurrence for bodily injury and property damage for all owned, leased, hired and/or non-owned vehicles used in performing services under this Agreement.

2.3.2.1 If operating vehicles unescorted airside at DEN, a \$10,000,000 combined single limit each occurrence for bodily injury and property damage is required.

2.3.2.2 If Contractor does not have blanket coverage on all owned and operated vehicles, then a schedule of insured vehicles (including year, make, model and VIN number) must be submitted by the insurer with the Certificate of Insurance.

2.3.2.3 The policy must not contain an exclusion related to operations on airport premises.

2.3.2.4 If transporting waste, hazardous material, or regulated substances, Contractor shall carry a Broadened Pollution Endorsement and an MCS 90 endorsement on its policy.

2.3.2.5 If Contractor is an individual or represents that Contractor does not own any motor vehicles and Contractor's owners, officers, directors, and employees use their personal vehicles for business purposes, Personal Automobile Liability insurance coverage will be accepted provided it includes a business use endorsement.

2.3.2.6 If Contractor will be completing all services to DEN under this Agreement remotely this requirement will be waived.

2.3.3 Workers' Compensation and Employer's Liability Insurance

Contractor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits no less than \$1,000,000 per occurrence for each bodily injury claim, \$1,000,000 per occurrence for each bodily injury caused by disease claim, and \$1,000,000 aggregate for all bodily injuries caused by disease claims.

2.3.3.1 If Contractor is a sole proprietor, Workers' Compensation and Employer's Liability is exempt under the Colorado Workers' Compensation Act.

2.3.4 Professional Liability (Errors and Omissions) Insurance

Contractor shall maintain a minimum limit of \$1,000,000 each claim and policy aggregate, providing coverage for applicable services outlined in this Agreement. If there are no applicable professional services, this coverage will not be required.

The Contractor shall be responsible for conferring with DEN Risk Management on any subcontractors providing work to the Project to obtain a formal determination if this coverage will be required.

2.3.5 Contractor's Pollution Legal Liability

If required by DEN Risk Management for any specific Excluded Party based on their scope of work, Contractor shall maintain coverage for its work site operations that are conducted on DEN's premises including project management and site supervision duties with a limit no less than \$1,000,000 each occurrence and aggregate resulting from claims arising out of a pollution condition or site environmental condition resulting out of work site operations on DEN's premises.

2.3.5.1 Coverage shall include claims/losses for bodily injury, property damage including loss of use of damaged property, defense costs including costs and expenses incurred in the investigation, defense or settlement of claims, and cleanup cost for pollution conditions resulting from illicit abandonment, the discharge, dispersal, release, escape, migration or seepage of any solid, liquid, gaseous or thermal irritant, contaminant, or pollutant, including soil, silt, sedimentation, smoke, soot, vapors, fumes, acids, alkalis, chemicals, electromagnetic fields, hazardous substances, hazardous materials, waste materials, low level radioactive waste, mixed wastes, on, in, into, or upon land and structures thereupon, the atmosphere, surface water or groundwater on the DEN premises.

2.3.5.2 Work site means a location where covered operations are being performed, including real property rented or leased from DEN for the purpose of conducting Contractor's covered operations.

The Contractor shall be responsible for conferring with DEN Risk Management on any subcontractors providing work to the Project to obtain a formal determination if this coverage will be required.

2.3.6 Technology Errors and Omissions, Network Security, and Privacy Liability (Cyber):

If required by DEN Risk Management for any specific Excluded Party based on their scope of work, Contractor shall maintain a limit no less than \$1,000,000 each claim and aggregate; \$1,000,000 each claim and aggregate for cyber extortion; and no less than \$250,000 each claim for invoice manipulation and email spoofing.

2.3.6.1 Coverage shall include professional misconduct or lack of ordinary skill.

2.3.6.2 Coverage shall include, but not be limited to, liability arising from theft, dissemination and/or use of personal, private, confidential, information subject to a non-disclosure agreement, including information stored or transmitted, privacy or cyber laws, damage to or destruction of information, intentional and/or unintentional release of private information, alteration of information, extortion and network security, introduction of a computer virus into, or otherwise causing damage to, a customer's or third person's computer, computer system, network or similar computer related property and the data, software, and programs thereon, advertising injury, personal injury (including invasion of privacy) and intellectual property offenses related to internet.

The Contractor shall be responsible for conferring with DEN Risk Management on any subcontractors providing work to the Project to obtain a formal determination if this coverage will be required.

2.3.7 Unmanned Aerial Vehicle (UAV) Liability

If Contractor desires to use drones in any aspect of its work on DEN premises, the following requirements must be met prior to commencing any drone operations:

- 2.3.7.1 Express written permission must be granted by DEN.
- 2.3.7.2 Express written permission must be granted by the Federal Aviation Administration (FAA).
- 2.3.7.3 Drone equipment must be properly registered with the FAA.
- 2.3.7.4 Drone operator(s) must be properly licensed by the FAA.
- 2.3.7.5 Contractor must maintain UAV Liability including flight coverage, personal and advertising injury liability, and hired/non-owned UAV liability for its commercial drone operations with a limit no less than \$1,000,000 combined single limit each occurrence for bodily injury and property damage.

2.3.8 Excess/Umbrella Liability

Combination of primary and excess coverage may be used to achieve minimum required coverage limits. Excess/Umbrella policy(ies) must follow form of the primary policies with which they are related to provide the minimum limits and be verified as such on any submitted Certificate of Insurance.

