

PREDEVELOPMENT AGREEMENT

THIS PREDEVELOPMENT AGREEMENT (this “Agreement”) is made and entered as of the date set forth on the City’s signature page, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, through and on behalf of its Department of Aviation (the “City”), and **DENVER GREAT HALL LLC**, a limited liability company organized under the laws of the State of Delaware (the “Developer”) (together, the “Parties” and each a “Party”).

WITNESSETH:

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

WHEREAS, the City desires to undertake the revitalization of the Jeppesen Terminal at the Airport (the “Project”); and

WHEREAS, the City will require a Developer to assist its Department of Aviation in achieving the Project by providing design, preconstruction, financing, and commercial planning services; and

WHEREAS, on January 28, 2015; the City published a Request for Qualifications for such services; and

WHEREAS, on May 21, 2015, four qualified bidders were shortlisted to continue participating in the procurement process; and

WHEREAS, from July 2015 to February 2016, the City and Proposers engaged in a comprehensive, interactive discussion process to determine the appropriate scope of services and commercial structure for the Project; and

WHEREAS, on February 24, 2016, the City published a Request for Proposals (“RFP”) for those services, from which the proposal of a team of entities now represented by the Developer (the “Proposal”) was selected; and

WHEREAS, the Parties desire to enter into this Agreement to establish the framework for what the Parties expect to be a collaborative process for (i) developing the details of the Project, (ii) enhancing the ability of both Parties to refine and advance the Developer’s Proposal and (iii) establishing a productive and interactive working relationship between the Parties and other key stakeholders; and

WHEREAS, Developer 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 promises and other good and valuable consideration, the Parties hereto agree as follows:

SECTION 1 - DEFINITIONS

The provisions of Appendix F to the RFP are hereby incorporated by reference. Without limiting the foregoing, capitalized terms used but not defined herein shall have their respective meanings set forth in such Appendix F.

SECTION 2 – PREDEVELOPMENT ACTIVITIES

- 2.01 Purpose of Agreement.** The Parties desire to enter into this Agreement to establish the period during which the Parties shall negotiate the terms and conditions of the Development Agreement to consummate the transactions contemplated in the RFP, as described in the ITP. The City also hereby engages Developer with respect to the performance of the Predevelopment Work (as defined herein) for the Project as set forth in this Agreement, and Developer hereby accepts such engagement subject to the terms and conditions of this Agreement. This Agreement sets forth (a) the Predevelopment Work; and (b) procedures for negotiating and approving a final Development Agreement between the Parties.
- 2.02 Line of Authority for Contract Administration.** The Airport’s Chief Executive Officer (“CEO”) or her designee or successor in function authorizes and directs all work performed under this Agreement. The CEO hereby designates the Airport’s Chief Financial Officer and Chief Operating Officer (collectively the “Program Manager”) as the CEO’s authorized representative for the purpose of issuing a written Notice to Proceed, and for purposes of administering, coordinating and approving the services performed by Developer under this Agreement. The CEO expressly reserves the right to designate another authorized representative to perform on the CEO’s behalf by written notice to Developer.
- 2.03 Independent Contractor.** Developer is an independent contractor retained to perform professional or technical services for the Term (as defined herein). Neither Developer nor any of its employees are or shall be considered to be employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code, or for any purpose whatsoever.
- 2.04 Scope of Developer’s Authority.** Developer shall have no authority to act on behalf of the City other than as expressly provided in this Agreement. Developer is not authorized to act as a general agent for or to undertake, direct or modify any contracts on behalf of the City. Developer lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City’s Charter and the Denver Revised Municipal Code.

SECTION 3 - BACKGROUND

- 3.01 Public-Private Partnership.** The Parties intend to pursue a highly cooperative and collaborative effort to engage Developer's innovation, private sector resources, risk capabilities, management capabilities and technical and financial expertise, and to engage the City's governmental authority, enterprise expertise, risk sharing capabilities, management capabilities and technical and financial expertise to bring the Project to fruition.
- 3.02 Project Division.** The Development Agreement shall set forth the division of responsibility between the Developer and the City in respect of the construction, operation and/or maintenance of the Project, with the Developer being responsible for operating and maintaining those portions of the Project that are within the O&M Limits only (as finally described and agreed between the parties). Notwithstanding the foregoing, the Parties acknowledge and agree that the design and construction of the Security Screening Area shall be subject to negotiation with and approval by TSA, which shall include the right of TSA to undertake the design and construction of all or a portion of the Security Screening Area.
- 3.03 Predevelopment Work.** The relationship between the City and Developer is expected to proceed in phases, as follows:
- a. This Agreement governs the period between execution of this Agreement and execution of the Development Agreement and is intended to provide the framework for collaboration between the Parties to deliver and finance the Project, unless terminated earlier in accordance with the terms hereof. This Agreement does not establish, and shall not be construed as, a legal partnership between the Parties.
 - b. During the Predevelopment Phase, the Parties will work collaboratively to advance certain elements of the Project as set forth in this Predevelopment Agreement, as required for Developer to reach Commercial Close of the Development Agreement with the City. During such phase, Developer shall be primarily responsible for undertaking the Predevelopment Work with respect to the Project as set forth in *Exhibit A*. The Predevelopment Work shall be performed under this Predevelopment Agreement in accordance with the Predevelopment Submittal Schedule in *Exhibit B* that reflect key decision points in the development of the Project. Developer shall complete all Predevelopment Work during the Predevelopment Period.
 - c. The Parties shall, during the Term, negotiate in good faith with the objective to execute the Development Agreement, subject to the terms and conditions set forth in this Agreement. Except as specifically may be provided in the Development Agreement, this Agreement shall be superseded and replaced once the Development Agreement is executed and, upon such execution, all

Predevelopment Work performed under this Agreement shall be deemed to have been performed under the Development Agreement and shall constitute part of the Work thereunder.

- d. The Development Agreement shall govern the rights and obligations of the Parties from the date of its execution. As security for the Developer's commitment to achieve Financial Close in accordance with the terms of the Development Agreement, on Commercial Close, the City will require the Developer to submit a proposal security in the form of either an irrevocable standby letter(s) of credit or a surety bond in an amount established by the City and in a form acceptable to the City.

SECTION 4 – DEVELOPER'S SERVICES

4.01 Scope of Services. Developer will primarily be responsible for undertaking, among other activities, the services set forth in *Exhibit A*, to the point needed to enter into the Development Agreement.

4.02 Professional Responsibility.

- a. All of the services performed by Developer under this Agreement shall be performed in accordance with Good Industry Practice.
- b. Developer agrees to conform strictly to and be bound by written standards, criteria and memoranda of policy furnished to it by the City and further agrees to design, plan and coordinate the Predevelopment Work, in compliance with Good Industry Practice, and all applicable laws, statutes, codes, ordinances, rules and regulations, and industry standards.

4.03 Design Standards and Specifications.

- a. Developer shall prepare Submittals and other requirements under the Predevelopment Work in a format that complies with all City requirements as well as all State and Federal requirements, including the requirements of TSA with respect to, in particular, the Security Screening Area. All Predevelopment Plans and Specifications shall be prepared so that the Project, when constructed in accordance with such Submittals, is in compliance all applicable laws, statutes, codes, ordinances, and rules and regulations of the City, the State and the Federal government (including TSA with respect to, in particular, the Security Screening Area).
- b. No funds will be paid to Developer for the preparation of the Predevelopment Plans and Specifications except as explicitly provided in this Agreement and, in any such case, only upon the condition that such Predevelopment Plans and Specifications are prepared in a form and substance that is acceptable to the

Department of Aviation of the City. It shall be the responsibility of Developer to contact, subject to City-approved communications protocols, the reviewing agencies and determine the acceptable format for all submissions, including any State and Federal requirements and, with respect to the Security Screening Area in particular, any TSA requirements. No documents will be considered final until approved by the City, even though any responsible Federal and State agencies have approved such documents.

- c. The reports, studies, drawings and specifications, electronic models, and other products and Submittal prepared by Developer under this Agreement, when submitted by Developer to the City for any identified phase of the Project, must represent a thorough study and competent solution for the Project or applicable component or portion thereof, as per usual and customary professional standards and shall reflect all architectural and engineering disciplines applicable to the Project or such component or portion thereof.
- d. The responsibilities and obligations of Developer under this Agreement shall not be relieved or affected in any respect by the presence on the site of any agent, contractor or subconsultant not contracted to, directly or indirectly, Developer, or any employee of the City, and Developer shall not be responsible for the errors, acts or omissions of any such other agent, contractor or subconsultant or any such employee of the City. Developer shall, however, have an affirmative obligation to notify the City as soon as practicable of any errors, acts or omissions of such other agents, contractors or subconsultants or of any such employee of which it becomes aware.
- e. Developer shall provide all professional design services as required by the City in defending all claims against the City that relate in any way to alleged default of the Developer hereunder, errors or omissions of Developer or its subconsultants, without any compensation or reimbursement for the provision of such services.

4.04 Program and Payment.

- a. All City approvals required under this Agreement will be made through the Program Manager, except as otherwise provided herein.
- b. Developer agrees to accomplish the Predevelopment Work set forth in this Agreement for no other consideration than (i) in the event of a termination of this Agreement, the Termination Payment set forth herein or (ii) upon execution of the Development Agreement, the amount(s) set forth in the Development Agreement with respect to the applicable portion of the Work.
- c. Developer agrees to accomplish the Predevelopment Work in accordance with the Predevelopment Submittals Schedule set forth in ***Exhibit B*** and to comply with the design and review process set forth in ***Exhibit C***.

4.05 Coordination and Cooperation.

- a. The Parties agree to cooperate with each other, and to exercise reasonable efforts to cause their respective contractors to cooperate with each other, fairly, reasonably and in good faith in all respects in connection with this Agreement, and to identify and coordinate their efforts and interfere as little as possible with each other's activities being undertaken with respect to the Project or, in the case of the City, any other activities at the Airport. In particular, Developer agrees to perform under this Agreement in such a manner and at such times that the City or any other contractor or City personnel who has work to perform, or contracts to execute, on behalf of the City can do so without unreasonable delay.
- b. Such coordination shall include, at a minimum, regular progress and review meetings with the City, work sessions with the City's Department of Aviation, and other agencies or as otherwise directed by the City. Such coordination may also include field and office reviews of plans, documents, or Submittals as required in connection with the Predevelopment Work. Developer shall be responsible for documenting all such conferences and distributing notes to the City. Developer shall update the City regularly, and no less than once per week, on the progress of the Predevelopment Work and progress toward achievement of the Predevelopment Submittal Schedule. Developer shall reconcile any incremental changes, variances, and evolutions in the Project concept, scope, space program, plans, features, and design, with changes in the capital cost estimate, O&M cost estimate, and lifecycle cost estimate of the Project, on a continuous basis, and present and explain such reconciliation to the City at least once every 14 days. Work sessions and meetings may be held in person or through the use of video and teleconference.
- c. Developer may be called upon to support the City in the coordination with other entities, including but not limited to airlines, Terminal tenants, concessionaires, the Transportation Security Administration, and other federal agencies. Such coordination shall be undertaken only upon direction by and in partnership with the City, who will facilitate the communications with such entities. As the Project sponsor, the City will maintain final decision-making authority with respect to matters concerning such entities, with input from Developer as appropriate.
- d. During the Term, the City may engage in work that, while related to the Predevelopment Work or the Project, does not require Developer's participation. The City will use reasonable efforts to inform Developer of such work and any potential impacts to the Predevelopment Work or the Project.

4.06 Personnel Assignments.

- a. The Key Personnel identified in *Exhibit E* will be assigned by Developer-Related Entity to perform the services required under this Agreement, as appropriate.
- b. Developer's services shall be diligently performed by the regular professional and technical staff of Developer. In the event Developer or Developer-Related Entity does not have as part of its regular staff certain professionals or technical staff necessary to perform the Predevelopment Work, then such services shall be performed, with prior City approval, by practicing professional subconsultants outside of the employ of Developer. With respect to DEN's baggage handling systems, Developer shall make use of the City's existing consultant, Logplan, Inc., provided that the conditions associated with Logplan's engagement are commercially reasonable and consistent with those of similar service providers.
- c. Developer agrees, at all times during the Term, to maintain on its payroll or to have access to through outside subconsultants, and to make available qualified professional design personnel and technicians in sufficient strength to meet the requirements of the City. Such personnel shall be of the classifications referenced in *Exhibit E*.
- d. Prior to designating an outside professional to perform subconsultant work, Developer shall submit the name of such subconsultant, together with a résumé of training and experience in work of like character and magnitude of the work being contemplated in connection with the Project, to the City and receive prior approval in writing, unless such approval is otherwise excused by the City.
- e. It is the intent of the Parties hereto that all Key Personnel be engaged to perform their specialty for all such services required by this Agreement and that Developer's and the subconsultant's Key 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; provided, however, that the foregoing shall be subject to the discretionary cessation or termination of employment of any such Key Personnel, as set forth in Section G, below.
- f. If a Developer-Related Entity decides to replace any of its Key Personnel, Developer shall notify the City in writing of the desired change. No such changes shall be made until replacement personnel are recommended by Developer and approved in writing by the City, which approval shall not be unreasonably withheld. Qualifications for such replacement personnel shall be greater than or equal to those of the replaced Key Personnel.

- g. If, during the term of this Agreement, the City determines that the performance of approved Key Personnel or a subconsultant is not acceptable, the City shall notify Developer and give Developer the time which the City considers reasonable to correct such performance. Thereafter, the City may require Developer to reassign or replace such Key Personnel. If the City notifies Developer that certain of its Key Personnel or a subconsultant should be replaced, Developer will use its best efforts to replace such Key Personnel or a subconsultant within 15 business days from the date of the City's notice.
- h. Actions taken by the City under this Section shall not relieve Developer of its responsibility for contractual or professional deficiencies, errors or omissions.
- i. Developer shall submit to the Program Manager a list of any additional Key Personnel who will perform work under this Agreement, together with complete resumes and other information describing their ability to perform the tasks which may be assigned. Such additional personnel must be recommended by Developer and approved by the City before they are assigned to perform any Predevelopment Work with respect to the Project.
- j. The City shall respond to Developer's written notice regarding replacement of Key Personnel within seven (7) days after the City receives the list of changes. If the City or her designated representative does not respond within that time, the changes shall be deemed to be approved.

4.07 Predevelopment Work.

- a. Developer shall complete the Mandatory Submittals and the Predevelopment Submittals Schedule in accordance with *Exhibit B*, and nothing in this Agreement shall be construed as placing any obligation on the City to proceed with work related to any such work.
- b. Each Phase of the Submittals shall have an associated contract price ("Contract Price") at the completion of such Phase, which Contract Price shall be set forth on *Exhibit B* and shall be payable by the City to the extent set forth in Article 7 hereof upon termination of this Agreement.

