

BY AUTHORITY

ORDINANCE NO. _____

COUNCIL BILL NO. CB12-0274

SERIES OF 2012

COMMITTEE OF REFERENCE:

BUSINESS, WORKFORCE, & SUSTAINABILITY

A BILL

For an ordinance approving a proposed Agreement between the City and County of Denver and Metrix Advisors, LLC concerning the Premium Value Concession Program at Denver International Airport.

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

Section 1. The proposed Agreement between the City and County of Denver and Metrix Advisors, LLC, in the words and figures contained and set forth in that form of Agreement available in the office and on the web page of City Council, and to be filed in the office of the Clerk and Recorder, Ex-Officio Clerk of the City and County of Denver, under City Clerk's Filing No. 2012-0218, is hereby approved.

COMMITTEE APPROVAL DATE: April 12, 2012

MAYOR-COUNCIL DATE: April 17, 2012

PASSED BY THE COUNCIL: _____, 2012

_____ - PRESIDENT

APPROVED: _____ - MAYOR _____, 2012

ATTEST: _____ - CLERK AND RECORDER,
EX-OFFICIO CLERK OF THE
CITY AND COUNTY OF DENVER

NOTICE PUBLISHED IN THE DAILY JOURNAL: _____, 2012; _____, 2012

PREPARED BY: Debra Overn, Assistant City Attorney  DATE: April 19, 2012

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

Douglas J. Friednash, City Attorney for the City and County of Denver

BY: _____, Assistant City Attorney DATE: April 19, 2012

AGREEMENT

THIS AGREEMENT is made and entered into as of the date stated on the City's signature page below, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, through its Department of Aviation (the "**City**"), and **METRIX ADVISORS, LLC**, a Colorado limited liability company (the "**Consultant**").

WITNESSETH:

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

WHEREAS, the City desires to obtain the professional services of a "Third Party Administrator" to implement and manage its Premium Value Concessions Program ("PVC Program"), pursuant to Airport Rule 45 revised effective May 11, 2011 ("Rule 45"); and

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

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

Section 1. LINE OF AUTHORITY: The City's current Manager of Aviation, her designee, or successor in function (the "Manager") authorizes all work performed under this Agreement. The Manager hereby delegates her authority over the work described herein to the Deputy Manager of Aviation -- Commercial, who may designate a "Project Manager" in accordance with the terms of this Agreement, for the purpose of administering, coordinating and approving work performed by the Consultant, including day-to-day administration of the Consultant's services under this Agreement. The initial Project Manager is Bryan Touchstone. The Consultant shall submit its reports, memoranda, correspondence and submittals to the Project Manager or other person designated by the Deputy Manager.

The Consultant 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 Project Manager with any City agency, or any person or firm under contract with the City doing work which affects the Consultant's work.

Section 2. PROFESSIONAL SERVICES TO BE PERFORMED:

A. Services to be Provided. Consultant will serve as the Third Party Administrator for the PVC Program, as defined in and pursuant to Rule 45 and the Scope of Work ("SOW") attached to this Agreement as **Exhibit A**, all in accordance with and as detailed in the SOW. Consultant also shall perform such other tasks as are reasonably related to the SOW, as assigned and requested by and at the direction of the Deputy Manager. Consultant understands and agrees that Rule 45 may be amended to expand the PVC Program to service providers, and such expansion shall not be considered a material change to this Agreement. Consultant will furnish

all technical, administrative, professional and other labor, all supplies and materials, equipment, printing, vehicles, local travel, office space and facilities, testing and analyses, calculations, and any other facilities or resources required to perform and complete the SOW.

B. Standard of Care. The Consultant shall faithfully perform services pursuant to this Agreement and the SOW in a workmanlike and professional manner in accordance with the standards of care, skill, training, diligence and judgment provided by competent professionals who perform work of a similar nature to the work described in this Agreement.

C. Ownership of Work Product. Upon payment to Consultant, all records, data, specifications, other work product prepared by the Consultant or any custom development work performed by the Consultant on or before the day of payment shall become the sole property of the City. Consultant, upon request by the City, or based on any schedule agreed to by Consultant and the City, Consultant shall provide City with copies of the data/files that have been uploaded to any database maintained by or on behalf of Consultant or otherwise saved or maintained by Consultant 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 Consultant and the City. Consultant also agrees to allow the City to review any of the procedures the Consultant uses in performing the SOW, 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 SOW, for up to three years after termination of this agreement. Upon written request from the City, the Consultant shall deliver any information requested pursuant to this Section 2.D within 10 business days in the event a schedule or otherwise agreed upon timeframe does not exist. Notwithstanding anything to the contrary herein, the City acknowledges that the Consultant shall have the right to retain and use all records and data compilations with respect to airports other than DIA.

Section 3. COMPENSATION AND PAYMENT:

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

B. Additional Concessions. The lump sum compensation stated in this Agreement assumes a scoring pool of 115 concession locations. If the scoring pool grows larger than this number, Consultant will be paid a one time set-up fee of Four Thousand Dollars (\$4,000.00) per additional concession location, and no change to the lump sum payments stated in Exhibit B.

C. Additional Minor Merchandise Categories. In the event an additional minor merchandise category is added, and a new PVC survey form must be developed, Consultant will be paid an additional one-time set-up fee of five thousand dollars (\$5,000.00). As described in Section 2.A *supra*, the addition of service providers at DIA are exempted from this fee.

D. Peer Airport Mystery Shopping. In the event peer airport Mystery Shops (as defined in Exhibit A) exceed 900 shopped locations in any given calendar year, Consultant will be compensated sixty five dollars (\$65.00) for each additional Mystery Shop performed.