2.3.9 Property Insurance or Builder's Risk Insurance

Contractor shall maintain all-risk insurance coverage on a replacement cost basis for equipment to be installed as part of the project within the scope of services provided.

- 2.3.9.1 Coverage shall apply to equipment stored off site and while in transit.
- 2.3.9.2 DEN and Contractor shall waive all rights against (1) each other and any of their subcontractors of any tier, and all respective agents and employees, and (2) the architect, architect's consultants, separate contractors, if any, and any of their subcontractors of any tier, and all respective agents and employees, for damages caused by fire or other causes of loss to the extent covered by Builder's Risk Insurance obtained pursuant to this Section. DEN or Contractor, as appropriate, shall require of the architect, architect's consultants, separate contractors, and their subcontractors of any tier, and all respective agents and employees, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.
- 2.3.9.3 DEN shall assume ownership of and responsibility to carry Property Insurance/ Builder's Risk Insurance on the equipment provided by Contractor within the scope of services at the time such equipment is delivered to DEN premises for temporary onsite storage and/or installation.

2.4 Reference to Project and/or Contract

The DEN Project and/or Contract Number and project description shall be noted on the Certificate of Insurance.

2.5 Additional Insured

For all coverages required under this Agreement (excluding Workers' Compensation and Professional Liability), Contractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, successors, agents, employees and volunteers as Additional Insureds by policy endorsement.

2.6 Waiver of Subrogation

For all coverages required under this Agreement, Contractor's insurer(s) shall waive subrogation rights against the City and County of Denver, its elected and appointed officials, successors, agents, employees and volunteers by policy endorsement.

2.7 Notice of Material Change, Cancellation or Nonrenewal

Each certificate and related policy shall contain a valid provision requiring notification to the Certificate Holder in the event any of the required policies be canceled or non-renewed or reduction in coverage before the expiration date thereof.

- 2.7.1 Such notice shall reference the DEN assigned contract number related to this Agreement.
- 2.7.2 Said notice shall be sent thirty (30) days prior to such cancellation, non-renewal or reduction in coverage unless due to non-payment of premiums for which notice shall be sent ten (10) days prior.
- 2.7.3 If such written notice is unavailable from the insurer or afforded as outlined above, Contractor and/or its insurance broker/agent shall provide written notice of cancellation, non-renewal and any reduction in coverage to the Certificate Holder within seven (7) business days of receiving such notice by its insurer(s) and include documentation of the formal notice received from its insurer(s) as verification. Contractor shall replace cancelled or nonrenewed policies with no lapse in coverage and provide an updated Certificate of Insurance to DEN.

2.8 Additional Provisions

- 2.8.1 Deductibles, SIRS, or any other type of retention are the sole responsibility of the Contractor.
- 2.8.2 Defense costs shall be in addition to the limits of liability. If this provision is unavailable that limitation must be evidenced on the Certificate of Insurance.
- 2.8.3 A severability of interests or separation of insureds provision (no insured vs. insured exclusion) is included under any policy requiring Additional Insured status.
- 2.8.4 A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by DEN, excluding Professional Liability and Workers' Compensation policies, if required.
- 2.8.5 The insurance requirements under this Agreement shall be the greater of (i) the minimum limits and coverage specified hereunder or (ii) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Contractor. It is agreed that the insurance requirements set forth herein shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums set forth in this Agreement.
- 2.8.6 All policies shall be written on an occurrence form when available and industry norm. If an occurrence form is unavailable and/or the industry norm, claims-made coverage may be accepted by DEN provided the retroactive date is on or before the Agreement Effective Date or the first date when any goods or services were provided to DEN, whichever is earlier, and continuous coverage will be maintained or an extended discovery period of three years beginning at the time work under this Agreement is completed or the Agreement is terminated, whichever is later.

- 2.8.7 Contractor shall advise DEN in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Contractor will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.
- 2.8.8 Certificates of Insurance must specify the issuing 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 DEN at the time Contractor signed this Agreement.
- 2.8.9 The insurance shall be underwritten by an insurer licensed or authorized to do business in the State of Colorado and rated by A.M. Best Company as A- VIII or better.
- 2.8.10 Certificate of Insurance and Related Endorsements: DEN's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Contractor's breach of this Agreement or of any of DEN's rights or remedies under this Agreement. DEN's acceptance of any submitted insurance certificate is subject to the approval of DEN Risk Management. All coverage requirements specified in the certificate shall be enforced unless waived or otherwise modified in writing by DEN Risk Management. Contractor is solely responsible for ensuring all formal policy endorsements are issued by their insurers to support the requirements herein.
- 2.8.11 DEN shall have the right to verify or confirm, at any time, all coverage, information or representations, and the insured and its undersigned agent shall promptly and fully cooperate in any such audit DEN may elect to undertake including provision of certified copies of insurance policies upon request.
- 2.8.12 No material changes that negatively impact DEN or reductions in the coverage required herein shall be allowed without the review and written approval of DEN Risk Management.

3. Insurance Requirements for ROCIP Enrolled Contractors and Subcontractors

3.1 Insurance Provided by the DEN ROCIP

DEN retains the right to have this Project insured under a ROCIP. ROCIP coverage shall provide: (i) Commercial General Liability, (ii) Workers' Compensation & Employer's Liability, (iii) Excess Liability, (iv) Contractor's Pollution Liability, and (v) Builder's Risk as outlined herein and as defined by the respective policies for each coverage, for the period from the start of Work through completion and final acceptance by DEN except as otherwise provided herein.