4.08 Additional Services.

- a. Developer-Initiated.
 - i. If Developer desires to perform services in addition to the Predevelopment Work under this Agreement ("Additional Services"), Developer may advise the City of any such changes by written notification to the City. All additions, deductions, or changes to the work so directed shall be executed under the conditions of this Agreement, subject to prior written agreement of the Parties.

ii. This Agreement, Contract Prices, and the Predevelopment Submittals Schedule shall be modified, as necessary, to account for any such changes and as may be agreed upon by the Parties.

b. City-Initiated.

i. The City may, at any time, request changes in the scope of services provided by Developer hereunder. Developer will be advised of any such changes by written notification from the City. All additions, deductions, or changes to the work so directed shall be executed under the conditions of this Agreement, subject to prior written agreement of the Parties.

ii. This Agreement and the Predevelopment Submittals Schedule shall be modified, as necessary, to account for any such changes and as may be agreed upon by the Parties.

4.09 Developer Right to Negotiate Development Agreement.

a. So long as this Agreement is in effect, Developer shall have the exclusive right to negotiate the Development Agreement with the City.

b. The Development Agreement to be negotiated pursuant to this Agreement shall be based upon the RFP and the Proposal, including without limitation the baseline requirements of the City set forth in the Term Sheet, attached hereto as *Exhibit F*.

c. If the Parties have not reached agreement on the final terms and conditions of the Development Agreement within 180 calendar days after execution of this Agreement, the Term may be extended by the mutual written consent of Developer and the City. The CEO shall have the authority to approve any such extension on behalf of the City without formal amendment to this Agreement for a reasonable period of time up to 180 calendar days. If Developer executes the Development Agreement within 180 days of execution of this Agreement, the CEO shall extend this Agreement for a period sufficient to achieve City execution of the Development Agreement. Any additional extension of time shall require formal amendment of this Agreement in accordance with Section 8.029.

d. If the City has not signed the Development Agreement by the expiration of the Term, then this Agreement shall automatically terminate and be of no further force or effect, except as otherwise provided in this Agreement.

e. Except as explicitly set forth herein, each Party shall be responsible for and bear its own costs and expenses incurred during and as a result of performing its activities, obligations and negotiations pursuant to this Agreement.

4.010 Temporary Right of Access/Entry. Developer expressly agrees and acknowledges that access and entry to the Terminal or any other Airport property for performance of the Predevelopment Work shall be in accordance with Part 20 of the Airport Rules and Regulations. Upon execution of this Agreement, Developer shall continue to coordinate with Airport Security to ensure that all appropriate badging and other Airport security requirements are met.

SECTION 5 – SCHEDULE; ADJUSTMENTS TO DEADLINES

5.01 Schedule of Performance.

a. General.

Developer shall provide each Submittal by the applicable deadline set forth in *Exhibit B*. The procedure for delivery and approval of Submittals is regulated in *Exhibit C*.

b. Force Majeure Event.

Force Majeure Event is defined in *Exhibit C*.

SECTION 6 – RESERVED

SECTION 7 – TERM AND TERMINATION

7.01 Term. The term of this Agreement shall commence on the date set forth on the City signature page, and shall terminate one hundred and eighty (180) days from such date, unless otherwise extended or sooner terminated as provided in this Agreement (such term, as so extended or terminated earlier in accordance with the terms hereof, the “Term”).

7.02 Grounds for Termination. This Agreement shall terminate upon the earliest of (a) the execution and delivery of the Development Agreement; (b) the City’s failure to perform any of its material obligations hereunder and such failure continues for thirty (30) days after written notice from Developer, or, if such failure is not capable of being cured within such 30-day period, if the City has not commenced the cure within such period and thereafter diligently pursued the same and the cure is not effected as promptly as possible and in any event within sixty (60) days after Developer’s notice, and Developer has provided written notice of termination for such failure, (c) Developer’s failure to perform any of its material obligations hereunder and such failure continues for thirty (30) days after written notice from the City, or, if such failure is not capable of being cured within such 30-day period, if Developer has not commenced the cure within such period and thereafter diligently pursued the same and the cure is not effected as promptly as possible and in any event within sixty (60) days after the City’s

notice, and the City has provided written notice of termination for such failure; (d) the City's election to terminate this Agreement for convenience pursuant to a written notice to Developer specifying the date for such termination (which must be at least thirty (30) days after the date of such written notice); or (e) either Party's termination of this Agreement pursuant to a written notice to the other Party in the event that the Parties reach an impasse in their negotiation of the Development Agreement or if either such Party determines, in its sole discretion, that the Project is not feasible, with 30 days advance written notice (each date on which any such termination occurs, as well as the expiration of the Term, hereinafter, the "Termination Date").

7.03 Termination Generally.

- a. Developer specifically acknowledges and agrees that neither this Agreement nor any approval of the Predevelopment Work by the City nor any performance of such work nor expenditure of any monies thereon shall grant or shall be deemed to have granted any rights in Developer to enter into the Development Agreement.
- b. Nothing herein shall be construed as giving Developer the right to perform the services contemplated under this Agreement beyond the time when its services become unsatisfactory to the CEO.
- c. In the event of any termination of this Agreement, Developer shall cooperate in all respects with the City. Such cooperation shall include, but not be limited to, delivery of drawings, specifications, and other documents referred to herein, and assisting the City during a transition to another Proposer or other third-party, if applicable, provided that Developer's obligation to provide transition assistance to the City will not exceed thirty (30) days following the Termination Date. All Submittals, including Mandatory Submittals, drawings, specifications, and other documents or work products relating to the design or administration of the Predevelopment Work completed or partially completed (for which payment is made or will be made in accordance with the terms hereof) shall be delivered by Developer to the City in the event of any such termination.
- d. In the event of termination of this Agreement, the City reserves the right to proceed with the design and construction of the Project using any design and construction contracting method available to it. Developer agrees to organize its Predevelopment Plans and Specifications consistent with industry standards to allow for implementation by a third-party contractor or through a means other than the Development Agreement.

7.04 Termination Payment.

- a. In the event of a termination under Section 4.09(d), 7.01, or 7.02 (with the exception of subsection (a)), where the Parties have not executed a Development Agreement, and subject to the other provisions of this Section 7.04, the City shall pay the Developer an amount equal to the sum of the Contract Prices for each Submittal completed by the Developer and accepted by the City as of the Termination Date (such amount, as applicable, the “Termination Payment”).
- b. For the avoidance of doubt, Developer will be entitled to payment for the Submittals accepted and completed at any time prior to the Termination Date (irrespective of whether notice of termination has been provided prior to such date), provided, however, that such work is otherwise completed and accepted in accordance with the terms of this Agreement, including without limitation Section 5.01 and **Exhibit C**.
- c. The City shall pay the amount set forth in Section 7.04(a) to Developer within thirty (30) days after Developer satisfies its obligations under Section 7.03(c).
- d. Notwithstanding any other provision of this Agreement, in no event shall the Termination Payment exceed the Maximum Contract Amount, which shall be equal to **NINE MILLION DOLLARS (\$9,000,000.00)**.
- e. The City’s payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of this Agreement. The City does not by this Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years, and this Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.
- f. All payments under this Agreement shall be paid from the City’s Airport System Capital Improvement and Replacement Fund or Airport Operations and Maintenance Fund. The City has no obligation to make payments from other sources or issue additional bonds to satisfy such payments. 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 set forth above.
- g. Except for the Termination Payment, in no event shall Developer have the right, and Developer expressly waives the right, to seek monetary damages of

any kind (including but not limited to actual damages, economic damages, consequential damages, lost profits or any other damages) from the City under this Agreement or any action related to this Agreement, nor shall Developer have any other right or remedy against the City, including any action for specific performance, the filing of a lis pendens, or otherwise.

SECTION 8 – GENERAL PROVISIONS

8.01. City’s Responsibilities.

- a. The City shall provide available information regarding its requirements for the Predevelopment Work and the Project and shall cooperate fully with Developer at all times. However, the City does not guarantee the accuracy of any such information and assumes no liability therefore. Developer shall notify the City in writing of any such information or requirements provided by the City which the Developer believes to be inaccurate or inappropriate.
- b. If the City observes or otherwise becomes aware of any fault or defect in the Predevelopment Work or non-conformance with the Predevelopment Plans and Specifications, it shall give prompt notice thereof to Developer.

8.02. Ownership of Documents.

- a. The City shall have title and all intellectual and other property rights, in and to all products of the Work and Submittals under this Agreement, and all data used in the development of the same, including the results of any tests, surveys or inspections at the Airport, and all photographs, drawings, drafts, studies, estimates, reports, models, notes and any other materials or work products, whether in electronic or hard copy format, created by Developer pursuant to this Agreement, in preliminary and final forms and on any media whatsoever (collectively, the “Documents”), regardless of whether the Project (including, for the avoidance of doubt, the Predevelopment Work) is pursued or completed for which payment has been made in accordance with the terms of this Agreement, if payment is due. Developer shall identify and disclose, as requested, all such Documents to the City.
- b. To the extent permitted by the U.S. Copyright Act, 17 USC § 101 et seq., as the same may be amended from time to time, the Documents are a “work made for hire,” and all ownership of copyright in the Documents shall vest in the City at the time the Documents are created. To the extent that the Documents are not a “work made for hire,” Developer hereby assigns and transfers all right, title and interest in and to the Documents to the City, as of the time of the creation of the Documents, including the right to secure copyright, patent, trademark, and other intellectual property rights throughout the world and to have and to hold such copyright, patent, trademark, and other intellectual property rights in perpetuity.

- c. Developer shall provide (and cause its employees and subcontractors to provide) all assistance reasonably requested in securing for the City's benefit any patent, copyright, trademark, service mark, license, right or other evidence of ownership of such Documents, and shall provide full information regarding the Documents and execute all appropriate documentation in applying for or otherwise registering, in the City's name, all rights to such Documents.
- d. Developer agrees to allow the City to review any of the procedures used in performing the Predevelopment Work and services hereunder, and to make available for inspection the field notes and other documents used in the preparation for and performance of any of the services performed hereunder.
- e. Developer shall be permitted to retain reproducible copies of all of the Documents for the information and reference, and the originals of all of the Documents, including all CAD disks, shall be delivered to the City promptly upon completion thereof, or if authorized by the City's Program Manager, upon termination or expiration of this Agreement.

8.03. Taxes and Licenses. Developer shall promptly pay, when they are due, all taxes, excises, license fees and permit fees of whatever nature applicable to the work and services which it performs under this Agreement, and shall take out and keep current all required municipal, county, state or federal licenses required to perform its services under this Agreement. Developer shall furnish to the CEO, upon request, duplicate receipts or other satisfactory evidence showing or certifying to the proper maintenance or payment of, as applicable, all required licenses and/or registrations and taxes. Developer shall promptly pay all owed bills, debts and obligations it incurs performing services under this Agreement and shall not allow any lien, verified claim, mortgage, judgment or execution to be filed against land, facilities or improvements owned or beneficially owned by the City as a result of such bills, debts or obligations.

8.04. Examination of Records.

- a. Records of Developer's direct personnel, Developer and reimbursable expenses pertaining to the Project and records of accounts between the City and Developer shall be kept pursuant to generally recognized accounting principles. Developer agrees that the CEO and the Auditor of the City or any of their duly authorized representatives, until the expiration of three (3) years after the final payment under this Agreement (or, if applicable, final payment under the Development Agreement), shall have access to and the right to examine any books, documents, papers and records of Developer, involving transactions related to this Agreement, without regard to whether the work was paid for in whole or in part with federal funds or was otherwise related to a federal grant program. Developer, upon request by the CEO, Auditor of the

City, or any of their duly authorized representatives shall make all such books and records available for examination and copying in Denver, Colorado.

- b. In connection with any services performed hereunder on items of work toward which federal funds may be received under the Airport and Airway Development Act of 1970, as amended, the City, the Federal Aviation Administration, the Comptroller General of the United States, and any of their duly authorized representatives, shall have access to any books, documents, papers and records of Developer which are directly pertinent to a specific grant program for the purpose of making audit, examination, excerpts and transcriptions. Developer further agrees that such records will contain information concerning the personnel, hours and specific tasks performed, along with the applicable federal project number.

8.05. Assignment and Subcontracting. The City is not obligated or liable under this Agreement to any party other than Developer. Developer understands and agrees that it shall not assign or subcontract the totality of its rights, benefits, obligations or duties under this Agreement except upon prior written consent and approval of the City to such assignment or subcontracting. Any attempt by Developer to assign or subcontract its rights or obligations hereunder without such prior written consent of the City shall, at the option of the City and upon thirty (30) days written notice, terminate this Agreement and all rights of Developer hereunder. Such consent may be granted or denied at the sole and absolute discretion of the City. In the event any such subcontracting shall occur, with the City's approval, such action shall not be construed to create any contractual relationship between the City and such subcontractor, and Developer named herein shall in any and all events be and remain responsible to the City according to the terms of this Agreement.

8.06. No Discrimination in Employment. In connection with the performance of services under this Agreement, Developer agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender variance, marital status, or physical or mental disability. Developer agrees to insert the foregoing provision in all subcontracts hereunder.

8.07. 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 Denver Municipal Airport System, including DEN. The provisions of Appendix No. 1, attached to this Agreement, are incorporated herein by reference.

8.08. Insurance.

- a. Developer shall obtain and keep in force during the entire Term, all of the insurance policies described in the City's form of insurance certificate which is attached to this Agreement as ***Exhibit D***. Such insurance coverage includes workers' compensation and employer liability, commercial general liability, business automobile liability, and professional liability. As a condition to the effectiveness of this Agreement, at the time of execution hereof, Developer shall have submitted to the City a fully completed and executed original insurance certificate consistent with the form set forth in Exhibit D, specifying the issuing company or companies, policy numbers and policy periods for each required coverage.
- b. The City's acceptance of any submitted insurance certificate and/or accompanying letter(s) 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.
- c. Developer 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.
- d. Unless specifically excepted in writing by the City's Risk Management Administrator, Developer shall include the City and all Developer-Related Entities performing services hereunder as additional insureds under each required policy or shall furnish a separate certificate (consistent with form certificate attached hereto), with authorization letter(s) for each subconsultant. All coverages for subconsultants shall be subject to all of the requirements set forth in the form certificate and Developer shall be responsible for ensuring that each subconsultant complies with all such coverage requirements.
- e. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of Developer. Developer 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.
- f. 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.

- g. If the City elects to purchase an owner’s professional protective insurance policy, such policy will include a self-insured retention for which Developer will be responsible. The City will endeavor to obtain a policy that has a self-insured retention for what is reasonably available in the market place.