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

F. Invoices:

- (1) Payments of the Consultant's Monthly Fee due hereunder shall be made to the Consultant pursuant to invoices submitted by the Consultant in accordance with this Agreement, which invoices have been audited and approved by the City. Invoices shall meet the following requirements:
 - a) Each invoice shall bear the signature of an authorized officer of the Consultant certifying that the information set forth in the invoice is true and correct.
 - b) Amounts invoiced shall reflect and summarize the fee structure incorporated into this Agreement. The cost of preparing and submitting invoices shall not be billed.
 - c) Invoices shall include status reports identifying the progress of all work involved and pertinent data relative to the SOW.
- (2) The City shall process all invoices for payment received from the Consultant on a timely basis in accordance with the City's Prompt Payment Ordinance, D.R.M.C. Section 20-107, *et. seq.* The Consultant agrees that interest and late fees shall be payable by the City hereunder only to the extent authorized and provided for in the City's Prompt Payment Ordinance.
- (3) The City reserves the right to require such additional documentation as it deems appropriate to support Consultant's invoices.
- (4) The City reserves the right to reject and not pay any invoice or part thereof where the Manager reasonably determines that the amount invoiced to date exceeds the amount which should be paid, based upon his determination of the work which has been completed.

G. Expenses Related to Appeals.

- (1) The Consultant understands and agrees that, in accordance with Rule 45 Parts 7 and 10, and the terms of each Concessionaire's Concession Agreement, all costs of appeals are to be borne by the appealing Concessionaires. Accordingly Consultant will not invoice the City for any costs related to such appeals, and will not seek any compensation from the City for conducting appeals, but will seek its compensation solely from the appealing Concessionaires. As such, the method for collection of appeals-related costs are at the discretion of the Consultant, if such methods are consistent with the provisions of Rule 45.
- (2) Upon receiving notice of an appeal, Consultant shall appoint a person to serve as Appeal Officer, The Appeal Officer shall be paid for professional services rendered at the rate of One Hundred and Twenty Five Dollars (\$125.00) per hour. No premium shall be paid for performing more than 40 hours of work per week or for working weekends or holidays. The Appeal Officer shall bill only for time spent performing tasks directly related to an appeal. Time spent preparing and submitting billing statements, and time spent travelling shall not be billed.

Section 4. APPROPRIATIONS AND CONTRACT FUNDING:

A. The obligations of the City under this Agreement shall extend only to monies appropriated for the purpose of this Agreement by the City Council, paid into the City Treasury, and encumbered for the purposes of this Agreement. Consultant acknowledges that (i) City does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City. Notwithstanding the foregoing, however, the Manager shall notify Consultant promptly in the event the Manager receives notice of or has actual knowledge that monies appropriated for the purpose of this Agreement have been or are reasonably contemplated to be reduced.

B. All payments under this Agreement shall be paid from either the City and County of Denver Airport System Operations and Maintenance Fund and from no other fund or source. The City is under no obligation to make payments from any other source. The City is under no 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 Liability stated below.

Section 5. MAXIMUM CONTRACT LIABILITY: Any other provision of this Agreement notwithstanding, in no event shall the City be liable for payment for services rendered and expenses incurred by the Consultant under the terms of this Agreement for any amount in excess of the sum of One Million Seven Hundred Twenty Seven Thousand Dollars and No Cents (\$1,727,000.00) unless this Agreement is amended to materially increase the duties to be performed hereunder or to increase such amount.

Section 6. TERM: The term of this Agreement shall commence on March 1, 2012, and shall terminate on February 28, 2017, unless this Agreement is terminated sooner in accordance with Section 18 below.

Section 7. CITY REVIEW OF PROCEDURES: The Consultant agrees that the City's Auditor, the Manager, the Project Manager, or any of the Manager's duly authorized representatives, until the expiration of three (3) years after the termination of this Agreement, shall have the right, at any reasonable time and at its own expense, to have access to and the right to examine any books, documents, papers and records of the Consultant pertinent to this Agreement

Section 8. INDEMNIFICATION:

The Consultant hereby agrees to release, indemnify, and hold harmless the City, its officers, agents and employees from and against any and all loss of or damage to property or injuries to or death of any person or persons, including property and employees or agents of the City, and shall defend, indemnify and hold harmless the City, its officers, agents and employees, from any and all claims, damages, suits, costs, expenses, liabilities, actions or proceedings of any kind or nature whatsoever, including worker's compensation claims, of or by anyone whomsoever, in any way resulting from, or arising out of, directly or indirectly, the performance of work under this Agreement, or the occupancy of City-owned property or other property upon which work is performed under this Agreement, and including acts and omissions of the Consultant's officers, employees, representatives, suppliers, invitees, contractors and agents; provided, however, that the Consultant need not indemnify or hold harmless the City, its officers, agents and employees, from liability or damages resulting from the negligence or willful misconduct of the City's officers, agents and employees. The Consultant's obligations set out in this paragraph shall survive the termination of this Agreement for a period of three years. Consultant understands that the insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Consultant. The Consultant shall maintain, at its own expense, any additional kinds and amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

Section 9. INSURANCE:

A. The Consultant shall obtain and keep in force during the entire term of this Agreement, insurance policies as described in the City's form of insurance certificate attached to this Agreement as **Exhibit C** and incorporated herein. The certificate specifies the minimum insurance requirements the Consultant and any subconsultants must satisfy in order to perform work under this Agreement. The original of such certificate shall be executed before a notary by the authorized party as specified on the certificate.

B. Upon execution of this Agreement, the Consultant shall submit to the City a fully completed and executed original of the insurance certificate form, which specifies the issuing company or companies, policy numbers and policy periods for each required coverage.