3.2 Enrollment Required

Parties performing labor or services at the Project Site are eligible to enroll in the DEN ROCIP, unless they are Excluded Parties (as defined in Section 7). Participation is mandatory but not automatic. Parties eligible for enrollment shall follow the procedures and follow the instructions as provided in the DEN ROCIP Insurance Manual to enroll in the program. When the Contractor and subcontractors of any tier are properly enrolled, the DEN ROCIP Administrator will issue a Certificate of Insurance evidencing the coverages afforded to each Enrolled Party under the DEN ROCIP, prior to their commencing Work on the Project Site.

3.3 Exclusion of Contractor/Subcontractor Insurance Costs from Proposal and Bid Prices

Contractor shall exclude from Contractor's cost of work and ensure that each subcontractor of any tier exclude from their cost of work, normal costs for insurance for those coverages provided under the DEN ROCIP. As part of the enrollment process, Contractor and subcontractors shall provide policy declaration rate pages and deductible endorsements on the General Liability, Workers' Compensation, and Excess Liability policies as required in the DEN ROCIP Insurance Manual. The calculation of these costs will be determined by the ROCIP Program Administrator. The costs of DEN ROCIP coverage includes

reductions in insurance premiums, all relevant taxes and assessments, markup on insurance premiums, and losses retained through large deductibles, self-insured retentions, or self-funded programs. Change orders shall also exclude the cost of ROCIP coverage.

Pre-employment substance abuse testing costs will be covered by DEN and should be removed from bid prices. Drug testing will be more thoroughly discussed in the ROCIP Safety Manual.

3.4 Insurance Premiums

DEN will pay the insurance premiums for the DEN ROCIP insurance policies. DEN is responsible for all adjustments to the premiums and will be the sole beneficiary of all dividends, retroactive adjustments, return premiums, and any other monies due through audits or otherwise. The Contractor assigns to DEN the right to receive all such adjustments and will require that each subcontractor of any tier assign to DEN all such adjustments. The Contractor and the subcontractors who are Enrolled Parties shall execute such further documentation as may be required by DEN to accomplish this assignment.

3.5 Off Site Operations Coverage Under ROCIP

The DEN ROCIP will provide certain insurance coverage for DEN, Contractor and Enrolled Parties, along with their Eligible Employees performing Work at the Project Site. Off-site operations shall be covered only if designated in writing by DEN and when all operations at such site are identified and solely dedicated to the Project. Contractors and subcontractors are responsible to notify the DEN ROCIP Administrator in writing, to request coverage for specified off-site operations. Coverage is not provided at the off-site location unless confirmed in writing by the DEN ROCIP Administrator.

3.6 DEN ROCIP Insurance Manual

As soon as practicable, the DEN ROCIP Insurance Manual will be sent to each Enrolled Party and will become a part of the Contract and Contractor's Subcontract with its subcontractor and its subcontractors' agreements with any lower-tier subcontractor. The DEN ROCIP Insurance Manual will contain the administrative and claim reporting procedures. Contractor agrees to and will require that its subcontractors of any tier to cooperate with the DEN ROCIP Administrator in providing all required information.

3.7 Conflicts

Descriptions of the DEN ROCIP coverages set forth in Section 3.8 are not intended to be complete or meant to alter or amend any provision of the DEN ROCIP insurance policies. The DEN ROCIP coverages, terms, conditions, and exclusions are set forth in full in their respective policy forms. In the event of a conflict or omission between the coverages provided in the DEN ROCIP insurance policies and the coverages summarized or described in the DEN ROCIP Insurance Manual, this Exhibit or elsewhere in the Contract Documents, the DEN ROCIP insurance policies shall govern. In the event of a conflict between the provisions of this Exhibit and the DEN ROCIP Insurance Manual, that does not involve any conflict with the provisions of the DEN ROCIP insurance policies, the provisions of this Exhibit shall govern.

3.8 ROCIP Insurance Coverage Provided to Enrolled Parties

3.8.1 Insurance Provided by DEN

Unless otherwise provided herein, prior to commencement of the Work, DEN, at its sole option and expense, shall secure and maintain at all times during the performance of this Contract the insurance specified below, insuring DEN, Enrolled Parties and such other persons or interests as DEN may designate with limits not less than those specified below for each coverage.

3.8.1.1 Workers' Compensation & Employer's Liability – On Site Only

DEN shall maintain the coverage as required by statute for the Project Site and shall maintain Employer's Liability insurance with limits no less than \$1,000,000 per occurrence for each bodily injury claim, \$1,000,000 per occurrence for each bodily injury caused by disease claim, and \$1,000,000 aggregate for all bodily injuries caused by disease claims.

3.8.1.2 Commercial General Liability – On Site Only

DEN shall maintain insurance coverage including bodily injury, property damage, personal injury, advertising injury, and products and completed operations in minimum limits as listed below:

Coverage	Limit
Annual General Aggregate (Per Project and Reinstates Annually)	\$4,000,000
Products/Completed Operations Aggregate (Per Project and Statute of Repose)	\$4,000,000
Total Products/Completed Operations Aggregate (Statute of Repose)	\$8,000,000
Personal / Advertising Injury Limit	\$2,000,000
Each Occurrence Limit	\$2,000,000
Fire Damage Legal Liability (any one fire)	\$ 300,000
Medical Payments (any one person)	\$ 10,000

3.8.1.3 Excess Liability Insurance

DEN shall maintain coverage following form with underlying policies of Commercial General Liability and Employer's Liability in minimum limits as listed below:

Coverage	Limit
Annual General Aggregate (Per Project and Reinstates Annually)	\$200,000,000
Products/Completed Operations Aggregate (Per Project)	\$200,000,000
Total Products/Completed Operations Aggregate (Policy Cap)	\$400,000,000
Each Occurrence Limit	\$200,000,000

DEN, in its sole discretion, may elect to provide higher limits, based on Project size. Excess Liability limits are shared by all Insured parties.