8.09. Indemnification.

- a. To the fullest extent permitted by law, Developer hereby agrees to indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or related to the work performed under this Agreement that are due to the negligence or fault of Developer or Developer’s agents, representatives, subcontractors, or suppliers (“Claims”). This indemnity shall be interpreted in the broadest possible manner consistent with the applicable law to indemnify the City.
- b. Developer will indemnify and reimburse the City any expenses incurred by reason of any Claims which may be brought or threatened against the City, including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of the City shall be in addition to any other legal remedies available to the City and shall not be considered the City’s exclusive remedy.
- c. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of Developer under the terms of this indemnification obligation. Developer shall obtain, at its own expense, any additional insurance that it deems necessary for the City’s protection.
- d. This defense and indemnification obligation shall survive the expiration or termination of this Agreement with respect to matters that arose prior to the Termination Date.

8.010. Colorado Governmental Immunity Act. The Parties hereto understand and agree that the City is relying upon, and has not waived, the monetary limitations (presently \$150,000 per person, \$600,000 per occurrence) and all other rights, immunities and protection provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq.

8.011. Project Documents; Order of Precedence. This Agreement consists of Sections 1 through 8, which precede the signature page, and the following attachments, which are incorporated herein and made a part hereof by reference :

Appendix No. A	Standard Federal Assurances
Exhibit A	Scope of Services

Exhibit B	Mandatory Submittals and Predevelopment Submittal Schedule
Exhibit C	Submittals Review and Approval Process
Exhibit D	Certificate of Insurance
Exhibit E	Key Personnel
Exhibit F	Term Sheet

In the event of an irreconcilable conflict between a provision of Sections 1 through 8 and 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 provision shall control to resolve such conflict, is as follows, in descending order:

- Appendix No. A
- Sections 1 through 8
- Exhibit A
- Exhibit B
- Exhibit C
- Exhibit F
- Exhibit E
- Exhibit D

Attachments may be changed through the mutual, written consent of both Parties and without formal amendment to this Agreement.

8.012. Rights and Remedies Not Waived. In no event shall any payment by the City constitute a waiver of any breach of covenant or default which may then exist on the part of Developer. No assent, expressed or implied, to any breach of the Agreement shall be held to be a waiver of any later or other breach.

8.013. Governing Law; Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado, the Charter and Revised Municipal Code of the City and County of Denver, and the ordinances, regulations and Executive Orders enacted or promulgated pursuant to the Charter and Code, including any amendments. The Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, are hereby expressly incorporated into this Agreement. Venue for any action arising hereunder shall be in the City and County of Denver, Colorado.

8.014. Conflict of Interest.

- a. The Parties agree that no employee of the City shall have any personal or beneficial interest in the services or property described herein, and Developer further agrees not to hire or contract for services with any employee or officer of the City which would be in violation of the Revised Municipal Code

Chapter 2, Article IV, Code of Ethics or Denver City Charter provisions 1.2.9 and 1.2.12.

- b. Developer agrees that it will not engage in any transaction, activity or conduct that would result in a conflict of interest under this Agreement. Developer 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 Developer by placing Developer's own interests, or the interests of any party with whom Developer 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 Developer written notice which describes the conflict. Developer shall have thirty (30) days after the notice is received to eliminate or cure the conflict of interest in a manner that is acceptable to the City.

8.015. No Third-Party Beneficiaries. 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 Developer, and nothing contained in this Agreement shall give or allow any claim or right of action by any other or third person under this Agreement. It is the express intention of the parties that any person other than the City or Developer receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

8.016. Time is of the Essence. The Parties agree that in the performance of the terms, conditions and requirements of this Agreement by Developer, time is of the essence.

8.017. Taxes, Charges and Penalties. The City and County of Denver shall not be liable for the payment of taxes, late charges, or penalties of any nature except as provided in the City's Prompt Payment Ordinance, set forth in D.R.M.C. 20-107, *et. seq.*

8.018. Proprietary or Confidential Information.

- a. For the purposes of this Agreement, "Confidential Information" shall mean all information or data, in whatever form, transmitted by the one Party to the other Party (either directly or through representatives) in connection with the Project, whose confidential status is identified by the clear labeling as such, or is otherwise obvious in nature; provided that it shall not be deemed to include information for which it can be demonstrated by written record (i) is or subsequently becomes publicly available without the breach of an obligation of confidentiality owed to the disclosing party, (ii) was disclosed to the recipient by a third party; provided such third party is not bound by or in breach of a confidentiality agreement relating to such Confidential Information, or (iii) was already in the possession of the recipient prior to its

receipt from the disclosing party or is developed by the recipient independent of any disclosure hereunder as evidenced by written records.

- b. **City Information:** Developer acknowledges and accepts that, in performance of its services under the terms of this Agreement, Developer may have access to Proprietary Information or Confidential Information which may be owned or controlled by the City and that the disclosure of such data or information may be damaging to the City or third parties. As such, Developer agrees that all information provided or otherwise disclosed by the City to Developer be held in confidence and used only in the performance of its obligations under this Agreement; provided that Developer may disclose Confidential Information to (i) its agents, employees, shareholders, directors, any Developer-Related Entity, consultants, lenders and other financing parties and their consultants and the Developer's team members who need to know the Confidential Information for purposes of its or their work in connection with the Project, or (ii) if required by law, any court, tribunal, authority, regulatory body or stock exchange, to any regulators or examiners. Developer shall exercise the same standard of care to protect such information as a reasonably prudent Developer would to protect its own proprietary or confidential data.

- c. **Developer's Information:** The City shall hold and treat all Confidential Information in confidence and shall ensure that it, its employees and agents use any Confidential Information only in connection with the Project. The Parties understand that all the material provided or produced under this Agreement may be subject to the Colorado Open Records Act, C.R.S. 24-72-201, et seq., and that in the event of a request to the City for disclosure of such information, the City shall advise Developer of such request in order to give Developer the opportunity to object to the disclosure of any of its proprietary or confidential material. In the event of the filing of a lawsuit to compel such disclosure, the City will tender all such material to the court for judicial determination of the issue of disclosure and Developer agrees to intervene in such lawsuit to protect and assert its claims of privilege and against disclosure of such material or waive the same. Developer further agrees to defend, indemnify and save and hold harmless the City, its officers, agents and employees, from any claim, damages, expense, loss or costs arising out of Developer's intervention to protect and assert its claim of privilege against disclosure under this Section 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.

8.019. Sensitive Security Information. In the course of Developer's performance of this Agreement, Developer may be provided records, documents and/or electronic media ("information") that contains sensitive security information, including information related to the Security Screening Area, ("SSI") disclosed to Developer pursuant to 49 C.F.R. § 1520.11, "persons with a need to know". Developer acknowledges and agrees that further disclosure or

dissemination of this information is governed by the provisions of 49 C.F.R. § 1520.9, “restrictions on the disclosure” of SSI; 49 C.F.R. § 1520.13, “Marking SSI”; and 49 C.F.R. § 1520.15 “SSI Disclosed by TSA or the Coast Guard”. Any further disclosure or dissemination of this information must be approved in writing by TSA, the Coast Guard or the Secretary of USDOT. Any request for approval of further disclosure or dissemination of this information must be referred to TSA or the applicable component or agency within USDOT or Department of Homeland Security with written notice to the City of such request.

8.020. Use, Possession or Sale of Alcohol or Drugs. Developer, its officers, agents, and employees shall cooperate and comply with the provisions of 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’s barring Developer from City facilities or participating in City operations.

8.021. No Employment of Illegal Aliens to Perform Work Under the Agreement.

- a. This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the “Certification Ordinance”).
- b. Developer certifies that:
 - i. 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.
 - ii. 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.
- c. Developer also agrees and represents that:
 - i. It shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.
 - ii. It shall not enter into a contract with a subconsultant or subcontractor that fails to certify to Developer that it shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.
 - iii. 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.

- iv. It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under this Agreement, and that otherwise requires Developer to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.
 - v. If it obtains actual knowledge that a subconsultant or subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, it will notify such subconsultant or subcontractor and the City within three (3) days. Developer will also then terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with an illegal alien.
 - vi. 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.
- d. Developer is liable for any violations as provided in the Certification Ordinance. If Developer violates any provision of this Section or the Certification Ordinance, the City may terminate this Agreement. If this Agreement is so terminated, Developer shall be liable for actual and consequential damages to the City. Developer acknowledges and agrees that any such termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Developer from submitting bids or proposals for future contracts with the City.

8.022. Disputes. All disputes between the City and Developer regarding this Agreement shall be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 5-17 et seq.

8.023. Waiver of C.R.S. 13-20-802, et seq. Developer specifically waives all the provisions of Chapter 8 of Article 20 of Title 13, Colorado Revised Statutes (also designated C.R.S. 13-20-802 et seq.) relating to design defects in the Project under this Agreement.

8.024. Survival of Certain Contract Provisions. The parties understand and agree that all terms and conditions of this Agreement, together with the exhibits and attachments hereto, which, by reasonable implication, contemplate continued performance or compliance beyond the termination of this Agreement, (by

expiration of the Term or otherwise), shall survive such termination and shall continue to be enforceable as provided herein. For the avoidance of doubt, and without limiting the generality of the foregoing:

- a. the City's payment obligations under Section 7.04 shall survive until such obligations have been satisfied, and
- b. Developer's obligations for the provision of insurance and to indemnify the City shall survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period. Upon execution of the Development Agreement, Developer's obligations for provision of insurance and indemnification of the City shall be subsumed into that agreement.

8.025. Advertising and Public Disclosure. Developer shall not include any reference to this Agreement or to services performed pursuant to this Agreement in any of its advertising or public relations materials without first obtaining the written approval of the CEO, which will not be unreasonably withheld. Notwithstanding the foregoing, the dissemination of any information regarding the Security Screening Area shall be subject to the written approval of the CEO, in the CEO's absolute discretion. Any oral presentation or written materials related to services performed under this Agreement shall include only services that have been accepted by the City. The CEO, or her designated representative, shall be notified in advance of the date and time of any such presentation. Nothing in this provision shall preclude the transmittal of any information to officials of the City, including without limitation the Mayor, the CEO, City Council or the Auditor.

8.026. Legal Authority. Developer represents and warrants that (i) it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement; (ii) each person signing and executing this Agreement on behalf of Developer has been fully authorized by Developer to execute this Agreement on behalf of Developer; (iii) this Agreement is validly and legally binding on Developer and (iv) Developer has full power and authority to perform all of its obligations under this Agreement and to comply with all the terms and provisions hereof. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate this Agreement if there is a dispute as to the legal authority of either Developer or any person signing on behalf of Developer.

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

to the City:

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

With a copy to:

Program Manager
Revenue Management Office
8500 Peña Boulevard, 9th Floor
Denver, Colorado 80249-6340

to Developer:
DENVER GREAT HALL LLC
C/O The Corporation Trust Company
1209 Orange Street
Wilmington, Delaware
19801

With a copy to:

c.c. DENVER GREAT HALL LLC
Ferrovial Aeropuertos
C/ Quintanavides 21
28050 Madrid
Spain

With a copy by email to:
icastejon@ferrovial.com
jbullon@ferrovial.com
fojer@ferrovial.com

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

8.028. Severability. It is understood and agreed by the Parties hereto that, if any part, term, or provision of this Agreement, except for the provisions of this Agreement requiring prior appropriation and limiting the total amount to be paid by the City, is by the courts held to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid.

8.029. Agreement as Complete Integration; Amendments. This Agreement is intended as the complete integration of all understandings between the Parties. No prior or contemporaneous addition, deletion or other amendment shall have any force or effect, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion or other amendment hereto shall have any force or effect unless embodied in a written amendatory or other agreement executed by the Parties and signed by the signatories to the original Agreement (except for

extensions signed by the CEO on behalf of the City pursuant to Section 4.09(c)). This Agreement and any amendments shall be binding upon the Parties, their successors and assigns.

8.030. Electronic Signatures and Electronic Records. Developer consents to the use of electronic signatures by the City. This Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of this 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 this 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.

[END OF AGREEMENT; APPENDIX, SIGNATURE PAGES, AND EXHIBITS FOLLOW]

Contract Control Number: PLANE-201418237-00

Contractor Name: Denver Great Hall LLC

By: _____

Name: _____

(please print)

Title: _____

(please print)

ATTEST: [if required]

By: _____

Name: _____

(please print)

Title: _____

(please print)



Contract Control Number:

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

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____

By _____

By _____



APPENDIX A

COMPLIANCE WITH NON-DISCRIMINATION REQUIREMENTS

NOTE: As used below the term "Contractor" shall mean and include Developer, and the term "sponsor" shall mean the "City."

During the Term, 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 will comply with the Title VI List of Pertinent Non-Discrimination Statutes and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made part of this Agreement.

2. **Nondiscrimination.** The Contractor, with regard to the work performed by it during this Agreement, will not discriminate on the grounds of race, creed, color, national origin, or sex 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 Acts and Regulations, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

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 will be notified by the Contractor of the Contractor's obligations under this Agreement and the Acts and Regulations relative to nondiscrimination 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, Regulations or 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 (FAA) to be pertinent to ascertain compliance with such Acts, Regulations, 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 or the FAA, 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 nondiscrimination provisions of this Agreement, the sponsor will 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 this Agreement until the Contractor complies, and/or;
- b. Cancelling, terminating, or suspending this Agreement, in whole or in part.

6. **Incorporation of Provisions.** The Contractor will include the provisions of paragraphs one (1) through six (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations or directives issued pursuant thereto. The Contractor will take 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, 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 such litigation to protect the interests of the sponsor. In addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Exhibit A

Predevelopment Work

During the Term, Developer shall perform the following work and activities as required for Developer to reach Commercial Close of the Development Agreement with the City, such work and activities collectively referred to as the “Predevelopment Work”, including all of the following:

- 1 finalize and execute right of entry agreement with the City,
- 2 conduct due diligence on the condition and operations of existing facilities and related investigation activities,
- 3 perform detailed programming and planning of all physical spaces of the Project and define the Project’s complete and final scope and physical limits,
- 4 incorporate approved technical concepts (including ATCs, if applicable) into the Project scope,
- 5 complete all necessary Design Work and pre-construction activities
- 6 develop capital and O&M cost estimates and establish final structure for the pricing of the Development Agreement,
- 7 develop implementation and phasing plans,
- 8 develop Project Management Plan, O&M Work Plan, Concessions Development and Management Plan (including any revenue forecasts),
- 9 coordinate with the City and TSA, as needed, with respect to the Security Screening Area
- 10 collaborate with the City to finalize the terms of the Development Agreement and the Technical Provisions
- 11 prepare and participate in meetings with the City and third parties as may be required and develop and deliver to the City meeting minutes following such meetings
- 12 provide progress reports, updates, and cost and scope reconciliation to the City as may be required

Exhibit B
Mandatory Submittals and Predevelopment Submittal Schedule

During the Term, Developer shall provide all Submittals in accordance to the Predevelopment Submittal Schedule herein. The list of Mandatory Submittals during the Term is subject to evolve during the Predevelopment Phase pursuant to collaborative work between Developer and the City. The City reserves the right to add Mandatory Submittals to this Exhibit B in its sole discretion, at which point the parties shall negotiate in good faith the relevant price associated therewith.