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

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

E. Unless specifically excepted in writing by the City's Risk Management Administrator, the Consultant shall include all subconsultants performing services hereunder as insureds under each required policy. All coverages for subconsultants shall be subject to all of the requirements set forth in the form certificate and the Consultant shall insure that each subconsultant complies with all of the coverage requirements.

F. If the City requires project specific professional liability coverage under "Optional Coverages" at Section F of the form certificate, the Consultant shall be compensated for the cost of this coverage as direct reimbursable expense for which no mark up will be allowed. Reimbursement shall be based upon the insurance broker or agent quote for such coverage submitted by the Consultant. The Consultant agrees to pass on to the City all savings or discounts on standard professional liability insurance premiums the Consultant or any subconsultant will receive as a result of the use of such coverage on the project. The Consultant's reimbursement for the cost of project specific professional liability coverage shall be reduced by the total amount of any discount or savings the Consultant or any subconsultants shall receive during the period the project specific coverage is in effect. The Consultant agrees to obtain and provide to the City all information necessary to determine the appropriate reimbursement reduction for premium discounts or savings for such coverage. In the event such coverage is purchased, subconsultants performing work hereunder shall not be required to maintain standard professional liability insurance covering their activities.

G. The parties hereto understand and agree that the City and County of Denver, its officers, officials and employees, are relying on, and do not waive or intend to waive by any provisions of this agreement, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 to 120, C.R.S., or otherwise available to the City and County of Denver, its officers, officials and employees.

Section 10. NO AUTHORITY TO BIND CITY TO CONTRACTS: The Consultant has no authority to bind the City on any contractual matters. Final approval of all contractual matters which obligate the City must be by the City as required by Charter and ordinance.

Section 11. ASSIGNMENT: The Consultant covenants and agrees that it will not assign or transfer its rights hereunder without first obtaining the written consent of the Manager. Any attempt by the Consultant to assign or transfer its rights hereunder without such prior written consent of the Manager shall, at the option of the Manager, automatically terminate this Agreement and all rights of the Consultant hereunder. Such consent may be granted or denied at the sole and absolute discretion of the Manager.

Section 12. INSPECTION OF RECORDS:

A. In connection with any consulting services performed hereunder on items of work toward which federal funds may be received under the Airport and Airway Improvement Act of 1982, as amended, the City and County of Denver, the Federal Aviation Administration, the Comptroller General of the United States and any other duly authorized representatives shall have access to any books, documents, papers and records of the consultants which are directly pertinent to a specific grant program for the purpose of making audit, examination, excerpts and transcriptions. The Consultant further agrees that such records will contain information concerning specific tasks performed along with the applicable federal project number.

B. The City shall also have the right to audit, examine and copy the Consultant's records which are related to work performed under this Agreement without regard to whether the work was paid or in whole or in part with federal funds or was otherwise related to a federal grant program.

Section 13. FEDERAL PROVISIONS: This Agreement is subject and subordinate to the terms, reservations, restrictions and conditions of any existing or future agreements between the City and the United States, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to the City for airport purposes, and the expenditure of federal funds for the extension, expansion or development of the Airport. The provisions of the attached Appendices 1 and 3 are incorporated herein by reference.

Section 14. STATUS OF CONSULTANT AS INDEPENDENT CONTRACTOR: It is understood and agreed by and between the parties that the status of the Consultant shall be that of an independent contractor retained on a contractual basis to perform professional or technical services for limited periods of time as described in Section 9.1.1.E(x) of the Charter of the City, and it is not intended nor shall it be construed that the Consultant, its employees, or its subcontractors are employees or officers of the City under Chapter 18 of the Revised Municipal Code or for any purpose whatsoever.

Section 15. SUBCONSULTANTS:

A. While the Consultant may retain and contract with subconsultants, no final agreement with any such subconsultant shall be entered into without the prior written consent of the Project Manager, which consent shall not be unreasonably withheld. Requests for such approval must be made in writing and include a description of the nature and extent of the services to be provided by the subconsultant, the name, address, the professional experience and qualifications of the subconsultant and any other information which may be requested by the Project Manager. Approval of the subconsultant shall not relieve the Consultant of any obligations under this Agreement. Any final agreement with the approved subconsultant must contain a valid and binding provision whereby the subconsultant waives any and all rights to make a claim of payment against any City property arising out of the performance of the agreement. Subconsultants and their agents that have been identified as part of the Metrix team as of the RFP submittal date are deemed approved by the Project Manager.

B. Because the Consultant's represented professional qualifications are a consideration to the City in entering into this Agreement, the Project Manager shall have the right to reject any proposed subconsultant deemed unqualified or unsuitable for any reason to perform the proposed services, and the Project Manager shall have the right to limit the number of subconsultants.

Section 16. SHARED INFORMATION, CONFIDENTIAL INFORMATION, AND OPEN RECORDS:

A. Information Furnished by City: The City will furnish to the Consultant information concerning matters that may be necessary or useful in connection with the work to be performed by the Consultant under this Contract. Both parties will make good faith efforts to ensure the accuracy of information provided to the other party; however, the Consultant understands and acknowledges that the information provided by the City to the Consultant may contain unintended inaccuracies.