3.8.1.4 Contractor's Pollution Liability

DEN shall maintain coverage for bodily injury, property damage, or environmental damage caused by a pollution event resulting from covered operations, including completed operations, at the Project Site with a limit no less than \$10,000,000 each occurrence and aggregate. Coverage includes microbial matter and legionella pneumophila in any structure on land and the atmosphere contained with the

structure. Products/Completed Operations coverage may extend for the statute of limitations/repose after final completion of the Project.

3.8.1.5 Builder's Risk Insurance

DEN shall maintain, Builder's Risk (and/or Installation Floater) in the amount of \$500,000,000 per occurrence subject to various sublimits (as defined in the Builders' Risk Policy). Such insurance shall end when the first of the following occurs: 1) DEN's interest in the Work ceases; 2) the policy expires or is cancelled; or 3) the Work is accepted by DEN.

Builder's Risk Insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss of damage including , theft, vandalism, malicious mischief, terrorism, rigging and hoisting for materials and equipment that are part of the Project, collapse, earthquake, flood, windstorm, falsework, testing and startup (as provided by the policy), temporary buildings and debris removal including demolition occasioned by enforcement of any applicable ordinance laws, and shall cover reasonable compensation for services and expenses required as a result of such insured loss.

This Builder's Risk Insurance shall cover portions of the Work stored off site, and also portions of the Work in transit.

DEN and Contractor shall waive all rights against (1) each other and any of their subcontractors of any tier, and all respective agents and employees, and (2) the architect, architect's consultants, separate contractors, if any, and any of their subcontractors of any tier, and all respective agents and employees, for damages caused by fire or other causes of loss to the extent covered by Builder's Risk Insurance obtained pursuant to this Section or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by DEN as fiduciary. DEN or Contractor, as appropriate, shall require of the architect, architect's consultants, separate contractors, and their subcontractors of any tier, and all respective agents and employees, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

3.8.2 Claim Chargeback

A claim charge-back will be assessed, regardless of fault, for the amount of any loss payable under this program with the exception of Workers' Compensation and Excess Liability, up to a maximum of \$25,000 each loss. Lead Contractor may elect to pass no more than \$5,000 of this charge, each loss, through to any responsible subcontractor.

3.9 Other Insurance Provided By Enrolled Parties

At their own expense, the Enrolled Parties of all tiers must carry the following minimum coverage and limits and such insurance shall be evidenced to DEN and the DEN ROCIP Administrator as required in this Section 3.9.

3.9.1 Certificate Holder

Certificate(s) shall be issued to: CITY AND COUNTY OF DENVER
Denver International Airport
8500 Peña Boulevard, Suite 8810
Denver CO 80249
Attn: Risk Management

and

CITY AND COUNTY OF DENVER
Department of Aviation
c/o Arthur J. Gallagher RMS, Inc.
12444 Powerscourt Drive
St. Louis, MO 63131
Attn: Gallagher OCIP Group

3.9.2 Acceptable Certificate of Insurance Form and Submission Instructions

Please read these requirements carefully to ensure proper documentation and receipt of your certificate(s) of insurance.

- ACORD FORM (or equivalent) must be emailed in pdf format to:
contractadmininvoices@flydenver.com
and heather_lawson@ajg.com
- HARD COPIES of certificates and/or copies of insurance policies will not be accepted.
- ACORD FORM (or equivalent) must reference the DEN assigned Contract Number.

3.9.3 Commercial General Liability – Off Site Only

Contractor shall maintain insurance coverage including bodily injury, property damage, personal injury, advertising injury, and products and completed operations for Contract operations not physically occurring within the Project Site in minimum limits of \$1,000,000 each occurrence, \$2,000,000 products and completed operations aggregate and \$2,000,000 policy and annual aggregate.

- 3.9.3.1 Coverage shall include Contractual Liability covering liability assumed under this Agreement (including defense costs assumed under contract) within the scope of coverages provided.

3.9.4 Business Automobile Liability

Contractor shall maintain a minimum limit of \$1,000,000 combined single limit each occurrence for bodily injury and property damage for all owned, leased, hired and/or non-owned vehicles used in performing services under this Agreement.

- 3.9.4.1 If operating vehicles unescorted airside at DEN, a \$10,000,000 combined single limit each occurrence for bodily injury and property damage is required.
- 3.9.4.2 If Contractor does not have blanket coverage on all owned and operated vehicles, then a schedule of insured vehicles (including year, make, model and VIN number) must be submitted by the insurer with the Certificate of Insurance.
- 3.9.4.3 The policy must not contain an exclusion related to operations on airport premises.
- 3.9.4.4 If transporting waste, hazardous material, or regulated substances, Contractor shall carry a pollution coverage endorsement and an MCS 90 endorsement on its policy.

- 3.9.4.5 If Contractor is an individual or represents that Contractor does not own any motor vehicles and Contractor's owners, officers, directors, and employees use their personal vehicles for business purposes, Personal Automobile Liability insurance coverage will be accepted provided it includes a business use endorsement.
- 3.9.4.6 If Contractor will be completing all services to DEN under this Agreement remotely this requirement will be waived.

3.9.5 Workers' Compensation and Employer's Liability Insurance – Off Site Only

Coverage to protect Contractor/Subcontractor from and against all claims arising from performance of Work outside the Project Site under the Contract.