Mandatory Submittals

Phase	#	Submittal	Description	Submittal type ¹	Deadline for submission	Amount	Working Group
1	1.01	PDA Contract Signature	This deliverable is an agreed version of the Predevelopment Agreement negotiated by the City and the Developer on the basis of the Predevelopment Agreement included in the Request for Proposals, once it is executed and comes into force.	A	9/6/2016	\$300,000	Legal and Prime Document Team
1	1.00	Rendering of Level 5	This deliverable is a rendered image of the proposed design of level 5 of the Jeppesen Terminal.	A	9/6/2016	\$200,000	Planning, Design, Review
1	1.02	Final Right of Entry Agreement	This deliverable is an agreed version of the agreement regulating the access by the Developer to the Airport premises to which access is	A	9/6/2016	\$50,000	Legal and Prime Document Team

¹ See Exhibit C for definition

Phase	#	Submittal	Description	Submittal type ¹	Deadline for submission	Amount	Working Group
			restricted and must be authorized and regulated.				
1	1.03	Initial Draft of Use Sub-Agreement	Developer will present a term sheet with the main elements of the template for the Concession Use Sub-Agreement. This initial draft will be periodically updated during the Predevelopment Phase to be consistent with the evolution of the Concession Development and Management Plan and the rest of the legal and technical documents of the project.	B	9/23/2016	\$ 250,000	Concession Development and Management
1	1.04	Initial Draft Project Management Plan	The first version of the document should include an index with all the sections required by the Technical Provisions in section I.6. The different sections will be only developed up to the level that is reasonable to expect at this early stage of the process. This initial draft of the document will be a tool to validate the Airport expectations related to the content and level of detail of the document. As well a plan in order to further develop the	B	9/23/2016	\$300,000	Project Controls & Reporting

Phase	#	Submittal	Description	Submittal type ¹	Deadline for submission	Amount	Working Group
			different areas (including actions, information requirements, meetings, etc.) will be discussed. The O&M Work Plan and the Commercial Development Management Plan sections will be separate deliverables.				
1	1.05	Initial Draft Legal Due Diligence	This deliverable is an updated version for the draft due diligence report provided with the RFP response including updated information made available to the Developer. It will be prepared by a well-known law firm and updated analyzing the main legal risks and issues to be considered and addressed in connection with the Project, according to the further information made available by the airport and/or the further analysis carried out by the Developer team	A	9/28/2016	\$300,000	Legal and Prime Document Team
1	1.06	Initial Draft Tax Due Diligence	This deliverable is an updated version for the draft due diligence report provided with the RFP response. It will be updated according to the further information made	A	9/28/2016	\$300,000	Tax

Phase	#	Submittal	Description	Submittal type ¹	Deadline for submission	Amount	Working Group
			available by the airport and the further analysis carried out by the Developer team.				
1	1.07	Initial Draft Accounting Due Diligence	This deliverable is an updated version for the draft due diligence report provided with the RFP response. It will be updated according to the further information made available by the airport and the further analysis carried out by the Developer team.	A	9/28/2016	\$200,000	Accounting
1	1.08	Initial Draft Technical Due Diligence	This deliverable consists of the analysis by the Developer team of the current conditions of the systems affecting the project. It will be based on the analysis of the information provided by the airport (e.g. as built drawings, inventories, technical data) and site visits performed by the Developer team.	A	9/28/2016	\$250,000	Planning, Design, Review
1	1.09	Initial Draft Commercial Due Diligence	The objective of this deliverable is to cover the Concession Program Supporting Analysis required in section IV.2.2.1 of the Technical Provisions (TP). The basis of this deliverable will be the report provided	A	9/28/2016	\$250,000	Concession Development and Management

Phase	#	Submittal	Description	Submittal type ¹	Deadline for submission	Amount	Working Group
			<p>in the Proposal to be completed with some additional research and delivered in the appropriate format and order as required in the ITP.</p> <p>In addition, to that the due diligence report should include an analysis of the current commercial contracts of the Terminal and any other relevant information provided by the City in this new phase of the project that may have an impact in the business model proposed.</p>				
1	1.10	Initial Draft Physical Due Diligence	<p>This deliverable consists of the analysis by the Developer team of the current conditions of the terminal building in respect to its structure, architectural features, etc. It will be based on the analysis of the information provided by the airport (e.g. structural as built drawings, inventories, technical data) and site visits performed by the Developer team.</p>	A	9/28/2016	\$400,000	Planning, Design, Review
1	1.11	Initial Draft Financial Due Diligence	<p>The deliverable consists in a report analyzing:</p> <p>(i) Feasibility of the financing structure of</p>	A	9/28/2016	\$200,000	Financing

Phase	#	Submittal	Description	Submittal type ¹	Deadline for submission	Amount	Working Group
			the Project and the payments related to the Concession Period (ii) Analyzing potential contingencies that could affect the financial capacity of the airport.				
2	2.01	Initial Draft Basis of Design Report	<p>This document will capture all the requirements agreed with the airport for the design. It will include:</p> <ul style="list-style-type: none"> - Preliminary general high level architecture drawings (floor plans) - A design brief describing the program to be accommodated, compiling input from DEN and third parties. - Schematic Design Analysis Report containing <ul style="list-style-type: none"> o Assumptions o A list of deviations from DEN or governmental agency design standards o Project systems o A list of utilities and their maximum capacities o Design coordination items with pre-study report and appropriate back-up not limited to catalogues cuts, technical 	C	10/7/2016	\$250,000	Planning, Design, Review

Phase	#	Submittal	Description	Submittal type ¹	Deadline for submission	Amount	Working Group
			<p>specifications and systems performance data</p> <ul style="list-style-type: none"> o Pre-design tenant supplies systems analysis o Buildability report. 				
2	2.02	Initial Draft Design Security Screening Area	<p>This Deliverable consists of the compilation of the design requirements of the relocated TSA area. It will reflect the progress made in the discussions with the TSA (if any) about the required layout, equipment, systems, etc. The deliverable will take the form of a floor plan and some detail drawings along with a narrative with the different requirements. The minutes of the meetings held with the TSA and any other documentation shared will also be part of the document as appendix.</p>	C	10/7/2016	\$200,000	Planning, Design, Review
2	2.03	Initial Draft Concessions Development Plan	<p>The content of this plan will be the one required in point IV.3 of the Technical Provisions. This initial draft will present the index of</p>	C	10/7/2016	\$200,000	Concession Development and Management

Phase	#	Submittal	Description	Submittal type ¹	Deadline for submission	Amount	Working Group
			the document and will develop the more generic areas and will present the methodology to be followed for the more detailed elements that depend on finalizing the design (e.g. unit by unit sales forecast).				
2	2.04	Initial Draft O&M Plan	The content of this plan will be the one required in point III.2 of the Technical Provisions. This initial draft will present the index of the document and will develop the more generic areas and will present the methodology to be followed for the more detailed elements that depend on finalizing the design (e.g. maintenance plans).	C	10/7/2016	\$250,000	O&M
2	2.05	Initial Draft ACDBE / DBE Plan	This plan will describe the methodology and actions to be taken by the Developer team in order to achieve best in class outreach and community engagement standards. Also will present the analysis to support the City decision about DBE and ACDBE targets for the different phases of the project. The Developer team	C	10/7/2016	\$150,000	Community Involvement

Phase	#	Submittal	Description	Submittal type ¹	Deadline for submission	Amount	Working Group
			will also initiate DBE engagement during the PDA phase so this plan will also contain a section monitoring the different actions taken by the Developer team and the targets being achieved during this phase.				
2	2.06	Draft of Concession Use Agreement	This document would be an enhanced version of the previous initial draft. It would include additional information available at that time and, if available, capture the comments and recommendations made by the City to the previous version to the extent that such comments or recommendations have been received.	C	10/7/2016	\$250,000	Concession Development and Management
2	2.07	Draft of Project Management Plan	This report would be an enhanced version of the previous initial draft report. It would include additional information available at that time and, if available, capture the comments and recommendations made by the City to the previous version to the extent that such comments or recommendations have been received.	B	10/16/2016	\$200,000	Steering Committee Pre-Development Phase and Contract Development
2	2.08	Draft Tax Due	This report would be an enhanced version	A	10/11/2016	\$200,000	Tax

Phase	#	Submittal	Description	Submittal type ¹	Deadline for submission	Amount	Working Group
		Diligence Report	of the previous initial draft report. It would include additional information available at that time and, if available, capture the comments and recommendations made by the City to the previous version to the extent that such comments or recommendations have been received.				
2	2.09	Draft Accounting Due Diligence Report	This report would be an enhanced version of the previous initial draft report. It would include additional information available at that time and, if available, capture the comments and recommendations made by the City to the previous version to the extent that such comments or recommendations have been received.	A	10/11/2016	\$200,000	Accounting
2	2.10	Draft of Technical Due Diligence Report	This report would be an enhanced version of the previous initial draft report. It would include additional information available at that time and, if available, capture the comments and recommendations made by the City to the previous version to the extent that such comments or recommendations have been received.	A	10/11/2016	\$200,000	Preconstruction, Construction Schedule & Phasing

Phase	#	Submittal	Description	Submittal type ¹	Deadline for submission	Amount	Working Group
2	2.11	Draft Commercial Due Diligence Report	This report would be an enhanced version of the previous initial draft report. It would include additional information available at that time and, if available, capture the comments and recommendations made by the City to the previous version to the extent that such comments or recommendations have been received.	A	10/11/2016	\$250,000	Concession Development and Management
2	2.12	Draft Physical Due Diligence Report	This report would be an enhanced version of the previous initial draft report. It would include additional information available at that time and, if available, capture the comments and recommendations made by the City to the previous version to the extent that such comments or recommendations have been received.	A	10/11/2016	\$250,000	Preconstruction, Construction Schedule & Phasing
2	2.13	Draft Financial Due Diligence Report	This report would be an enhanced version of the previous initial draft report. It would include additional information available at that time and, if available, capture the comments and recommendations made by the City to the previous version to the extent that such comments or	A	10/11/2016	\$200,000	Financing

Phase	#	Submittal	Description	Submittal type ¹	Deadline for submission	Amount	Working Group
			recommendations have been received.				
2	2.14	Draft Legal Due Diligence Report	This report would be an enhanced version of the previous initial draft report. It would include additional information available at that time and, if available, capture the comments and recommendations made by the City to the previous version to the extent that such comments or recommendations have been received.	A	10/11/2016	\$200,000	Legal and Prime Document Team
3	3.01	Final Design Security Screening Area	This Deliverable consists in the compilation of the design requirements of the relocated TSA area. It will reflect the progress made in the discussions with the TSA about the required layout, equipment, systems, etc. The deliverable will take the form of a floor plan and some detail drawings along with a narrative with the different requirements. The minutes of the meetings held with the TSA and any other documentation shared will also be part of the document as appendix. This final design will contain the assumptions in which	C	10/28/2016	\$200,000.00	TSA Work

Phase	#	Submittal	Description	Submittal type ¹	Deadline for submission	Amount	Working Group
			the Development Agreement will be based on.				
3	3.02	Final Delivery of Basis of Design	This deliverable would be an enhanced version of the previous draft. It would include additional information available at that time and capture the comments and recommendations made by the City to the previous version. This final version of the Basis of Design will contain the assumptions in which the Development Agreement will be based on.	B	10/28/2016	\$500,000.00	Planning, Design, Review
3	3.03	Initial Draft Physical Project Plan	This is the design to be presented to the airport as part of the PDA Phase. See description at the bottom of this table in "Physical Project Plan Description"	C	11/11/2016	\$800,000.00	Planning, Design, Review
4	4.01	Passenger Simulation	Developer will provide a passenger simulation that reflects the future performance of the ticketing area and security screening area and shows the flow of the passenger from the façade to the level 4, addressing the	B	12/02/2016	\$50,000	Planning, Design, Review

Phase	#	Submittal	Description	Submittal type ¹	Deadline for submission	Amount	Working Group
			<p>following activities:</p> <ul style="list-style-type: none"> - Integrate the final boundary conditions established by the different project stakeholders and the modelling parameters related to the agreed passenger flows, terminal building layouts, terminal equipment and processing/queuing times; in order to “freeze” the inputs of the simulation, the advisor will have to previously interact and agree the conditions with all the project stakeholders - Prepare a capacity & simulation report that reflects the methodology, the assumptions taken with the modelling of the tool and the results obtained from the simulation - Deliver a video file that shows the results of the passenger simulation according to the final assumptions and airport layout. 				