B. Proprietary information to be kept confidential:

1. Consultant understands and acknowledges that it may be told, provided with, or otherwise have access to either documentary or verbal information which may be confidential or proprietary or from which confidential or proprietary information may be learned deductively. Consultant understands the following with respect to any such documents or verbal or other information that is provided by Aviation pursuant to work performed under this contract:
 - a) Certain documents and other information may be protected from disclosure under the Colorado Open Records Act, the federal Freedom of Information Act, or other local, state or federal law;
 - b) Such documents and other documents or information may be considered by Aviation to be confidential or proprietary, and could contain information that is commercially or financially sensitive; and
 - c) Verbal communications between Consultant and Aviation employees or others active in the project contemplated herein will be made with the expectation that such communications will be treated confidentially.
2. Consultant agrees to do the following, to the best of its ability and to the extent allowed by law, with respect to any documents and other written or verbal information that are provided pursuant to work performed under this contract:
 - a) Consultant will safeguard documents and other information designated in writing by the City as "Confidential," and the information contained in any such documents or confidential verbal communications, to prevent inadvertent disclosure of the information;

- b) Consultant will not release these documents or information to any party, company, person, organization, or entity for any reason other than those directly related to work performed under this contract;
 - c) Consultant will not release documents or other written information, or the information contained in such documents, pursuant to a request under the Colorado Open Records Act or the federal Freedom of Information Act without affording Aviation the opportunities under those laws to protect these documents from disclosure.
3. Consultant further understands that the City and County of Denver may seek legal remedies for any violation of these provisions, including seeking an injunction against the Consultant.
4. The restrictions of this Section shall not apply to any information which (i) is or becomes generally available to the public other than as a result of a breach of this Section by the receiving party; (ii) was available to the receiving party on a non-confidential basis prior to its disclosure under this Agreement; or (ii) becomes available to the receiving party on a non-confidential basis from a third party which was not itself bound by a confidentiality obligation and was free to disclose the information.

C. Open Records Act: Notwithstanding the above, Consultant understands that certain material provided or produced under this Agreement may be subject to the Colorado Open Records Act, C.R.S. § 24-72-201, et seq. In the event of a request to the City for disclosure of such information, the City shall advise the Consultant of such request and give the Consultant the opportunity to object to the disclosure of any of material the Consultant may consider confidential or proprietary. In the event of the filing of a lawsuit to compel disclosure, the City will tender all such material to the court for judicial determination of the issue of disclosure and the Consultant agrees it will either intervene in such lawsuit to protect materials the Consultant does not wish disclosed, or waive any claim of privilege or confidentiality. If the Consultant chooses to intervene in such a lawsuit and oppose disclosure of any materials, the Consultant agrees to defend, indemnify, and save and hold harmless the City, its officers, agents, and employees, from any claim, damages, expense, loss or costs arising out of the Consultant's intervention including, but not limited to, prompt reimbursement to the City of all reasonable attorney fees, costs and damages that the City may incur directly or may be ordered to pay by such court.

Section 17. PATENTS, TRADEMARKS AND SOFTWARE: The Consultant covenants that it is the owner of or fully authorized to use any and all services, processes, machines, articles, marks, names or slogans to be used by it in its operations under or in any way connected with this Agreement. The Consultant agrees to save and hold the City, its officers, employees, agents and representatives free and harmless of and from any loss, liability, expenses, cost, suit or claim for damages in connection with any actual or alleged infringement of any patent, trademark or copyright arising from any alleged or actual unfair competition or other similar claim arising out of the operations of the Consultant under or in any way connected with this Agreement.

Section 18. TERMINATION:

A. The City has the right to terminate this Agreement without cause, on thirty (30) days written notice to the Consultant, and with cause on ten (10) days written notice to the Consultant. However, nothing herein shall be construed as giving the Consultant the right to perform services under this Agreement beyond the time when such services become unsatisfactory to the Manager of Aviation.

B. If this Agreement is terminated by the Consultant, or if this Agreement is terminated by the City for cause, the Consultant shall be compensated for, and such compensation shall be limited to, (1) the sum of the amounts contained in invoices which it has submitted and which have been approved by the City, (2) the reasonable value to the City of the work which the Consultant performed prior to the date of the termination notice, but which had not yet been approved for payment, and (3) the cost of any work which the Project Manager approves in writing which he determines is needed to accomplish an orderly termination of the work. If this Agreement is terminated for the convenience of the City and without the fault of the Consultant, the Consultant shall also be compensated for any reasonable costs it has actually incurred in performing services hereunder prior to the date of the termination.

C. If this Agreement is terminated, the City shall take possession of all materials, equipment, tools and facilities owned by the City which the Consultant is using by whatever method it deems expedient, and the Consultant shall deliver to the City all drafts or other documents it has completed or partially completed under this Agreement, together with all other items, materials and documents which have been paid for by the City, and these documents and materials shall be the property of the City.

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

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

Section 19. NOTICES: Notices concerning termination of this Agreement, notices of alleged or actual violations of the terms or conditions of this Agreement, and other notices of similar importance shall be made:

by Consultant to: Manager of Aviation
 Airport Office Building, 9th Floor
 8500 Pena Boulevard
 Denver, Colorado 80249-6340

Attention: Bryan Touchstone

and by City to: Metrix Advisors, LLC
 899 Logan Street, Suite 210
 Denver, Colorado 80203

303 641-3443

Attention: Owner/Principal: Robert C. McDaniel

Section 20. NON DISCRIMINATION IN THE AWARD OF CITY CONTRACTS: It is the policy of the City and County of Denver to prohibit discrimination in the award of design contracts and subcontracts for public improvements. Further, the City and County of Denver encourages design consultants to utilize minority and women owned businesses and to divide the design services work into economically feasible units or segments to allow the most opportunity for subcontracting.

Section 21. NO DISCRIMINATION IN EMPLOYMENT: In connection with the performance of work under this Agreement, the Consultant agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation, terms, conditions or privileges of employment against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and the Consultant further agrees to insert the foregoing provision in all subcontracts hereunder.