Contractor shall maintain the coverage as required by statute for performance of Work outside the Project Site under the Contract and shall maintain Employer's Liability insurance with limits no less than \$1,000,000 per occurrence for each bodily injury claim, \$1,000,000 per occurrence for each bodily injury caused by disease claim, and \$1,000,000 aggregate for all bodily injuries caused by disease claims.

- 3.9.5.1 If Contractor is a sole proprietor, Workers' Compensation and Employer's Liability is exempt under the Colorado Workers' Compensation Act.

3.9.6 Professional Liability (Errors and Omissions) Insurance

Contractor shall maintain a minimum limit of \$1,000,000 each claim and policy aggregate, providing coverage for applicable services outlined in this Agreement.

The Contractor shall be responsible for conferring with DEN Risk Management on any subcontractors providing work to the Project to obtain a formal determination if this coverage will be required.

- 3.9.7 Technology Errors and Omissions, Network Security, and Privacy Liability (Cyber): Contractor shall maintain a limit no less than \$1,000,000 each claim and aggregate; \$1,000,000 each claim and aggregate for cyber extortion; and no less than \$250,000 each claim for invoice manipulation and email spoofing for applicable services outlined in this Agreement.

- 3.9.7.1 Coverage shall include professional misconduct or lack of ordinary skill.
- 3.9.7.2 Coverage shall include, but not be limited to, liability arising from theft, dissemination and/or use of personal, private, confidential, information subject to a non-disclosure agreement, including information stored or transmitted, privacy or cyber laws, damage to or destruction of information, intentional and/or unintentional release of private information, alteration of information, extortion and network security, introduction of a computer virus into, or otherwise causing damage to, a customer's or third person's computer, computer system, network or similar computer related property and the data, software, and programs thereon, advertising injury, personal injury (including invasion of privacy) and intellectual property offenses related to internet.

The Contractor shall be responsible for conferring with DEN Risk Management on any subcontractors providing work to the Project to obtain a formal determination if this coverage will be required.

3.9.8 Excess/Umbrella Liability:

Combination of primary and excess coverage may be used to achieve minimum required coverage limits. Excess/Umbrella policy(ies) must follow form of the primary policies with which they are related to provide the minimum limits and be verified as such on any submitted Certificate of Insurance.

3.9.9 Reference to Project and/or Contract

The DEN Project and/or Contract Number and project description shall be noted on the Certificate of Insurance.

3.9.10 Additional Insured

For all coverages required under this Agreement (excluding Workers' Compensation and Professional Liability), Contractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, successors, agents, employees and volunteers as Additional Insureds by policy endorsement.

3.9.11 Waiver of Subrogation

For all coverages required under this Agreement, Contractor's insurer(s) shall waive subrogation rights against the City and County of Denver, its elected and appointed officials, successors, agents, employees and volunteers by policy endorsement.

3.9.12 Notice of Material Change, Cancellation or Nonrenewal

Each certificate and related policy shall contain a valid provision requiring notification to the Certificate Holder in the event any of the required policies be canceled or non-renewed or reduction in coverage from the requirements herein before the expiration date thereof.

- 3.9.12.1 Such notice shall reference the DEN assigned contract number related to this Agreement.
- 3.9.12.2 Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal or reduction in coverage unless due to non-payment of premiums for which notice shall be sent ten (10) days prior.
- 3.9.12.3 If such written notice is unavailable from the insurer, and in any event, Contractor and/or its insurance broker/agent shall provide written notice of cancellation, non-renewal and any reduction in coverage to the Certificate Holder within seven (7) business days of receiving such notice by its insurer(s) and include documentation of the formal notice received from its insurer(s) as verification. Contractor shall replace cancelled or nonrenewed policies with no lapse in coverage and provide an updated Certificate of Insurance to DEN.

3.9.13 Additional Provisions

- 3.9.13.1 Deductibles, SIRS, or any other type of retention are the sole responsibility of the policyholder.
- 3.9.13.2 Defense costs shall be in addition to the limits of liability. If this provision is unavailable that limitation must be evidenced on the Certificate of Insurance.
- 3.9.13.3 A severability of interests or separation of insureds provision (no insured vs. insured exclusion) is included under any policy requiring Additional Insured status.
- 3.9.13.4 A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by DEN, excluding Professional Liability and Workers' Compensation policies, if required.
- 3.9.13.5 The insurance requirements under this Agreement shall be the greater of (i) the

minimum limits and coverage specified hereunder or (ii) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Contractor. It is agreed that the insurance requirements set forth herein shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums set forth in this Agreement.

- 3.9.13.6 All policies shall be written on an occurrence form when available and industry norm. If an occurrence form is unavailable and/or the industry norm, claims-made coverage may be accepted by DEN provided the retroactive date is on or before the Agreement Effective Date or the first date when any goods or services were provided to DEN, whichever is earlier, and continuous coverage will be maintained or an extended discovery period of three years beginning at the time work under this Agreement is completed or the Agreement is terminated, whichever is later.
- 3.9.13.7 Contractor shall advise DEN in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Contractor will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.
- 3.9.13.8 Certificates of Insurance must specify the issuing 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 DEN at the time Contractor signed this Agreement.
- 3.9.13.9 The insurance shall be underwritten by an insurer licensed or authorized to do business in the State of Colorado and rated by A.M. Best Company as A- VIII or better.
- 3.9.13.10 Certificate of Insurance and Related Endorsements: DEN's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Contractor's breach of this Agreement or of any of DEN's rights or remedies under this Agreement. DEN's acceptance of any submitted insurance certificate is subject to the approval of DEN Risk Management. All coverage requirements specified in the certificate shall be enforced unless waived or otherwise modified in writing by DEN Risk Management. Contractor is solely responsible for ensuring all formal policy endorsements are issued by their insurers to support the requirements herein.
- 3.9.13.11 DEN shall have the right to verify or confirm, at any time, all coverage, information or representations, and the insured and its undersigned agent shall promptly and fully cooperate in any such audit DEN may elect to undertake including provision of certified copies of insurance policies upon request.
- 3.9.13.12 No material changes that negatively impact DEN or reductions in the coverage required herein shall be allowed without the review and written approval of DEN Risk Management.