Phase	#	Submittal	Description	Submittal type ¹	Deadline for submission	Amount	Working Group
4	4.02	Draft Transition and Phasing Plan	<p>This plan will describe the construction phasing and the different plans to guarantee a smooth transition from the PDA Phase to the Design and Construction Phase and from Construction to Operations. It will contain:</p> <ul style="list-style-type: none"> - A narrative with the description of the different construction phases - floor plan drawings of the phases - Some details of the temporary elements to be included (secured corridors, protections...) - A narrative and schemes for the key relocations / temporary elements: <ul style="list-style-type: none"> o Airlines o Airport employees / offices o Services o Commercial areas (we will collaborate on this area). 	B	12/02/2016	\$250,000	Preconstruction, Construction Schedule & Phasing
4	4.03	Final Physical Project Plan	<p>This deliverable would be an enhanced version of the previous draft. It would include additional information available at that time and capture the comments and recommendations made by the City to</p>	B	12/02/2016	\$200,000	Planning, Design, Review

Phase	#	Submittal	Description	Submittal type ¹	Deadline for submission	Amount	Working Group
			the previous version. This final version of the Basis of Design will contain the assumptions in which the Development Agreement will be based on.				
5	5.01	Draft Construction Term Sheet	This deliverable consists in the draft Construction term sheet that will be shared with rating agencies and underwriters to assess the construction risk.	A	12/15/2016	\$50,000	Legal and Prime Document Team
5	5.02	Final ACDBE / DBE Plan	This plan would be an enhanced version of the previous draft. It would include additional information available at that time and capture the comments and recommendations made by the City to the previous version. Also it will develop the areas that were pending from the finalization of the Physical Project Plan.	B	12/30/2016	\$20,000	Community Involvement
5	5.03	First Version of DD reports for Underwriters and rating agencies	This deliverable consists in the compilation of all due diligence reports and relevant information and plans to be shared with the rating agencies and underwriters in order to obtain a	A	12/30/2016	\$50,000	Same as for the previous draft version for each due diligence report

Phase	#	Submittal	Description	Submittal type ¹	Deadline for submission	Amount	Working Group
			preliminary rating and financing terms				
5	5.04	Final O&M Plan	This plan would be an enhanced version of the previous draft. It would include additional information available at that time and capture the comments and recommendations made by the City to the previous version. Also it will develop the areas that were pending from the finalization of the Physical Project Plan.	B	12/30/2016	\$100,000	O&M
5	5.05	Final Concession Development Plan	This plan would be an enhanced version of the previous draft. It would include additional information available at that time and capture the comments and recommendations made by the City to the previous version. Also it will develop the areas that were pending from the finalization of the Physical Project Plan.	B	12/30/2016	\$100,000	Concession Development and Management
5	5.06	Final Project Management Plan	This plan would be an enhanced version of the previous draft. It would include additional information available at that time and	B	12/30/2016	\$50,000	Project Controls & Reporting

Phase	#	Submittal	Description	Submittal type ¹	Deadline for submission	Amount	Working Group
			capture the comments and recommendations made by the City to the previous version. Also it will develop the areas that were pending from the finalization of the Physical Project Plan.				
5	5.07	Fixed Construction and O&M Price	At this moment in time Developer will be able to update the construction and O&M cost by means of an updated costing sheet.	A	12/23/2016	\$15,000	Preconstruction, Construction Schedule & Phasing
5	5.08	Final Transition and Phasing Plan	This plan would be an enhanced version of the previous draft. It would include additional information available at that time and capture the comments and recommendations made by the City to the previous version. Also it will develop the areas that were pending from the finalization of the Physical Project Plan.	B	12/30/2016	\$25,000	Preconstruction, Construction Schedule & Phasing

Phase	#	Submittal	Description	Submittal type ¹	Deadline for submission	Amount	Working Group
5	5.09	Negotiation of Development Agreement and Technical Provisions	<p>This task covers the negotiation process of the legal documents. For the Technical Provisions the different working groups will be responsible for the discussion and drafting of the document. The Development Agreement discussion will be led and coordinated by the legal team. The deliverables of the Development Agreement may consist in:</p> <p>(i) the Preliminary report prepared by an external advisor of the Developer describing the terms agreed in the preliminary meeting to discuss the central elements of the Development Agreement and Technical Provisions (20%)</p> <p>(ii) the delivery to the airport of a document prepared by a leading law firm containing either (a) first draft of Development Agreement and Technical Provisions or (b) first mark-up to the draft of the Development Agreement and Technical Provisions</p>	B	1/13/2017	\$25,000	Legal and Prime Document Team

Phase	#	Submittal	Description	Submittal type ¹	Deadline for submission	Amount	Working Group
			proposed by the Airport (30%) (iii) Delivery of the Development Agreement and Technical Provisions in agreed form following the negotiation with the City (50%)				
5	5.10	Initial draft Financial Documentation	This deliverable consists of the initial drafts of the required financial documentation in order to reach Commercial and Financial Close, including: Bond Indenture, Loan Agreement, Equity Contribution Agreement, Collateral Agency Agreement, Security Agreement, Pledge Agreement, Bond Purchase Agreement, Collateral Agency Agreement, Security Agreement, Pledge Agreement, Bond Purchase Agreement.	A	1/13/2017	\$25,000	Financing
5	5.11	Inputs to analyze Impact on Airline Agreement	Developer will provide the necessary inputs (revenues, Opex, capex, square footage, etc.) to the Airport so the Airport can run its models and assess the project's impact in the Airline Agreements	A	1/30/2017	\$20,000	Rates & charges, PFCs

Phase	#	Submittal	Description	Submittal type ¹	Deadline for submission	Amount	Working Group
5	5.12	Draft Updated Financial Plan and Model Audit	Update of the most optimal financial solution resulting in a capital structure that combines private equity, PABs (potentially also bank debt) and a Substantial Completion Payment. The model audit is a lender/underwriter requirement to confirm that the model properly reflects the contractual obligations and other stated assumptions and that accounting and taxation calculations are correct.	B	1/13/2017	\$10,000	Deal structure
5	5.13	Model for rating agencies	Developer will deliver an updated version of the financial model containing the scenario to be shared with the rating agencies.	A	1/18/2017	\$10,000	Financial modeling
6	6.01	Junior Bond Ordinance	For a structure comprising a junior contractual or bond obligation, a junior bond ordinance would have to be drafted and approved by the City Council. (To the extent that 6.01 should not apply, the amount applicable for 6.01 will be payable under 6.02)	B	11/4/2016	\$50,000	Financing

Phase	#	Submittal	Description	Submittal type ¹	Deadline for submission	Amount	Working Group
6	6.02	Supplemental Bond Ordinance	For a structure that includes potential subordinate contractual or bond obligations, a Supplemental Subordinate Bond Ordinance would have to be approved by the City Council. (To the extent that 6.02 should not apply, the amount applicable for 6.02 will be payable under 6.01)	B	11/4/2016	\$50,000	Financing
6	6.03	PABs Term Sheet	This deliverable consists of a PABs term sheet that will be shared with rating agencies and underwriters	A	1/24/2017	\$50,000	Financing
6	6.04	Final Construction Contract	This deliverable consists in the Construction Contract that will be executed between the SPV and the DBJV. It will be shared with rating agencies and underwriters to assess the construction risk	A	2/12/2017	\$20,000	Legal and Prime Document Team
6	6.05	TEFRA Hearings	Public hearing required by the IRS in order to approve the issuance of tax-exempt debt. The hearing gives the public an opportunity to comment on the use of the tax-exempt funds by the borrower to finance its capital needs	A	2/11/2017	\$10,000	Financing
6	6.06	Inducement Resolution	The first "official action" or evidence	A	2/11/2017	\$10,000	Financing

Phase	#	Submittal	Description	Submittal type ¹	Deadline for submission	Amount	Working Group
		by Bonding Issuer	of official intent indicating an issuer's intent to issue certain types of private activity bonds.				
6	6.07	Technical, Revenue and Financial Presentation to Rating Agencies	This consist in the presentation to the Rating Agencies of the Due Diligence reports prepared so far.	A	1/28/2017	\$100,000	Developer Team Members of each of the relevant working groups
6	6.08	Preliminary rating	This deliverable consists of obtaining two (as requested by the underwriters) preliminary investment grade ratings for the financing before reaching Commercial Close.	A	2/17/2017	\$100,000	Financing
6	6.09	Commercial Close Security	Drafting a standby letter of credit or a surety bond in an amount established by the City as security for the Developer's commitment to achieve Financial Close in accordance with the terms negotiated during the PDA.	A	2/22/2017	\$50,000	Financing
6	6.10	Preparation of Documentation for Closing of Development Agreement and Technical Provisions	Preparation of the Project financing documents subject to completion of the financing.	B	2/22/2017	\$20,000	Legal and Prime Document Team

Phase	#	Submittal	Description	Submittal type ¹	Deadline for submission	Amount	Working Group
6	6.11	Report of Conditions Precedent to Financial Close	Delivery of a conditions precedent checklist prepared by an external legal advisor on the conditions which must be fulfilled to proceed with the Financial Close of the Development Agreement.	A	2/22/2017	\$20,000	Legal and Prime Document Team
6	6.12	Developer team execution of Development Agreement (end of 180 day period)	Execution by the Developer of a Development Agreement reflecting the wording negotiated and agreed by the Developer and the City.	A	3/6/2017	\$20,000	Legal and Prime Document Team

Description of Physical Project Plan

PHYSICAL PROJECT PLAN
Architecture
A. Final Design brief describing the program to be accommodated, to produce consolidated airport layout plans
B. Final General Architecture drawings a. Level 6 General Architecture Floor plan. Scale 1:250 or similar b. Level 5 General Architecture Floor plan. Scale 1:250 or similar c. Level 4 General Architecture Floor plan. Scale 1:250 or similar
C. Sections a. 2 transverse sections b. 1 longitudinal section c. 1 external elevation d. 2 internal elevations
D. Packaged delivery 1:400 scale plans including set of specifications a. Demolitions b. Flooring c. Ceiling d. Wall lining e. Envelope f. Vertical transportation
E. 3 Renderings
F. 1 video (60 seconds)
Structural and M&E
A. Schematic drawings indicating design concepts and alternative solutions. a. Structural b. Mechanical (HVAC, Plumbing, Fire suppression & Life Safety) c. Electrical (LV & Electronic Safety and Security) d. ITS & Communications. Including interfaces with TSA, CUTE, FIDS, & BMS
B. Schematic, to scale models of areas of the project, to fully demonstrate or describe the project a. Structural b. Mechanical (HVAC, Plumbing, Fire suppression & Life Safety) c. Electrical (LV & Electronic Safety and Security) d. ITS & Communications. Including interfaces with TSA, CUTE, FIDS, & BMS
C. Design calculations
D. Building Information Model (BIM) Scope of Deliverables a. Follow latest version of DEN Electronic Data Collection and Interchange (EDCI) Compliance Design Standards Manual b. The preliminary BIM Model to be delivered will cover the design intent and will serve as a set up and backbone of the Model to be developed in the detailed design phase of the Project (the Developer Agreement phase)

PHYSICAL PROJECT PLAN

- c. In addition, this model will serve as a spatial program validation tool of the early concept design and to identify high level inconsistencies and conflicts prior to the Developer Agreement phase
- d. Therefore, the model will show a preliminary layout of the proposed physical project, containing architectural partitions and accesses, flooring and ceiling limits. No detail to finishes or renderings will be provided at this stage.
- e. Proposed structural works will be shown to an schematic level to identify areas of work
- f. General MEP program space provisions for volumetric control of technical rooms and mechanical shafts will be included. A developed MEP design will not be provided at this stage (elements such as conduits, boxes, etc.)

EXHIBIT C

Submittal Review and Approval Process

Developer shall provide all Submittals of the Predevelopment Work in accordance to the Exhibit B.

Developer and the City have agreed to create the following Working Groups with members appointed by each of the Parties to address specific issues of the Predevelopment Work which require further expertise.

Working Groups:

- Pre-Development Phase and Contract Development
- Concession Development and Management
- O&M
- Financial modeling
- Financing
- Deal structure
- Tax
- Accounting
- Rates & charges, PFCs
- Legal and Prime Document Team
- Insurance
- Pre-Construction, Construction Schedule & Phasing
- Planning, Design, Review, including TSA coordination
- Project Controls & Reporting
- Strategic Airline Stakeholder Coordination
- Non-airline Stakeholder Outreach
- Early Construction and Enabling
- Community Involvement
- City Council Liaison

The Parties may agree on creating additional Working Groups and/or changing the scope of work of any of them. These groups will be coordinated by the Steering Committee proposed by each of the Parties.

The Working Groups may work on further defining and agreeing on the content of Submittals A, B and C. The content of the Submittals will be based on the Technical Provisions, the Proposal and this Agreement.

Types of Submittals: Submittals “A”, “B” and “C”.

There will be three types of Submittals (“**Submittals A**”, “**Submittals B**” and “**Submittals C**”), as identified in Exhibit B. The following procedure will apply to each of the Submittals

Procedure for Submittals A:

Developer shall submit to the City each Submittal by the applicable deadline set forth in Exhibit B. Provided that the Submittal meets the description established in Exhibit B, it will be considered as duly fulfilled.

If the City has justified reasons to consider that the Submittal does not comply with the description included in Exhibit B, the Steering Committee will meet on the next Business Day following the Submittal to resolve the outstanding issues on such submission.

If the Steering Committee is not satisfied with the initial submission, it will state its reasons for the disapproval and the Submittal will be resubmitted to the Steering Committee addressing such issues. Once resubmitted, the Steering Committee will resolve on its approval or refusal on the next Business Day after the new submission. Unless there are justified reasons for refusing the initial submission, the delays caused by such refusal shall be understood as caused by the City.

While the approval of the Submittal is obtained, Developer may continue with other Predevelopment Work; provided however that Developer acknowledges that any additional Predevelopment Work, which may depend on a Submittal which is pending to be approved, may need to be modified, amended, expanded, reworked or redone in part or completely, and that any such revisions are the responsibility and risk of Developer.

Procedure for Submittals B:

When Developer has completed and achieved all of the requirements of a Submittal, Developer shall submit a written request for confirmation by the applicable Working Group (as set forth in Exhibit B) for review and approval, as set forth in this Agreement.

The written request shall include a statement identifying the Submittal that has been completed and shall also include all relevant work product and documentation necessary for verification of completion.

The Working Group will have five (5) Business Days to issue its recommendation to the Steering Committee on the Submittal. If the Working Group does not provide a recommendation for approval within those five (5) Business Days, because it finds that any Submittal must be amended or is identified to be outdated, incomplete or contains errors, the Working Group will meet as soon as it notices or considers that such amendment or update is required (but, in any event, no later than on the fifth Business Day since the Submittal was presented) to clarify whether the Submittal needs to be amended and, if so, the elements to be addressed in the amendment.

If no agreement can be reached at the Working Group during such meeting on how to amend or approve the Submittal, the Team Executives (who will be appointed after execution by the City of the Agreement) from the City and the Developer will meet on the following Business Day

(i.e., the sixth Business Day since the Submittal was presented) and will make their best efforts to reach an agreement in the maximum period of two Business Days.

If the Working Group recommends the approval of the Submittal, the Steering Committee will have two (2) Business Days to accept or reject the recommendation from the Working Group. If the Steering Committee does not agree with approval of the Submittal, it will meet with the Developer Team Executive as soon as it notices that it will not agree with the recommendation (but in any event, no later than on the second Business Day since it received the Working Group recommendation) to clarify whether the Submittal needs to be amended and, if so, the elements to be addressed in the amendment.

If the Steering Committee approves the Submittal, it will send it to the CEO and/ or the CFO, who will have one Business Day for final sign off. When the CEO and the CFO are not available to sign off in One Business Day, they may request an additional period of two Business Days to issue the final sign off.

While these approvals are obtained, Developer may continue with other Predevelopment Work; provided however that Developer acknowledges that any additional Predevelopment Work, which may depend on a Submittal which is pending to be approved, may need to be modified, amended, expanded, reworked or redone in part or completely, and that any such revisions are the responsibility and risk of Developer.

Procedure for Submittals C:

Procedures for Submittals B will apply to Submittals C, excepted for the fact that the Working Group will have ten (10) Business Days (instead of five) to issue its recommendation to the Steering Committee on the Submittal.

Extensions of deadlines:

If Developer is rendered wholly or partly unable to meet any Submittal by the deadline set forth in the Predevelopment Submittal Schedule in Exhibit B because of a Force Majeure Event, delays caused by the City or breach by the City of this Agreement, Developer's time to meet such deadline shall be extended to the extent such delay impacted its ability to maintain its schedule by the actual number of calendar days Developer was delayed.

For the avoidance of doubt and without limitation, it is herein agreed that whenever the CEO or CFO request an additional period to issue the sign off because of not being available on the first Business Day following the Steering Committee approval, this additional period shall be considered as a delay caused by the City of this Agreement.