Section 22. SMALL AND DISADVANTAGED BUSINESS ENTERPRISES: The contractor shall make a good faith effort to utilize qualified and available Small or Disadvantaged Business Enterprises to the extent required by Denver Revised Municipal Code Section 28-205 *et seq.*

Section 23. BOND ORDINANCES; GOVERNING LAW; VENUE: This Agreement shall be deemed to have been made in, and construed in accordance with the laws of, the State of Colorado and the Charter and Ordinances of the City and County of Denver. This Agreement is in all respects subject and subordinate to any and all City bond ordinances applicable to the Denver Municipal Airport System and to any other bond ordinances which amend, supplement, or replace such bond ordinances. Venue for any action hereunder shall be in the City and County of Denver, State of Colorado.

Section 24. CONFLICT OF INTEREST: The Consultant agrees that it will not engage in any transaction, activity or conduct which would result in a conflict of interest under this Agreement. The Consultant represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Consultant by placing the Consultant's own interests, or the interest of any party with whom the Consultant has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, shall determine the existence of a conflict of interest and may terminate this Agreement in the event such a conflict exists after it has given the Consultant written notice which describes the conflict. The Consultant shall have thirty days after the notice is received to eliminate or cure the conflict of interest in a manner which is acceptable to the City.

Section 25. TAXES AND COSTS: The Consultant shall promptly pay, when due, all taxes, bills, debts and obligations it incurs performing work under this Agreement and shall allow no lien, mortgage, judgment or execution to be filed against land, facilities or improvements owned by the City.

Section 26. COMPLIANCE WITH ALL LAWS AND REGULATIONS: All of the work performed under this Agreement by the Consultant shall comply with all applicable laws, rules, regulations, and codes of the United States and the State of Colorado and with the charter, ordinances, and rules, and regulations of the City and County of Denver.

Section 27. SEVERABILITY: In the event any of the provisions, or applications thereof, of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions, or applications thereof, shall not be affected.

Section 28. NO THIRD PARTY BENEFICIARIES: The enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to the City and the Consultant, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement. It is the express intention of the City and the Consultant that subconsultants and any other person other than the City or the Consultant receiving any benefits from this Agreement shall be deemed to be incidental beneficiaries only.

Section 29. ADVERTISING AND PUBLIC DISCLOSURES: The Consultant shall not include any reference to this Contract or to work performed hereunder in any of its advertising or public relations materials without first obtaining the written approval of the Project Manager, which will not be unreasonably withheld. Any oral presentation or written materials related to Denver International Airport shall include only presentation materials, work product, designs, renderings and technical data which have been accepted by the City. The Project Manager shall be notified in advance of the date and time of any such presentations. Nothing herein, however, shall preclude the transmittal of any information to officials of the City, including without limitation, the Mayor, the Manager of Aviation, member or members of City Council, or the Auditor.

Section 30. NO WAIVER OF RIGHT: No assent, expressed or implied, to any breach of any one or more of the covenants, terms and provisions of this Agreement shall be deemed or taken to be by the City or consultant a waiver of any succeeding or other breach.

Section 31. 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.

Section 32. ADMINISTRATIVE HEARING: Disputes arising under or related to this Agreement or the work which is the subject of this Agreement shall be resolved by administrative hearing which shall be conducted in accordance with the procedures set forth in Section 5-17, Revised Municipal Code of the City and County of Denver. The parties hereto agree that the Manager' determination resulting from said administrative hearing shall be final, subject only to the Consultant's right to appeal the determination under Colorado Rule of Civil Procedure, Rule 106.

Section 33. HEADINGS: The heading contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

Section 34. PROHIBITION AGAINST EMPLOYMENT OF ILLEGAL ALIENS UNDER THIS AGREEMENT:

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

B. The Consultant certifies that:

- (1) At the time of the execution of the Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.
- (2) It will participate in either the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., or the employment verification program established by the Colorado Department of Labor and Employment under § 8-17.5-102(5)(c), C.R.S. (the "Department Program"), to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

C. The Consultant also agrees and represents that:

- (1) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
- (2) It shall not enter into a contract with a subconsultant or subcontractor that fails to certify to the Consultant that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
- (3) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement,

through participation in either the E-Verify Program or the Department Program.

- (4) It is prohibited from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement.
- (5) If it obtains actual knowledge that a subconsultant performing work under the Agreement knowingly employs or contracts with an illegal alien, he will notify such subconsultant and the City within three days. The Consultant will also then terminate such subconsultant if within three days after such notice the subconsultant does not stop employing or contracting with the illegal alien, unless during such three-day period the subconsultant provides information to establish that the subconsultant has not knowingly employed or contracted with an illegal alien.
- (6) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S.

Section 35. KEY PERSONNEL ASSIGNMENTS:

A. All key professional personnel identified in the Consultant's proposal will be assigned by the Consultant or subconsultants to perform work under this Agreement. The Consultant shall submit to the Project Manager a list of any additional key professional personnel who will perform work under this Agreement within thirty days after this Agreement has been executed, together with complete resumes and other information describing their ability to perform the tasks assigned. Such additional personnel must be approved in writing by the Project Manager. It is the intent of the parties hereto that all key professional personnel be engaged to perform their specialty for all such services required by this Agreement and that the Consultant's and the subconsultant's key professional personnel be retained for the life of this Agreement to the extent practicable and to the extent that such services maximize the quality of work performed hereunder.

B. If the Consultant decides to replace any of its key professional personnel, it shall notify the Project Manager in writing of the changes it desires to make. No such replacement shall be made until the replacement is approved in writing by the Project Manager, which approval shall not be unreasonably withheld. The Project Manager shall respond to the Consultant's written notice regarding replacement of key professional personnel within fifteen days after the Project Manager receives the list of key professional personnel that the Consultant desires to replace. If the Project Manager or his designated representative does not respond within that time, the listed personnel shall be deemed to be approved.