4. Contractor Warranties and Agreements

4.1 Accuracy of Contractor-provided Information

Contractor warrants that all information submitted to DEN or the DEN ROCIP Administrator is accurate and complete to the best of its knowledge. Contractor will notify DEN or the DEN ROCIP Administrator immediately in writing of any errors discovered during the performance of the Work.

4.2 Contractor Responsible to Review Coverage

Contractor acknowledges that all references to DEN ROCIP policy terms, conditions, and limits of

liability in this document, as well as the DEN ROCIP Insurance Manual, are for reference only. Contractor and its subcontractors of any tier are responsible for conducting their own independent review and analysis of the DEN ROCIP insurance policies in formulating any opinion or belief as to the applicability of such coverage in the event of any loss or potential claim. Any type of insurance or increase of limits not described above, which the Contractor requires for its own protection or on account of statute, shall be its own responsibility and at its own expense.

4.3 Audit

Contractor agrees to make its records available for review and to cooperate with DEN, its insurers and insurance brokers, the City Auditor, and representatives of the aforesaid parties in the event of an audit. In the event that a DEN audit of Contractor's records, as permitted in the Contract or other DEN ROCIP documents, reveals a discrepancy in the insurance, payroll, safety, or any other information required to be provided to DEN or the DEN ROCIP Administrator, or reveals inclusion of costs for DEN ROCIP coverage or other coverage beyond what is described above in any payment for the Work, DEN will have the right to deduct from payments due Contractor all such insurance costs as well as all audit costs.

4.4 Insurance Costs Removed

Contractor warrants that the costs for insurance as provided under the DEN ROCIP were not included in Contractor's bid or proposal for the Work, the Contract Price/Contract Sum, and will not be included in any change order or any request for payment for the Work or extra work.

5. Contractor Obligations

5.1 ROCIP Documents Shall be Provided to Subcontractor

Contractor shall furnish each bidding subcontractor, vendor, supplier, material dealer or other party a copy of this Exhibit, the DEN ROCIP Insurance Manual and the DEN ROCIP Safety Manual and shall incorporate the terms of this Exhibit in all contracts and agreements entered into for performance of any portion of the Work.

5.2 Timely Enrollment Required

Contractor shall enroll in the DEN ROCIP within five (5) business days following a request by DEN or the DEN ROCIP Administrator. Contractor shall notify each subcontractor of the process for enrolling in DEN ROCIP and confirm that enrollment is mandatory, but not automatic. Contractor shall assure that subcontractors of any tier shall not commence Work until verification of enrollment is confirmed by the DEN ROCIP Administrator by the issuance of a Certificate of Insurance to each individual Enrolled Party.

5.3 Compliance with Conditions

Contractor shall not violate any condition of the policies of insurance provided by DEN under the terms of this Exhibit, the DEN ROCIP Insurance Manual or the DEN ROCIP Safety Manual. All requirements imposed by the subject policies and to be performed by Contractor shall likewise be imposed on, assumed, and performed by each subcontractor of any tier.

5.4 Claims Cooperation

Contractor shall participate in claim reporting procedures. Contractor agrees to assist and cooperate in every manner possible in connection with the adjustment of all claims arising out of operations within the scope of the Work required by the Contract, and to cooperate with DEN's insurer(s) in all claims and demands which DEN's insurer(s) is called upon to adjust or to defend against. Contractor shall take all

necessary action to assure that its subcontractors of any tier comply with any request for assistance and cooperation. This obligation includes, without limitation, providing light or modified duty for injured workers, appearing in mediation, arbitration or court proceedings and/or participating in settlement meetings, as may be required.

5.5 Monthly Payroll Submission

All Enrolled Parties shall submit monthly payrolls and worker-hour reports to DEN and/or the DEN ROCIP Administrator via the DEN ROCIP Administrator's online reporting system as outlined in the DEN ROCIP Insurance Manual. The online reporting instructions will be provided to all Contractors at time of enrollment. Failure to submit these reports may result in funds being held or delayed from monthly progress payments. Payroll must be submitted online for each month, including zero (0) payroll, if applicable, until completion of the Work under each Contract and Subcontract. For subcontractors of any tier performing Work under multiple Subcontracts, a separate payroll report is required for each Subcontract under which Work is being performed.

5.6 Response to Information Requests

All insurance underwriting, payroll, rating or loss history information requested by DEN or the DEN ROCIP Administrator shall be provided by the Contractor within three (3) business days of request. Contractor agrees (and will require each subcontractor to agree) that DEN, DEN's insurers or its representative may audit the Contractor's records or records of subcontractors of any tier to confirm the accuracy of all insurance information provided including, without limitation, any such information that may have any effect on insurance resulting from changes in the Work. At all times during performance of the Contract and Subcontracts, the Contractor and subcontractors of any tier shall cooperate with DEN, the DEN ROCIP Administrator and DEN's insurers.