To the extent that such deadlines are extended under this Exhibit, the deadlines set forth in Section 5.01 will (i) in the case of an act or omission by the City in breach of this Agreement or

in case of a delay caused by the City, be automatically extended by the number of calendar days by which any Submittal affected by the City act or omission was extended pursuant to this section or (ii) in the case of a Force Majeure Event, be extended by mutual agreement of the Parties, but at least for the number of days of delay caused by such event.

Along with the extension of Section 5.01, the Term of the Agreement may also be extended, acting in a reasonable manner, if the act, omission, delay or event caused by the City or the Force Majeure Event results in the parties being unable to meet the submittal schedule as set forth on Exhibit B. Prior to a Term extension request, pursuant to this paragraph, the parties will make all reasonable efforts to keep the original schedule as set forth in Exhibit B. Any Term extension will be negotiated in good faith and be subject to the terms and conditions of section 4.09 of this Agreement.

Monthly Reports.

Developer shall submit to the Steering Committee written reports no later than the first day of each month during the Term, setting forth a description of the status of Developer's compliance with the Submittals Schedule, in such form as shall be mutually agreed to by the Parties.

Force Majeure Event.

"Force Majeure Event" is defined as, with respect to each Party, the occurrence and continuing impact of an event, act, omission, condition, or circumstance beyond such Party's reasonable control and due to no fault of such Party, or persons for whom such Party is responsible, that prevents or delays such Party from performing any of its obligations pursuant to this Agreement, including (i) war (including civil war and revolution), invasion, armed conflict, violent act of foreign enemy, military or armed blockade, or military or armed takeover of the Terminal; (ii) any act of riot, insurrection, civil commotion, act of terror or sabotage that causes direct physical damage to the Terminal; (iii) nuclear explosion, radioactive or chemical contamination of the Terminal; (iv) fire or explosion; (v) earthquake; (vi) hurricane force winds, tornadoes, floods, tsunami, named windstorms or snow or ice storms that are not ordinarily encountered at DEN; or (vii) any event resulting in the declaration of a state of emergency.

Notwithstanding the foregoing, an event will not constitute a Force Majeure Event under this Agreement if such event is otherwise specifically dealt with in this Agreement or arises by reason of any of the following: (1) the negligence or willful misconduct of such Party or persons for whom such Party is responsible (the "Related Parties"); (2) any act or omission by such Party or the Related Parties in breach of the provisions of this Agreement; (3) any strike, labor dispute or labor protest directed solely at such Party or any Related Party or caused by or attributable to any act (including any pricing or other practice or method of operation) or omission of such Party or any Related Party; (4) market conditions or economic conditions affecting such Party's ability to meet its financial obligations or the availability, supply, or cost

of labor, equipment and materials, construction equipment and supplies, or commodities, other than as a result of the events described in clauses (i) through (vii) above; or (5) weather conditions, other than the events described in clauses (vi) and (vii) above.

EXHIBIT D

**CITY AND COUNTY OF DENVER
INSURANCE REQUIREMENTS FOR THE DEPARTMENT OF AVIATION
THIS IS FOR PREDEVELOPMENT PHASE ONLY AND DOES NOT APPLY TO DESIGN/CONSTRUCTION PHASE**

Certificate Holder Information:

CITY AND COUNTY OF DENVER

Attn: Risk Management, Suite 8810

Manager of Aviation

Denver International Airport

8500 Peña Boulevard

Denver CO 80249

CONTRACT NAME & NUMBER TO WHICH THIS INSURANCE APPLIES: 201418237 – Great Hall Project

I. MANDATORY COVERAGE

Colorado Workers' Compensation and Employer Liability

Minimum Limits of Liability (In Thousands)

\$100, \$500, \$100

1. Developer/Special Purchase Vehicle (SPV) expressly represents to the City, as a material representation upon which the City is relying on entering into this Agreement, that none of the Contractor's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement. Any such rejections previously effected, must have been revoked as of the date Contractor executes this Agreement.
2. If the contractor/consultant is a sole proprietor, Workers' Compensation is waived per State of Colorado law.

Commercial General Liability

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

The policy must provide the following:

1. That this Agreement is an Insured Contract under the policy.
2. Defense costs are outside the limits of liability.
3. A severability of interests or separation of insureds provision (no insured vs. insured exclusion).
4. A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.
5. The full limits of coverage must be dedicated to apply to each project/location.

Business Automobile Liability

Minimum Limits of Liability (In Thousands):

Combined Single Limit	\$1,000
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The policy must provide the following:

1. Coverage applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.
2. If transporting wastes, hazardous material, or regulated substances, Contractor shall carry a pollution coverage endorsement and an MCS 90 endorsement on their policy.

II. ADDITIONAL COVERAGE

Excess/Umbrella Liability

Minimum Limits of Liability (In Thousands):

Umbrella Liability Non-Controlled Area	Each Occurrence and aggregate	\$5,000
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The policy must provide the following:

1. Coverage must be written on a "follow form" or broader basis.
2. Any combination of primary and excess coverage may be used to achieve required limits.
3. If operations include unescorted airside access at DIA, then a \$9 million Umbrella Limit is required.

Developer/SPV Professional Liability and Subconsultants

Developer/SPV/Primary Design Firm Minimum Limits of Liability (In Thousands)

Per Claim	\$5,000
Aggregate	\$5,000

The policy must provide the following:

1. Coverage shall extend to cover the full scope of all cost estimating work performed under the insured's contract with City.
2. Coverage is to be on a primary basis, if other professional coverage is carried.

Subconsultants Minimum Limits of Liability (In Thousands)

Per Claim	\$1,000
Aggregate	\$1,000

The policy must provide the following:

1. Coverage shall extend to cover the full scope of all cost estimating work performed under the insured's contract with City.
2. Coverage is to be on a primary basis, if other professional coverage is carried.

Property Insurance

Coverage: Personal Property, Contents, Fixtures, Storage, Tenant Improvements and Betterments

Minimum Limits of Liability (in Thousands):

- o 100% of the Replacement Cost value of Personal Property, Contents, Fixtures, Tenant Improvements and Betterments
- o Covered Cause of Loss – Special Form including glass coverage and signs
- o Replacement Cost Endorsement

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. Waiver of Subrogation Applies to City as Landlord for any protected Landlord Property.

3. In the event of payment of any Loss involving Tenant Improvements and Betterments, permanent fixtures, etc, the insurance carrier shall pay the City (as Landlord) its designee first for said property loss

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:

1. For Commercial General Liability, Auto Liability and Excess Liability/Umbrella (if required), Contractor and subcontractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.
2. All coverage provided herein shall be primary and any insurance maintained by the City shall be considered excess.
3. For all coverages required under this Agreement, Contractor's insurer shall waive subrogation rights against the City.
4. 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.
5. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better.
6. For claims-made coverage, the retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier
7. No changes, modifications or interlineations on this document 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.

Exhibit E
Key Personnel

Ignacio Perez (Ferrovial Agroman)
Taryn Edwards (Saunders)
Chris Butler (Ferrovial Airports)
Alejandro Veramendi (Ferrovial Airports)
Ignacio Castejon (Ferrovial Airports)

Exhibit F
Term Sheet



REQUEST FOR PROPOSALS (RFP)

NO. 201418237

Term Sheet

Great Hall Project

Release Date

02/24/2016

As modified by Addenda issued thru 04/20/16

DEPARTMENT OF AVIATION

City & County of Denver

Kim Day, Chief Executive Officer

**DENVER INTERNATIONAL AIRPORT
DEVELOPMENT AGREEMENT TERM SHEET
FEBRUARY 24, 2016**

This term sheet addresses certain key terms to be included and developed in the Development Agreement and sets forth the baseline requirements of the City as to those terms, subject to amendment and modification during the Predevelopment Phase (including in respect of any related defined terms set forth in Exhibit F to the RFP). The capitalized terms used in this Term Sheet have the meanings given or generally described in this Term Sheet, or if not so defined or described, in Exhibit F to the RFP.

PARTIES:	The Parties to the Development Agreement will be: <ul style="list-style-type: none"> • The City; and • The Developer
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TERM:	The term of the Development Agreement (the “Term”) means the period commencing on the Commencement Date and ending on the earlier of (i) a date not later than the 30 th anniversary following Substantial Completion, as agreed between the Parties during the Development Phase, and (ii) the Early Termination Date.
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NATURE OF AGREEMENT:	<p>The Parties will define in the Development Agreement the nature of the interests (e.g., lease, license and/or other) in the Project Premises.</p> <p>The grant of an interest in the Project Premises will be on an “as-is” basis, and the Developer will be required to assume all responsibility for any and all risks, costs and expenses caused by, arising out of or in connection with the condition of the Project Premises, regardless whether any aspect of such condition existed prior to, on or after the commencement of the Term, except as expressly provided by the Development Agreement (which, for the avoidance of doubt, shall include customary and appropriate exclusions).</p> <p>The Development Agreement will grant the Developer, its sub lessees, if any, its lead contractor and their respective officers, authorized representatives, employees, customers, patrons, invitees, designees, contractors and suppliers, access to the Project Premises and non-exclusive rights of ingress and egress to and from the Project Premises.</p> <p>Except as may otherwise be provided in the Development Agreement, the City will retain the right to access the Project Premises at reasonable times and with reasonable advance notice (which may be oral notice) in order to provide customer-related services to the Airport’s patrons, as described in the Development Agreement, that are not within the scope of the Developer’s responsibilities as set forth in the Development Agreement and for any other purpose permitted or required by the Development Agreement or required by applicable Law. The Development Agreement will also permit the City to enter any part of</p>
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	the Project Premises in the case of an emergency or for public safety purposes without any prior notice to the Developer.
PROJECT BASE SCOPE:	<p>The Project Base Scope will include each of the components set forth in Section 2.3 of the ITP.</p> <p><u>Project Options:</u> The ITP contemplates that there may be Alternative Technical Concepts identified in the Developer’s Proposal. Subject to the terms of the ITP and the Predevelopment Agreement, one or more Alternative Technical Concepts identified in the Developer’s Proposal may be included in the Project. This Term Sheet does not include any of the terms of the Development Agreement that would be required as a result. The Parties will negotiate such terms during the Predevelopment Phase.</p> <p>The Agreement will provide that, pursuant to Denver Revised Municipal Code (“D.R.M.C.”) Section 5-18, all improvements to the Terminal will be the property of the City upon issuance of a certificate of occupancy, subject to the continuing right of the Developer to occupy the Project Premises as set forth in the Development Agreement.</p>
DESIGN AND CONSTRUCTION GENERALLY:	<p>The City will grant to the Developer the exclusive right to, and the Developer will have the obligation to, design and construct the Project, in accordance with and subject to the terms and conditions of the Development Agreement. The Development Agreement will include industry standard provisions governing various aspects of the design and construction process, may impose additional obligations on the Developer relating to the Project and will reserve to the City certain rights with respect to the Project, including but not limited to provisions described under “Design and Construction Process” below and the following (as will be further described in the Development Agreement):</p> <ul style="list-style-type: none"> • <u>Performance Bond/Letter of Credit.</u> The Development Agreement will require the Developer’s lead contractor to furnish an acceptable performance bond with respect to the construction of the Project (or, as an acceptable alternative, an irrevocable letter of credit). • <u>Parent Company Guarantee.</u> The Development Agreement will require the Developer’s lead contractor to furnish a parent guarantee from each member or joint venture member of the lead contractor, guaranteeing the performance of the lead contractor’s obligations under the Development Agreement. Both the performance bond/letter of credit and guarantees will be in an amount and in form and substance satisfactory to the City and must designate the City as a permitted assignee or transferee beneficiary (as applicable), with rights to draw upon or exercise other remedies thereunder if the City succeeds to

	<p>the position of the Developer under the Development Agreement, subject in each case to customary lender’s rights and remedies.</p> <ul style="list-style-type: none"> • <u>Permitting</u>. The Development Agreement will require the Developer (or, in the case of building permits, its subcontractors) to obtain all necessary permits and approvals for the Project which it is entitled to obtain. • <u>Standards and Specifications</u>. The Development Agreement will require the Developer to comply with the applicable DEN design standards and construction specifications included in the Technical Provisions. • <u>Warranty Period</u>. The Development Agreement will specify a warranty period for all design and construction work, the scope and duration of which will, as appropriate to the circumstances, be comparable to those included in City contracts of similar scope and which will take into account the risk-transfer elements contemplated by the Development Agreement. • <u>Right of Inspection</u>. The City will have the right (but not the duty) to (i) inspect the construction of the Project and the plans and specifications with respect thereto, at reasonable times (and upon reasonable notice) during the design and construction of the Project and (ii) at reasonable times (and upon reasonable notice) perform testing (and take samples) on any part of the construction site or Work (without interfering with the construction or operation of the Project Premises to the extent reasonably practicable). • <u>Suspension</u>. The City will have the right to suspend the construction of the Project under certain defined circumstances (e.g., change in law, security issues, and airport emergencies) and in its absolute discretion, subject to compensation and relief being granted to the Developer under appropriate circumstances (determined based on the nature and duration of the suspension). • (See “Delay/Compensation Events” and “Termination; Termination Payments” below.)
<p>DESIGN AND CONSTRUCTION PROCESS:</p>	<p>The Development Agreement will require the Project to reach Substantial Completion by a date no later than September 30, 2019, as agreed by the Parties during the Predevelopment Phase (the “Guaranteed Substantial Completion Date), as the same may be extended as provided in the Development Agreement but in no event later than the Long Stop Date.</p> <p>Additional matters relating to the design and construction process that are to be addressed in the Development Agreement will likely include:</p> <ul style="list-style-type: none"> • Required Submissions

	<ul style="list-style-type: none"> • Notices to Proceed • Payment/Requisition Process • Change Orders • Correction of Non-Conforming Work • Coordination • Oversight • Step-In Rights • Commissioning • Final Acceptance
OPERATIONS AND MAINTENANCE GENERALLY:	The Developer will be responsible for the O&M Work, except as otherwise provided in the RFP.
DEVELOPER PAYMENTS:	The Development Agreement will require the Developer to make payments to the City during the Term of the Development Agreement, in the amounts or computed as set forth in the Proposal; provided that in any event all such payments must be made at monthly intervals.
FINANCING OF PROJECT; LENDERS' RIGHTS AND REMEDIES:	<p>The Development Agreement will require the Developer to finance the Project in the manner and with the amounts of debt and equity provided in its Proposal, subject to such modifications as are agreed by the Parties, during the Predevelopment Phase. If the Proposal contemplates participation in the financing by the City, the City will determine whether it will-participate or otherwise facilitate such financing in the manner so contemplated, recognizing that any deviation may require changes to the Developer’s Proposal.</p> <p><u>Non-compliance measures.</u> The Developer will be required to meet operational standards or performance metrics, which shall be negotiated during the Predevelopment Phase and included in the Development Agreement. There will be non-compliance points attributed to the Developer for failing to meet any such pre-determined operational standards or performance metrics. Accumulation of points could result in an Event of Default if they reach specified levels in any given period over a certain period of time (the thresholds and timing of which will be negotiated during the Predevelopment Phase and included in the Development Agreement).</p> <p><u>Availability Payments.</u> If availability payments are required by the Development Agreement, the City will make such payments monthly in a fixed, pre-determined amount as provided by the Developer’s</p>

Proposal, subject to such modifications as are agreed by the Parties during the Predevelopment Phase. The receipt by the Developer of the full amount of such payments in any given month, however, will be subject to pre-determined reduction(s) in any instance in which the Developer fails to meet any operational standards or performance metrics during such preceding month. The reduction(s) will be determined based on a schedule included in the Development Agreement that will set forth, with particularity, the various standards and metrics that will be used to evaluate the Developer's performance and the corresponding reductions in payments that will result for the failure to meet any such standards or metrics in the preceding month.