C. If, during the term of this Agreement, the Project Manager determines that the performance of approved key personnel is not acceptable, he shall notify the Consultant, and he may give the Consultant notice of the period of time that the Project Manager considers reasonable to correct such performance. If the Project Manager notifies the Consultant that certain of its key personnel should be reassigned, the Consultant will use its best efforts to obtain adequate substitute personnel within ten days from the date of the Project Manager's notice.

Section 36. ENTIRE AGREEMENT: The parties acknowledge and agree that the provisions contained herein constitute the entire agreement and that all representations made by any officer, agent or employee of the respective parties unless included herein are null and void and of no effect. No alterations, amendments, changes or modifications to this Agreement, except those which are expressly reserved herein to the Manager or Project Manager, shall be valid unless they are contained in an instrument which is executed by all the parties with the same formality as this Agreement.

Section 37. CITY EXECUTION OF AGREEMENT: This Agreement is expressly subject to, and shall not become effective or binding on the City, until it is fully executed by all signatories of the City and County of Denver.

**END OF PAGE
SIGNATURES APPEAR ON FOLLOWING PAGES**

Contract Control Number: PLANE-201205015-00

Contractor Name: METRIX ADVISORS, LLC

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:

DOUGLAS J. FRIEDNASH, Attorney
for the City and County of Denver

By _____

By _____

By _____



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

Contract Control Number: 201205015

Vendor Name: METRIX ADVISORS, LLC

By: 

Name: ROBERT C. McDANIEL
(please print)

Title: PRESIDENT
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



APPENDIX 1

STANDARD FEDERAL ASSURANCES

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

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

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

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

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

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

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

- a. Withholding of payments to the contractor under the contract until the contractor complies, and/or
- b. Cancellation, termination, or suspension of the contract, in whole or in part.

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

APPENDIX NO. 3

REQUIREMENT FOR CERTIFICATION OF NONSEGREGATED FACILITIES

(To be included in all Federal A.I.P. Construction Contracts in excess of \$10,000.00)

NOTICE TO PROSPECTIVE FEDERALLY ASSISTED CONSTRUCTION CONTRACTORS

1. A Certification of Nonsegregated Facilities must be submitted prior to the award of a Federally assisted construction contract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity Clause.

2. Contractors receiving Federally assisted construction contract awards exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause will be required to provide for the forwarding of the following notice to prospective subcontractors for supplies and construction contracts where the subcontracts exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity Clause. NOTE: The penalty for making statements in offers is prescribed in 18 U.S.C. 1001.

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATION OF NONSEGREGATED FACILITIES

1. A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity Clause.

2. Contractors receiving subcontract awards exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause will be required to provide for the forwarding of this notice to prospective subcontractors for supplies and construction contracts where the subcontracts exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity Clause. NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

CERTIFICATION TO BE SUBMITTED BY FEDERALLY ASSISTED CONSTRUCTION CONTRACTORS AND THEIR SUBCONTRACTORS (APPLICABLE TO FEDERALLY ASSISTED CONSTRUCTION CONTRACTS AND RELATED SUBCONTRACTS EXCEEDING \$10,000 WHICH ARE NOT EXEMPT FROM THE EQUAL OPPORTUNITY CLAUSE)

CERTIFICATION OF NONSEGREGATED FACILITIES

The Federally assisted construction contractor certifies that he does not maintain or provide, for his employees, any segregated facilities at any of his establishments and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The Federally assisted construction contractor certifies that he will not maintain or provide, for his employees, segregated facilities at any of his establishments and provide, for his employees, segregated facilities at any of his establishments and that he will not permit his employees to perform their services at any location under his control where segregated facilities are maintained. The Federally assisted construction contractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directives or are, in fact, segregated on the basis of race, color, religion, or national origin because of habit, local custom, or any other reason. The Federally assisted construction contractor agrees that (except where he has obtained identical certifications from proposed subcontractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause and that he will retain such certifications in his files.



EXHIBIT A

SCOPE OF WORK

Premium Value Concessions Program

Third Party Administrator (TPA)

PLANE-201205015-00

DEPARTMENT OF AVIATION
City & County of Denver
Kim Day, Manager



DENVER INTERNATIONAL AIRPORT

COMMERCIAL DIVISION

Exhibit A - Scope of Work

1.0 Introduction

1.1. Denver International Airport

- 1.1.1. Denver International Airport (DEN) is a commercial air carrier facility located 23 miles northeast of downtown Denver. The airport site is approximately 34,000 acres with 6 active runways. The terminal and concourse facilities contain a total area of 5.45 million square feet with a total of 94 passenger loading gates. The average daily passenger activity is approximately 136,700 enplanements. The airport functions efficiently as both a hubbing and origination and destination terminal for multiple airlines.
- 1.1.2. The Department of Aviation has created the "Premium Value Concessions Program" ("PVC Program") to encourage growth in concession revenues at Denver International Airport (the "Airport" or "DIA"), and encourage Concessions to comply with their Concession Agreement terms and maintain high standards for the quality of foods, beverages, and goods sold at DIA.
- 1.1.3. The PVC Program is in addition to DIA's ability to offer concession opportunities via RFP or direct negotiation, and provides an objective set of performance criteria through which participating Concessions, including eligible ACDBE concessions, may obtain the right to execute a new concession agreement at the end of their term (the "Program Benefit"). It is desirable for DIA to retain its best Concessions, as these are most likely to offer the best overall performance in Concession Agreement compliance, customer service, and sales generation, the combination of which can lead to greater revenues to DIA.