5.7 Responsibility for Safety

Notwithstanding the DEN ROCIP, the Contractor shall initiate, maintain and supervise all safety precautions and programs in connection with the Work. Contractor is solely responsible, at no adjustment to the contract sum payable or contract time, for initiating, maintaining, and supervising all safety precautions and programs relating to the conduct of Work including, without limitation, any safety programs or procedures that are required by any applicable state or federal laws, rules or regulations, or under the terms of the DEN ROCIP Safety Manual.

5.8 Duty of Care

Nothing herein shall relieve the Enrolled Parties of their respective obligations to exercise due care in the performance of their duties in connection with the Work or to complete the Work in strict compliance with this Contract and subsequent subcontracts.

6. Notices and Costs

6.1 Limitations on DEN Provided Coverage and DEN Right to Purchase Other Coverage

DEN assumes no obligations to provide insurance other than that evidenced by the policies referred to in Section 3.8. DEN, however, reserves the right to furnish insurance coverage of various types and limits provided that such coverage shall not be less than that specified in Section 3.8 and the costs of such insurance shall be paid by DEN. Apart from the DEN ROCIP, DEN may at its option purchase additional insurance coverages that insure the Project that may not necessarily insure the Contractor or the subcontractors. Without limitation, examples of such coverage may include pollution liability, excess professional liability, and excess automobile liability insurance.

6.2 Contractors Responsible for Own Equipment

Contractor and subcontractors are solely responsible for loss or damage of all construction tools and other equipment whether owned, leased, rented, borrowed or used on Work at the Project Site. If an individual Enrolled Party purchases insurance on their tools and equipment, such insurance shall contain a waiver of subrogation in favor of the City and County of Denver, its elected and appointed officials, agents, employees and volunteers and all other Enrolled Parties. If an individual Enrolled Party does not purchase such insurance, that Enrolled Party will hold harmless the City and County of Denver, its elected and appointed officials, agents, employees and volunteers and other Enrolled Parties for loss or damage to its tools and equipment.

6.3 No Release; No Waiver of Immunity

The provision of the DEN ROCIP shall in no way be interpreted as relieving Contractor or subcontractors of any tier of any responsibility or liability under the Contract Documents, the DEN ROCIP insurance policies or applicable laws including, without limitation, Contractor's and subcontractor's responsibilities relative to indemnification and their obligation to exercise due care in the performance of the Work and to complete the Work in strict compliance with the Contract Documents. The parties hereto understand and agree that the City and County of Denver, its elected and appointed officials, agents, employees and volunteers 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 DEN, its officers, officials and employees.

6.4 DEN Right to Withhold Payments

In addition to any other rights of withholding that DEN may have under the Contract Documents, DEN has the right to withhold any payments otherwise due to Contractor in the event of a failure by Contractor or any subcontractor to comply with the requirements of this Exhibit, the DEN ROCIP Insurance Manual or the DEN ROCIP Safety Manual. DEN may withhold from any payment owing to Contractor the costs of DEN ROCIP coverages if included in a request for payment. Such withholding by DEN shall not be deemed to be a default under the Contract. DEN shall withhold from Contractor the costs of DEN ROCIP coverages attributable to an increase in an Enrolled Party's total payroll for the Work over the amount reported to DEN and/or the DEN ROCIP Administrator at time of enrollment.

6.5 DEN Remedies

Without limitation upon any of DEN's other rights or remedies, any failure of an Enrolled Party to comply with any provision of this Exhibit, the DEN ROCIP Insurance Manual, or the DEN ROCIP Safety Manual shall be deemed a material breach of the Contract, thereby entitling DEN, at its option, upon notice to Contractor, to (1) suspend performance by Contractor and/or the offending subcontractor, without any adjustment to Contract Sum Payable or Contract Time, until there is full compliance, or (2) terminate this Contract for cause.

6.6 Off Site Storage

Unless otherwise provided in the Contract Documents, the property insurance provided by DEN shall not cover portions of the Work stored off the Site without written approval of DEN. Contractor shall be responsible for reporting such property or work if ownership has been transferred to DEN. If ownership rests with the Contractor, Contractor shall be responsible for obtaining insurance to protect its interests.

6.7 Partial Occupancy

Partial occupancy or use shall not commence until DEN insurer(s) providing Builders Risk and/or

Property Insurance have consented to such partial occupancy or use by endorsement or otherwise. DEN and the Contractor shall take reasonable steps to obtain consent of the insurer(s) and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

6.8 DEN Right to Exclude Parties from the DEN ROCIP

DEN reserves the right to exclude any subcontractor from the DEN ROCIP, before or after enrollment by the subcontractor. If DEN elects to exclude a subcontractor from the DEN ROCIP, the Contractor will be responsible for ensuring the insurance coverages outlined in the Contractor's Subcontract Agreement are provided to DEN or the DEN ROCIP Administrator before the subcontractor can begin or resume Work on the Project.

6.9 DEN's Right to Modify or Discontinue DEN ROCIP Coverages

If DEN determines that modification or discontinuation of the DEN ROCIP is in the best interest of DEN, the Contractor and subcontractor will receive sixty (60) days advance written notice to secure and maintain such insurance as is required to provide replacement coverage comparable to that provided under the DEN ROCIP. Provided that the foregoing is not the result of any failure by the Contractor or any subcontractor to comply with the requirements of the Contract Documents, the DEN ROCIP Insurance Manual or DEN ROCIP Safety Manual, the costs of such replacement insurance shall be deemed a cost of Work for which the Contractor shall be entitled to a Contract Adjustment, without any sum added thereto for Allowable Markup. The form, content, limits of liability, cost and the rating of the insurer(s) issuing such replacement coverage shall be subject to DEN's prior written approval.