Grant of a Security Interest. The Development Agreement will provide that, except as expressly authorized therein, the Development Agreement will not be permitted to mortgage the Developer's interest in the Development Agreement or the letting thereunder, if applicable, of all or any portion of the Project Premises in whole or in part. Any security interest granted pursuant to the Development Agreement to secure the obligations of the Developer's with respect to any debt incurred by the Developer (whether at financial close or in connection with a refinancing) may be subject to certain conditions to be negotiated between the Parties during the Predevelopment Phase, which conditions may include appropriate protection of the City's rights under the Development Agreement and the ability of the City and Developer to enter into an amendment of the Development Agreement without third-party consent. In addition, the Development Agreement shall set forth lenders' step-in and cure rights as may be agreed by the Parties.

Refinancing. Except for Permitted Refinancings, any refinancing of the Developer's debt with respect to the Project will require the prior written approval of the City (to be granted or withheld in its reasonable discretion). In connection with a refinancing, the City may (among other things) at any time, whether before, during or after such refinancing, require access to the Developer's updated financial model and related information and documentation in order to audit the same.

"Permitted Refinancings" will be defined in the Development Agreement to include: (a) any refinancing that was fully and specifically identified and taken into account in the financial model, (b) any refinancing that results in demonstrated present value debt service savings, (c) any changes in taxation or the Developer's accounting treatment or policies, and (d) the syndication in the ordinary course of business of any lender's rights and interests in the financing documents related to the Developer's debt.

In connection with any refinancing, the Developer will be responsible for reimbursing the City for its reasonable documented costs and expenses

	<p>incurred in reviewing the proposed refinancing and otherwise administering its obligations with respect to the lender(s)/refinancing at the time of the closing of the refinancing (or in connection with a subsequent successful refinancing, if the refinancing in question is not finalized). The Development Agreement will require that any debt service savings resulting from any refinancing will be shared on an equal basis by the City and the Developer as such savings are realized, subject to such modifications as the Parties may agree during the Predevelopment Phase.</p>
<p>AIRPORT-RELATED MATTERS:</p>	<p><u>FAA Grants.</u> The Development Agreement will acknowledge that the City has applied for and received grant(s) from the Administrator of the FAA and has applied for and received permission to collect and use PFCs (and may take such actions again in the future) and that, in connection with such actions, the City has undertaken (and may in the future undertake) certain obligations respecting its operation of DEN and the activities of, among others, its contractors and lessees at DEN in applications for such grants and permissions. The Development Agreement will require the Developer to covenant and agree that the Developer will comply with any direction issued by the City to comply with applicable Law, statement of policy, advisory circular, recommendation or suggestion of the Administrator of the FAA or any other governmental officer or body having jurisdiction over the enforcement of the obligations of the City under Federal law, or arising from the applications described in the preceding sentence. The Development Agreement will set forth in what circumstances such compliance may result in compensation being payable to the Developer.</p> <p><u>Terminal Security Program.</u> The Development Agreement will acknowledge that the City is obligated to have in effect and does have in effect an airport security program approved by the TSA, which complies with 49 C.F.R. Part 1542 and includes, as a portion thereof, the City's obligations under 49 C.F.R. Part 1542 to provide security within DEN, including the Project Premises.</p>
<p>INSURANCE:</p>	<p><u>In General.</u> The Development Agreement will require the Developer (and each of its contractors and sub lessees, if any, as applicable) to furnish insurance satisfying the requirements of applicable Law, meeting the requirements for insurance typically provided for or otherwise appropriate for Work of a similar nature and scope and adequate to protect the interests of the City in connection with all risks related to the Project and the activities of the Developer, its sub lessees, if any, and its contractors on the Premises. Such insurance coverage might include, among others, the following:</p> <ul style="list-style-type: none"> • Coverage complying with the "City and County of Denver

	<p>Insurance Requirements for the Department of Aviation”; and</p> <ul style="list-style-type: none"> • Throughout the Term (when the applicable risk exist): <ul style="list-style-type: none"> ○ All-Risk Property Damage – including coverage for terrorism, flood, windstorm, storm surge, collapse, lightening, hail, ice, explosion, riot, vandalism, malicious mischief, civil commotion, aircraft, smoke, fire and earthquake; ○ Boiler and Machinery – covering all boilers, pressure vessels, air conditioning and any other related equipment; ○ Business Interruption; ○ Commercial General Liability; ○ Commercial Automobile Liability; ○ Pollution Liability; ○ Cargo and Baggage Liability; ○ Liquor Liability; and ○ Workers’ Compensation; and Commercial Crime. • In addition, during the design and construction Work: <ul style="list-style-type: none"> ○ Builder’s Risk – including loss or damage by fire, collapse, lightning, windstorm, flood, earthquake, hail, terrorism, explosion, underground property damage, riot, vandalism, malicious mischief, civil commotion, aircraft, vehicle impact, smoke, off premise service interruption, delay in completion, debris removal, valuable papers, pollutant cleanup and removal, professional fees, extra/expediting expenses and such other risk; and ○ Professional Liability. <p><u>Other Requirements as to Insurance Policies.</u> Subject to the agreement of the Parties during the Predevelopment Phase, the following requirements shall apply in respect of insurance policies:</p> <ul style="list-style-type: none"> • <u>Insured under Property and Liability Policies.</u> To be determined during Predevelopment Phase, • <u>Liability Insurance Limits Greater than Otherwise Required.</u> To be determined during Predevelopment Phase. • <u>Contractual Liability Coverage.</u> Such coverage is to be included on all policies of liability except professional liability insurance. • <u>No Impairment.</u> Coverages must not be impaired by any risk within the scope of the Development Agreement, unless otherwise approved in writing by the City. • <u>Losses Absorbed by the Developer.</u> All losses related to the Premises, the design and construction work, the operations and maintenance work or the Developer’s activities at DEN that are not recoverable by insurance or deductible will be absorbed by the Developer, unless otherwise expressly stated in the Development Agreement
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- Restrictions on Insurance. Self-funded, self-insurance, self-insured retention, policy fronting or other non-risk transfer insurance mechanisms by the Developer, its sub lessees, if any, or its contractors will not be permitted (except for such commercial standard deductibles that are self-funded), unless otherwise agreed in the Development Agreement.
- Deductibles. As between the City and the Developer, the Developer will be solely responsible for paying any deductibles, unless otherwise expressly stated in the Development Agreement.
- Indemnification; Increased Premiums. The Development Agreement will require the Developer to indemnify the City for any forfeiture of insurance coverage caused by the Developer, its sub lessees, if any, or its contractors and the Developer will be responsible for any increased premium amounts for required coverage that are caused by the Developer, its sub lessees, if any, or its contractors.
- Availability. An agreed upon process for determining whether any required insurance is, at any given time, unavailable at commercially reasonable rates.

Other Insurance Provisions. Subject to the agreement of the Parties during the Predevelopment Phase, the following requirements shall apply in respect of insurance policies:

- Nature of Insurers. Minimum required ratings will be set forth in the Development Agreement, based on industry standards.
- Review by City. All binders and certificates of insurance must be pre-approved by the City.
- Settlement of Losses. Insurance proceeds will be required to be used for the repair, replacement or rebuilding of the Project.
- Separate Insurance. Any separate insurance carried by the Developer concurrent in form with that required under the Development Agreement must be approved by the City.
- Defense Costs. Defense costs shall generally not be included within or erode the limits of coverage.
- Contesting Denial of Coverage. The Developer will bear all such costs.
- Lender Insurance Requirements. If the terms of any financing documents require coverage with higher limits, lower deductibles or broader coverage than required under the Development Agreement, the Developer's provision of such insurance must satisfy the applicable requirements.
- Agreement Notices. The Developer must provide the City with written notice of any claims that are made and any policy

	<p>will expire within ninety (90) days.</p> <ul style="list-style-type: none"> • <u>Compliance with Insurance Policies.</u> The Developer must comply with the terms and conditions of all policies and not act in any way that could result in the cancellation of any policy. • <u>City’s Right to Cure.</u> The City will have the right (but not the obligation) to obtain, at the Developer’s cost, any required insurance that the Developer has failed to obtain. <p>Proposers should note that the City may, as an alternative, want to consider a City-provided OCIP, which would be primary over any other insurance provided by the Developer. In such event and subject to such terms as may be agreed by the Parties during the Predevelopment Phase, the Developer will be required to provide a credit to the City for such coverage.</p>
<p>INTELLECTUAL PROPERTY:</p>	<p>The Development Agreement will contain customary and appropriate provisions relating to Intellectual Property, which may include, without limitation, the following:</p> <p>The Development Agreement will require the Developer, at the request of the City, to grant a nonexclusive, transferable, royalty-free, irrevocable, perpetual, worldwide, fully-paid right and license to use, reproduce, modify and adapt (and to disclose to and sublicense to other persons engaged by or on behalf of the City (directly or indirectly) the Intellectual Property of the Developer in connection with the operation of the Airport.</p> <p>The Development Agreement will require the Developer to maintain appropriate data and records with respect to Intellectual Property and will require the Developer to transfer all applicable Intellectual Property to the City on the Termination Date.</p>
<p>ENVIRONMENTAL:</p>	<p>Particular allocations of risk in relating to environmental matters will be included in the Development Agreement based on negotiations between the Parties during the Predevelopment Phase. Such provisions will include appropriate and customary risk allocation provisions (as well as appropriate indemnities), including provisions relating to the environmental matters described below. Such provisions will also set forth the responsibility of each of the Parties in respect of the disposal of Hazardous Materials.</p> <p>The Development Agreement will require the Developer to design and construct the Project in a manner that complies with, and so that the Project can be operated in compliance with, all applicable environmental Laws and environmental requirements, and to operate the Project Premises in compliance with all applicable environmental</p>

	<p>Laws and environmental requirements. Except as expressly stated in the Development Agreement, compliance with all such Laws and requirements related to the Developer’s right to use the Project Premises and activities with respect to the Project Premises will be the responsibility of the Developer, and the Developer will be responsible for all costs, losses, liabilities, damages and operational requirements arising under or with respect to such Law and regulations throughout the Term of the Development Agreement, including obtaining any surety bond or giving any other financial assurance that may be required in connection with construction of the Project and complying with any such provisions that become effective upon, or relate to, the termination of the Development Agreement or the surrender of the Project Premises or any portion thereof under the Development Agreement, or on the closure of or transfer of control of the Developer’s operations at the Project Premises.</p> <p>The Developer will not be permitted to dispose of, release or discharge any Hazardous Materials on, in, under or from the Project Premises, except in compliance with applicable environmental Law, environmental requirements and the Development Agreement.</p> <p>The Development Agreement will incorporate the requirements of the RFP with respect to LEED certification.</p>
HEALTH & SAFETY:	<p>The Development Agreement may set forth provisions relating to health and safety, as agreed upon by the Parties during the Predevelopment Phase.</p>
KEY PERSONNEL:	<p>The Developer will not be permitted to change or substitute (or to allow any subcontractor or other party to change or substitute) any Key Personnel, except due to retirement, death, disability, incapacity or voluntary or involuntary termination of employment or otherwise without the prior consent of the City.</p> <p>Except as otherwise permitted or set forth above, the Developer will be required to provide the City with at least thirty (30) days of advance written notice of any proposed change in or replacement of Key Personnel. The City will have the right to approve or disapprove of such change or replacement, in its reasonable discretion, based on the City’s review of, among other things, the qualifications, experience and character of each individual to be appointed to such a position (whether employed directly by the City or the lead contractor or another contractor).</p> <p>The City will respond to the Developer’s written notice regarding replacement of Key Personnel within the time agreed by the Parties during the Predevelopment Phase. If the City does not respond within that time, the changes contemplated shall be deemed to be approved.</p>

<p>PROJECT MANAGEMENT PLAN AND OTHER PLANS</p>	<p>The Development Agreement will require Developer to develop a series of plans, including a Project Management Plan, that shall set out Developer’s organizational structure and management approach to all Project activities including planning, design, construction, operations, maintenance (routine and capital), project controls and scheduling, pedestrian and vehicular traffic management, quality, coordination with the City and Third Parties, communications and outreach, handback, documentation, DBE participation (including M/WBE and ACDBE), testing, monitoring/auditing/reporting, risk analysis and mitigation, <u>concession</u> development and management, and customer and public relations. Information presented in such plans shall apply to all phases of the Work, unless otherwise specified. Such plans shall be subject to City approval and shall be updated from time to time as provided in the Technical Provisions.</p> <p>The Development Agreement will set forth, among other things, the level of City review or approval required for each of such plans and the time periods (if any) during which such plans must be updated.</p> <p>Failure by the Developer to submit or comply with such plans shall constitute a Non-Compliance Event.</p>
<p>SELF-MONITORING AND SELF-REPORTING</p>	<p>Without otherwise limiting the rights of the City to inspect, verify, control, or audit the Work at any time, Developer shall report on the performance of the Work and compliance or noncompliance with the requirements of the Technical Provisions. Failure to monitor or report as required in the Technical Provisions or in the Development Agreement shall constitute a Noncompliance Event.</p>
<p>LICENSING AND CERTIFICATIONS:</p>	<p>The Development Agreement will require the Developer, its sub lessees, if any, and its contractors to obtain and maintain all required State and other certifications and/or licenses to perform their respective activities or designated work in accordance with all applicable Law. The Development Agreement will require the Developer, its sub lessees, if any, and its contractors to be qualified to do business in the State (as and to the extent required by applicable Law).</p>
<p>EMPLOYMENT PRACTICES / LABOR RELATIONS:</p>	<p><u>No Employment of Illegal Aliens to Perform Work Related to the Project.</u> The Development Agreement will be subject to Division 5 of Article IV of Chapter 20 of the D.R.M.C., and any amendments (the “Certification Ordinance”), and the Developer will be required to certify that:</p> <ul style="list-style-type: none"> • At the time of execution of the Development Agreement, the Developer does not knowingly employ or contract with an illegal