1.2. Project Description

- 1.2.1. The PVC Program is designed to provide an objective method of evaluating eligible Concessions to determine whether Concessions are "top performers" in their merchant class and whether they are eligible to receive the Program Benefit. There are three performance-criteria categories delineated in the PVC Program: (i) Operations; (ii) Financial Performance; and (iii) Customer Service. Concessions that fail to meet the Operations Criteria will not be eligible for the Program Benefit even if they satisfy the other two criteria. Each of these criteria is defined in more clearly Rule 45 of the Airport Rules and Regulations. By incorporating these standards into the PVC Program, it is the intent of DIA and its concessions to incentivize concessions to excel at these standards.
- 1.2.2. The Third Party Administrator ("TPA") will assist with the administrative demands of the PVC Program. The TPA will implement and manage the PVC Program, perform the information gathering, data evaluation, and reporting functions of the PVC Program, hire contractors, issue progress reports based on tallying scoring results, conduct store surveys, publish findings and make determinations regarding scoring and granting of the Program Benefit. The TPA's responsibilities include interaction with DIA information sources, systems, and concessions. The TPA will gather information including but not limited to agreements, compliance, sales, and customer service. The TPA will develop its own information management systems to support the efficient gathering and reporting of

information. The TPA will be responsible for the sub-contracting of the customer service “secret shopper” organization. The TPA will be responsible for compiling information into evaluations of concessions and for any subjective appeal process defined below. DIA will select and coordinate the TPA. Subject to any appeal or administrative hearings, DIA will be the final authority in all scoring methodology determinations and calculation disputes.

1.3. **Organizational Structure**

- 1.3.1. Denver International Airport is owned by the City and County of Denver (“City”) and operated by the Department of Aviation. The Manager of Aviation is the City official responsible for the administration of the Contract. The Manager has delegated contract administration authority in the manner and to the person(s) occupying the position(s) identified in the Contract.
- 1.3.2. Manager of Aviation - The Manager of Aviation is located on the 9th Floor, Airport Office Building, 8500 Pena Boulevard, Denver, CO 80249.
- 1.3.3. Deputy Manager of Aviation, Commercial - The Deputy Manager reports to the Manager. The Deputy Manager’s address is Revenue Development, Airport Office Building, 9th Floor, 8500 Pena Boulevard, Denver, CO 80249.
- 1.3.4. Assistant Deputy Manager of Aviation for Concession Management - The Assistant Deputy Manager reports to the Deputy Manager. The Project Manager reports to the Assistant Deputy Manager and is located at 9th Floor, Airport Office Building, 8500 Pena Boulevard, Denver, CO 80249.
- 1.3.5. Project Manager - The Project Manager is the City representative who has day to day administrative responsibility of this Contract, and who reports to the Department of Aviation’s Deputy Manager of Aviation for Concession Management. All notices, requests, pay applications and other correspondence from the TPA shall be sent to the assigned Project Manager unless otherwise provided in this Contract.
- 1.3.6. The Manager may from time to time substitute a different City official as the designated “Deputy Manager”, and any such change will be effective upon the issuance of written notice to the TPA which identifies the successor Project Manager.

1.4. **Relationship and Roles of the Parties**

- 1.4.1. It is the City’s expectation that the TPA and the City shall create a “Project Team” to ensure the success of the PVC Program. Each Team member shall communicate with all other Team members to assure overall coordination, cooperation, and efficiency. Each Team member shall cooperate fully with and coordinate fully with each other team member in order to achieve PVC Project completion in an expeditious and economical manner. The TPA and City shall schedule regular meetings of the key principals of the Project Team in an effort to solve problems in a partnering atmosphere to facilitate the ability of each team member to meet its business objectives, so long as its business objectives are consistent with the successful completion of the Project. It is the City’s intent that all consensus decisions of the Project Team changing or adding to tasks included in this SOW be reduced to writing in an appropriate Task Order that must be signed by the Deputy

Manager before becoming effective. Such Task Orders may only change or add to tasks described in this SOW, and may not change the Agreement's Term, payment provisions, contract amounts, or any other term or condition of the Agreement. Task Orders simply changing or adding to this SOW will not be considered amendments to the Agreement.

1.4.2. The City has separate agreements with the participating Concessionaires to provide food, beverage, and retail services to the traveling public. Both the TPA and the Concessionaires shall be given direction by the City through the Program Manager. The TPA agrees to support the City's efforts to create a collaborative and cooperative team among the TPA, Concessionaires, and Program Manager. All lines of communication should be handled through the Program Manager.

1.5. **Forms and Procedures**

The City has developed or may develop procedures and forms for the administration and tracking of the Contract. The TPA agrees to abide by those procedures and use those forms.

2.0 **The Program**

2.1. **See attached Rules and Regulations**

3.0 **Information Gathering**

3.1. All the information should be gathered by the Project Manager and forwarded to the TPA each month.

3.2. Concessions Administration shall provide a monthly report to be known as a "Default Report" to the Project Manager. The report should contain the following: the name of the concession (legal and doing business as name), agreement number, reason for the default, date the default was issued, and date the default was cured.

3.3. An excel version of the Finance Report (also located on the FlyDenver.com website) will be provided to the TPA.

3.4. Passenger statistics will be provided by concourse.

3.5. Passenger statistics seating capacity every 6 months

3.6. List of all concessions with a column indicating participation, expiration date, PVC square footage, major and minor merchandise categories.

4.0 **Analysis, Criteria, and Evaluation Period**

4.1. The analysis is of the entire Concessions Program excluding, initially, Terminal Concessions and Service Concessions. There are three performance-criteria categories that a concession can be awarded points: (i) Operations, (ii) Financial Performance, and (iii) Customer Service. However, only the participating and eligible concessions may benefit from the PVC Program.