7. Definitions

Certificate of Insurance:	A document providing evidence of coverage for a particular insurance policy or policies. This will include certificates issued to Enrolled Parties evidencing the coverage afforded under the DEN ROCIP and certificates issued to DEN evidencing additional coverage "Provided by Enrolled Parties"
DEN:	City and County of Denver and Denver International Airport
Contract:	The written agreement between DEN and Contractor describing the Work, contract terms and conditions, or a portion thereof; also includes a written agreement between a Contractor and any subcontractor as well as between subcontractors and their subcontractors of any tier.
Contractor Insurance Cost:	The costs of ROCIP coverage are defined as the amount of Contractor's and eligible Subcontractors' of every tier reduction in insurance costs due to participation in the DEN ROCIP.
Rolling Owner Controlled Insurance Program (ROCIP):	A coordinated insurance program providing certain coverage, as defined herein, for DEN, Contractor and Enrolled Subcontractors, along with their Eligible Employees, performing Work at the Project Site.
Eligible Employees:	Employees of the Contractor and Enrolled Subcontractors who are not excluded from the ROCIP under the "Excluded Parties" definition.
Enrolled Parties:	The Contractor and those subcontractors that have submitted all

necessary enrollment information and been accepted into the ROCIP as evidenced by the issuance of a Certificate of Insurance.

Excluded Parties: Parties not covered by the ROCIP because of ineligibility or DEN explicit exclusion. No insurance coverage provided by DEN under the ROCIP shall extend to the activities or products of the following:

- Any person or organization that fabricates or manufactures products, materials or supplies away from a Project Site with no direct onsite installation responsibility

Exception: The ROCIP Insurer may agree to extend General Liability coverage only if the Lead Contractor has a written contract with the off-site fabricator or manufacturer to provide the pre-fabricated product. To consider extending coverage, the Insurer requires 30 days advance written notice to the ROCIP Administrator with details of the work/product and a copy of the contract between the Lead Contractor and the off-site fabricator or manufacturer. Approval must be obtained from the Insurer before enrolling in the ROCIP for General Liability coverage only.

- Hazardous materials remediation, removal, or transportation companies and their consultants
- Architects, engineers, surveyors and their consultants
- Truckers, haulers, material dealers, vendors, suppliers, and others who merely transport, pick up, deliver or carry materials, personnel, parts or equipment or any other items or persons to or from a Project Site
- Contractors, subcontractors and subconsultants who do not work at a Project Site
- Employees of an Enrolled Party who either (i) do not work on-site or (ii) occasionally visit a Project Site to make deliveries, pick-up supplies or personnel, to perform supervisory or progress inspections, or for any other reason
- Day labor employees (individuals working directly for the Contractor and not procured through a third party)

Exception: The ROCIP Insurer typically will accept including employees working for a contractor, or employed by temporary staffing agencies or professional employer organizations, as long as those employer-entities are enrolled as subcontractors to supply supplemental workforce.

Insured: (liability policies) DEN, Contractor and Enrolled Parties and their Eligible Employees and any other party named in the insurance policies.

Insurers: Those insurance companies providing the DEN ROCIP coverage. The insurers will be identified on the issued Certificate of Insurance and in

the DEN ROCIP Insurance Manual.

Net Bid: Contractor bids with insurance costs removed because of the obligation of any Enrolled Party to delete insurance costs for coverage provided by the ROCIP from its bid and all change orders. Net bids are subject to verification by the Administrator through the providing of contractors' rate and declaration pages from their Insurance policies.

ROCIP Administrator: The DEN ROCIP Administrator will be identified in the DEN ROCIP Insurance Manual.

ROCIP Insurance Manual: A reference document provided to Contractor and subcontractors of all tiers, which summarizes the terms and provisions of the DEN ROCIP and provides information about requirements and compliance.

ROCIP Safety Manual: A reference document provided to Contractor and subcontractors of all tiers which contains workplace safety requirements of all Enrolled Parties.

Off Site Work: Work performed away from the Project Site.

Payroll: For purposes of the ROCIP only, refers to Unburdened Straight Time Payroll per Workers Compensation Class Code.

Policy Owner: City and County of Denver and Denver International Airport

Project: The Project as defined in the contract documents and as described in the Declarations of the DEN ROCIP insurance policies.

Project Site: Means those areas designated in writing by DEN in a Contract document for performance of the Work and such additional areas as may be designated in writing by DEN for Contractors' use in performance of the Work. Subject to the ROCIP Insurer(s) written approval, the term "Project Site" shall also include: (1) field office sites, (2) property used for bonded storage of material for the Project approved by DEN, staging areas dedicated to the Project, and (4) areas where activities incidental to the Project are being performed by Contractor or subcontractors covered by the DEN ROCIP Worker's Compensation policy (if included), but excluding any permanent locations of any Enrolled Party.

Items 1 through 4 above must be approved by the ROCIP Insurer and listed on the DEN ROCIP insurance policies.

Subcontract: The written agreement between Contractor and subcontractor, or between subcontractor and a lower tier subcontractor, describing the Work, subcontract terms and conditions, or a portion thereof.

Subcontractor: Includes those persons, firms, joint venture entities, corporations, or other parties that enter into a Subcontract with Contractor to perform Work at the Project Site and any of these subcontractor's lower-tier subcontractors.

Work: Operations, as fully described in the Contract and Subcontract,

performed at the Project Site.