4.2. **Financial Performance Scoring**

4.2.1. See section 4.04 of the attached Rules & Regulations

4.3. **Customer Service Performance Criteria**

4.3.1. See section 4.05 of the attached Rules & Regulations

4.4. **Operating Period**

4.4.1. See section 4.06 of the attached Rules & Regulations

5.0 **Reporting by the TPA**

- 5.1. 30 days from the date information is provided to the TPA the Program Manager should receive a report (Financial Performance and Customer Service Categories) from the TPA showing which concessionaires have received points during the month in question.
- 5.2. The TPA should include all supporting documentation to justify the findings.
- 5.3. Dissemination of findings to concessionaires shall be the responsibility of the Program Manager.

6.0 **Appeal Process**

- 6.1. TPA is responsible for administrating the process per section 10 of Rules & Regulations. TPA must separately monitor costs to be billed to the appealing concessionaire.

7.0 **Ownership of Data**

- 7.1. The Airport owns the data gathered and information compiled by the TPA. The TPA must maintain the data in a format acceptable to the airport. At the termination of the contract all data will be turned over to DIA and acceptable to DIA before final payment is made.

8.0 **Secret Shopper**

- 8.1. The TPA is responsible to hire and oversee the Secret Shopper. Please see Rules & Regulations for information related to Secret Shopper Scope of Work.

EXHIBIT B

COMPENSATION AND PAYMENT

	Year One	Year Two	Year Three	Year Four	Year Five	Total
Base Contract	\$ 280,000.00	\$ 280,000.00	\$ 280,000.00	\$ 280,000.00	\$ 280,000.00	\$ 1,400,000.00
External Airport Secret Shopper	\$ 50,000.00	\$ -	\$ 50,000.00	\$ -	\$ 50,000.00	\$ 150,000.00
Escalator / Secret Shopper	\$ -	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 20,000.00
Sub-Total Contract Costs	\$ 330,000.00	\$ 285,000.00	\$ 335,000.00	\$ 285,000.00	\$ 335,000.00	\$ 1,570,000.00
10% Contingency Reserve						\$ 157,000.00
Maximum Contract Amount						\$ 1,727,000.00
Monthly Compensation	\$ 27,500.00	\$ 23,750.00	\$ 27,916.67	\$ 23,750.00	\$ 27,916.67	\$ 1,727,000.00

EXHIBIT C

**CITY AND COUNTY OF DENVER
CERTIFICATE OF INSURANCE FOR DEPARTMENT OF AVIATION**

Original COI

Advice of Renewal

Change

Party to Whom this Certificate is Issued:

Name and Address of Insured:

CITY AND COUNTY OF DENVER
Manager of Aviation
Denver International Airport
8500 Peña Boulevard, Room 8810
Denver CO 80249

CONTRACT NAME & NUMBER TO WHICH INSURANCE APPLIES: 201205015 – TPA Premium Value Concessions Program

I. MANDATORY COVERAGE

Colorado Workers' Compensation and Employer Liability Coverage

Coverage: COLORADO Workers' Compensation

Minimum Limits of Liability (In Thousands)

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

And Employer's Liability Limits:

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

1. All States Coverage or Colorado listed as a covered state for the Workers' Compensation
2. Waiver of Subrogation and Rights of Recovery against the City and County of Denver (the "City"), its officers, officials and employees.

Commercial General Liability Coverage

Coverage: Commercial General Liability (coverage at least as broad as that provided by ISO form CG0001 or equivalent)

Minimum Limits of Liability (In Thousands):

Each Occurrence:	\$1,000
General Aggregate Limit:	\$2,000
Products-Completed Operations Aggregate Limit:	\$2,000
Personal & Advertising Injury:	\$1,000
Fire Damage Legal - Any one fire	\$1,000

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

1. City, its officers, officials and employees as additional insureds, per ISO form CG2010 and CG 2037 or equivalents.
2. Coverage for defense costs of additional insureds outside the limits of insurance, per CG0001.
3. Liability assumed under an Insured Contract (Contractual Liability).
4. The full limits of coverage must be dedicated to apply to this project/location, per ISO form CG2503 or equivalent.
5. Waiver of Subrogation and Rights of Recovery, per ISO form CG2404 or equivalent.
6. Separation of Insureds Provision required
7. General Aggregate Limit Applies Per: Policy ___ Project ___ Location ___, if applicable

Business Automobile Liability Coverage

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

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

EXHIBIT C

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

1. Symbol 1, coverage for any auto. If no autos are owned, Symbols 8 & 9, (Hired and Non-owned) auto liability.
2. If this contract involves the transport of hazardous cargo such as fuel, solvents or other hazardous materials may occur, then Broadened Pollution Endorsement, per ISO form CA 9948 or equivalent and MCS 90 are required.

II. ADDITIONAL COVERAGE

Umbrella Liability

Coverage:

Umbrella Liability, Non Restricted Area		
Minimum Limits of Liability (In Thousands)	Each Occurrence and aggregate	\$1,000

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

1. City, its officers, officials and employees as additional insureds.
2. Coverage in excess of, and at least as broad as, the primary policies in sections WC-1, CGL-1, and BAL-1.
3. **If operations include unescorted airside access at DIA, then a \$9 million Umbrella Limit is required.**

Standard Professional Liability

Coverage: Professional Liability

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

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

1. Policies written on a claims-made basis must remain in force in accordance with CRS 13-80-104.
2. Any cancellation notice required herein may be provided by either Certified or Regular Mail.
3. Coverage must extend, by endorsement or otherwise, to cover the full scope of all environmental work performed under the insured's contract with the City.

III. ADDITIONAL CONDITIONS

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

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

NOTICE OF CANCELLATION

It is understood and agreed that should any Policy issued hereunder be cancelled or non-renewed before the expiration date thereof, or sustain a material change in coverage adverse to the City, the issuing company or its authorized Agent shall give notice to the Department of Aviation in accordance with policy provisions.