	<p>alien who will perform work under the Development Agreement; and</p> <ul style="list-style-type: none"> • The Developer 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 the Development Agreement. <p>The Developer will also be required to agree and represent that:</p> <ul style="list-style-type: none"> • It will not knowingly employ or contract with an illegal alien to perform work under the Development Agreement; • It will not enter into a contract with a sub consultant or subcontractor that fails to certify to the Developer that such sub consultant or subcontractor will not knowingly employ or contract with an illegal alien to perform work under the Development Agreement; <p>It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the Development Agreement, through participation in the E-Verify Program;</p> <ul style="list-style-type: none"> • It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Development Agreement, and that it is otherwise required to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights; • If it obtains actual knowledge that a sub consultant or subcontractor performing work under the Development Agreement knowingly employs or contracts with an illegal alien, the Developer will notify such sub consultant or subcontractor and the City within three (3) days. The Developer will also then terminate such sub consultant or subcontractor if within three (3) days after such notice the sub consultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the sub consultant or subcontractor provides information to establish that the sub consultant or subcontractor has not knowingly employed or contracted with an illegal alien; and • It will comply with any reasonable request made in the course of an investigation by the Colorado City 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. <p>The Developer will be liable for any violations as provided in the Certification Ordinance. If the Developer violates any provisions of the Certification Ordinance or the Development Agreement (related to the prohibition against employing illegal aliens), the City may terminate the</p>
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	<p>Development Agreement for a breach of the Development Agreement. If the Development Agreement is so terminated, the Developer will be liable for damages as agreed by the Parties during the Predevelopment Phase and the City may, at its discretion, disqualify the Developer from submitting bids or proposals for future contracts with the City.</p> <p><u>No Discrimination in Employment.</u> The Developer will be required to agree 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. The Developer will also be required to insert the foregoing provision in all subcontracts related to work to be performed with regard to the Project.</p>
COMPLIANCE WITH LAW:	The Development Agreement will require the Developer to comply with all applicable Laws. For avoidance of doubt, FAA grant assurances and the Airport’s operating certificate will constitute applicable Laws.
DISADVANTAGED BUSINESS ENTERPRISES/ACDBE GOALS:	The Development Agreement will require the Developer to meet or exceed the agreed-upon M/WBE and ACDBE goals set forth within the Development Agreement.
REPRESENTATIONS & WARRANTIES:	<p>The Development Agreement will require each Party to provide customary and appropriate representations and warranties, in each case as of the effective date of the Development Agreement and subject in each case to customary and appropriate qualification.</p> <p>Subject to agreement between the Parties during the Predevelopment Phase, representations and warranties to be made by the Developer will address, without limitation, the following:</p> <ul style="list-style-type: none"> • due organization, valid existence and good standing; • power and authority to execute and deliver the Development Agreement and perform its obligations thereunder; • due authorization to enter into the Development Agreement; • the Development Agreement constitutes a valid and binding obligation of the Developer, enforceable against the Developer in accordance with its terms, subject to customary bankruptcy and other enforceability exceptions; • Development Agreement and the performance by Developer of its obligations thereunder will not conflict with any applicable Law, corporate formation documents or material agreements; • no pending or threatened material action, suit, proceeding, investigation or litigation; • proper licenses and registrations to perform Work

	<ul style="list-style-type: none"> • Work to be formed by personnel who are skilled, experienced and competent in respective trades and professions, with licensed and appropriate supervision; • no conflicts of interest; • good standing as to bidding, proposing and contracting with government agencies; • right to use Intellectual Property; • no material adverse change in financial condition since Proposal; • full disclosure of ownership of Developer; and • accuracy and completeness of financial proposal. <p>Subject to agreement between the Parties during the Predevelopment Phase, representations and warranties to be provided by the City will address, without limitation, the following:</p> <ul style="list-style-type: none"> • power, right and authority to execute and deliver the Development Agreement (and any other related documentation) and to perform its obligations thereunder; • due authorization to enter into the Development Agreement;, execution and delivery of such documentation; • no pending or threatened material action, suit, proceeding, investigation or litigation; • Development Agreement constitutes the legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms, subject to customary bankruptcy and enforceability exceptions; • Development Agreement and the performance by City of its obligations thereunder will not conflict with any applicable Law, or material agreements;
ASSIGNMENT/TRANSFER:	<p>The Development Agreement will prohibit any sale, conveyance, transfer, exchange, assignment, pledge, hypothecation, mortgage or other disposition or encumbrance of all or any portion of the ownership interests in the Developer or its interest in the Development Agreement or any other Developer contracts reasonably designated by the City during the Predevelopment Phase, except for Permitted Transfers (any change to the definition of which will be subject to the agreement of the Parties during the Predevelopment Phase). Any assignment or transfer in violation of the Development Agreement shall be null and void.</p>
CHANGE IN CONTROL:	<p>The Development Agreement will prohibit any Change in Control (any change to the definition of which will be subject to agreement of the Parties during the Predevelopment Phase) with respect to the Developer, without the prior written consent of the City (such consent to be subject to the City’s good faith discretion). Any Change in Control</p>

	in violation of the Development Agreement shall be null and void for purposes of the Development Agreement.
FORCE MAJEURE:	<p>“Force Majeure Event” in the Development Agreement will be as defined in Exhibit F to the RFP, except as the Parties may otherwise agree during the Predevelopment Phase.</p> <p>Notwithstanding the foregoing, an event will not constitute a Force Majeure Event under the Development Agreement if such event is otherwise specifically dealt with in the Development Agreement or arises by reason of any of the following: (1) the negligence or willful misconduct of such Party or persons for whom such Party is responsible (the “Related Parties”); (2) any act or omission by such Party or the Related Parties in breach of the provisions of the Development Agreement; (3) any strike, labor dispute or labor protest directed solely at such Party or any Related Party or caused by or attributable to any act (including any pricing or other practice or method of operation) or omission of such Party or any Related Party; (4) market conditions or economic conditions affecting such Party’s ability to meet its financial obligations or the availability, supply, or cost of labor, equipment and materials, construction equipment and supplies, or commodities, other than as a result of the events described in clauses (i) through (vii) of the definition of Force Majeure Event; or (5) weather conditions, other than the events described in clauses (vi) and (vii) of the definition of Force Majeure Event.</p> <p>The Development Agreement will also include provisions with respect to Force Majeure Events that will afford the Developer relief from performance and other relief under certain circumstances. (See “Delay/Compensation Events” and “Other Termination; Termination Payments” below.)</p>
COMPENSATION/DELAY EVENTS:	<p><u>Compensation Event.</u> A Compensation Event (any change to the definition of which will be subject to the Agreement of the Parties during the Predevelopment Phase) affecting the design and construction work or the Work will entitle the Developer to payment from the City to compensate the Developer for the net negative impact on its revenues and/or expenses as a result of such Compensation Event, determined on a year by year basis, net of all applicable insurance proceeds. The exact methodology for calculating such payments will be determined during the Predevelopment Phase</p> <p><u>Source/Timing of Compensation Event Payments.</u> Payments by the City with respect to a Compensation Event will be made as agreed by the Parties during the Predevelopment Phase.</p>

	<p><u>Delay Event.</u> A Delay Event (any changes to the definition of which will be subject to the agreement of the Parties during the Predevelopment Phase) affecting the Work will excuse the Developer from the performance of its obligations with respect to such Work to the extent that such Work is directly affected by such Delay Event.</p> <p><u>Sole Remedy.</u> Compensation Event payment will be the Developer’s sole remedy for the adverse effects of a Compensation Event. The extension of time for performance as a result of a Delay Event will be the Developer’s sole remedy for the adverse effects of a Delay Event.</p> <p>Other Provisions. Notice requirements, waivers and other customary and appropriate provisions relating to Compensation Events and Delay Events will be subject to the agreement of the Parties during the Predevelopment Phase.</p>
EVENTS OF DEFAULT:	<p>Event of Default (the definition of which will be subject to agreement by the Parties during the Predevelopment Phase) in respect of each Party and related remedies, relationships with the Compensation Event and Delay Event regimes, and other necessary and appropriate provisions will be the subject of negotiation between the Parties during the Predevelopment Phase.</p> <p>Points attributed to the Developer for failing to meet any pre-determined operational standards or performance metrics, may result in an Event of Default if they reach specified levels in any given period over a specified period of time, subject to the agreement of the Parties during the Predevelopment Phase.</p>
TERMINATION; TERMINATION PAYMENTS:	<p>Details regarding termination rights and Termination Payments, if applicable, to be paid by under various scenarios will be the subject of negotiation between the Parties during the Predevelopment Phase.</p>
PREVAILING WAGES:	<p>Employees of the Developer or its subcontractors may be subject to the payment of prevailing wages pursuant to D.R.M.C. 20-76, depending upon the nature of the work. By executing the Development Agreement, the Developer will covenant that it is familiar with this Code Section and is prepared to pay or cause to be paid prevailing wages, if any, required by the scope of work of the Developer’s or his subcontractor’s employees. If applicable, a schedule of current prevailing wages will be attached to the Development Agreement. The schedule of prevailing wages is periodically updated and Developer will be responsible for payment of then current prevailing wage. The Developer may obtain an updated schedule of prevailing wage at any time from the City Auditor’s Office.</p>

<p>DISPUTE RESOLUTION:</p>	<p>The Development Agreement will require that the following procedure be followed if resolution is required to a conflict arising during the performance of this Development Agreement:</p> <ol style="list-style-type: none"> 1. If a conflict arises between the City and Developer, the project team member(s) will first attempt to work out the problem internally. 2. If the project team cannot resolve the conflict within two (2) working days, the City's Program Manager and designated Developer's program manager will meet to resolve the issue. 3. If the conflict is not thereafter resolved by the Program Managers within three (3) working days, the Parties agree to try in good faith to settle the dispute by mutually agreed mediation before resorting to 5-17 process, set forth below. <p>Subject to the process expressly set forth above, all disputes of any nature whatsoever regarding the Development Agreement, including, without limitation, disputes involving claimed breach of or default under the Development Agreement, shall be resolved by an administrative hearing. Such administrative hearing shall be conducted pursuant to the procedures set out in D.R.M.C. §5-17 for Department of Aviation Contracts. With respect to appropriate issues arising under the City's Ordinances governing any disadvantaged business enterprise (DBE) contracting program mandated by the federal government, the proceeding shall be conducted pursuant to D.R.M.C. §28-33. The City hereby agrees pursuant to D.R.M.C. §5-17(b) to the designation of a hearing officer selected by mutual agreement of the City and Developer (the "Hearing Officer").</p> <p>If either party raises a question concerning whether any issue or claim raised in such administrative proceeding is within the scope of the Development Agreement's dispute resolution provisions, such question shall be decided by the Hearing Officer selected to hear the matter; or with respect to appropriate issues arising under the City's Ordinances governing any disadvantaged business enterprise (DBE) contracting program mandated by the federal government, the question shall be decided by the Director of the Division of Small Business Opportunity or his or her appointed Hearing Officer.</p>
<p>INDEMNIFICATION:</p>	<p>The Development Agreement will contain customary and appropriate indemnification provisions, which will include, without limitation, the following subject to such modification as the Parties agree during the Predevelopment Phase:</p> <p><u>Developer Indemnity.</u> The Development Agreement will require that Developer shall indemnify, defend and hold harmless the City and its elected and appointed officials, officers, employees, agents and assigns</p>

(collectively, "City Indemnified Parties") for, from and against any and all claims that any City Indemnified Party or Parties may have alleged against them, incur, become responsible for, or pay out for any reason, but only to the extent arising out of all or any of the following: (i) Developer Event of Default; or (ii) Developer's Negligent or Willful Acts, provided that if the conduct, act or omissions indemnified against by Developer pursuant to this Section is not covered by insurance under the Development Agreement because the conduct, act or omission is uninsurable, or because no such insurance is required to be provided by either Party hereunder, then Developer's indemnification obligation under this Section shall be limited to those claims arising out of Developer's grossly negligent or willful acts. Notwithstanding the foregoing, in no event will Developer's indemnity, hold harmless or defense agreements extend to claims arising out of (A) the City's negligent or willful acts; or (B) an Event of Default by the City under the Development Agreement; or (C) matters relating to structural integrity of the Project or other matters relating to design, materials or workmanship of the Project, provided the same was not caused by Developer's negligent or willful acts.

Survival of Indemnification. The indemnification obligations shall survive the expiration or any termination of the Development Agreement. Notwithstanding any contrary provision of this Section, the City and Developer mutually agree for the benefit of each other to look first to the appropriate insurance coverages in effect pursuant to the Development Agreement in the event any claim occurs as a result of injury to person or damage to property, regardless of the cause of such claim. So long as each Party is named as an insured or additional insured under the other Party's policies of casualty insurance, or the policies otherwise permit where each Party is not so named, each Party hereby releases the other Party, and its Affiliates and agents, and its and their officers and employees, from any and all liability for damage or destruction to its property, whether or not due to the negligent or other acts or omissions of the other Party, its Affiliates or agents, or its or their officers or employees, where the damage or destruction is covered by the insurance policies in effect and maintained by the releasing Party.

Appointment of Counsel. Any City Indemnified Party shall be entitled, upon written notice to the Developer, to the timely appointment of counsel by the Developer for the defense of any claim, which counsel shall be subject to the approval of the City Indemnified Party. If, in the City Indemnified Party's judgment, a conflict of interest exists between the City Indemnified Party and the Developer at any time during the defense of the City Indemnified Party, the City Indemnified Party may appoint independent counsel of its choice for the defense of the City Indemnified Party as to such claim. Additionally, regardless of whether the City Indemnified Party is appointed counsel or selects independent

	<p>counsel (i) the City Indemnified Party shall have the right to participate in the defense of any claim and approve any proposed settlement of such claim; and (ii) all costs, expenses and attorneys' fees of the City Indemnified Party shall be borne by the Developer. If the Developer fails to timely pay such costs, expenses and attorneys' fees, the City Indemnified Party may, but shall not be obligated to, pay such amounts and be reimbursed by Developer for the same, which amounts shall bear Interest at a mutually agreed rate provided until paid in full. The Parties will acknowledge that it shall not be a defense to a demand for indemnity that less than all claims asserted against the City Indemnified Party are subject to indemnification. If a claim is covered by the Developer's liability insurance, the City Indemnified Party shall not take or omit to take any action that would cause the insurer not to defend such claim or to disclaim liability in respect thereof.</p> <p><u>Waiver of Punitive Damages.</u> Anything therein contained, and anything at law to the contrary notwithstanding, in any action or proceeding between the Parties arising under or with respect to the Development Agreement or in any manner pertaining to the Project or to the relationship of the Parties thereunder, each Party thereby unconditionally and irrevocably waives and releases any right, power or privilege either may have to claim or receive from the other Party thereto any punitive or exemplary damages, each party acknowledging and agreeing that the remedies herein provided, and other remedies at law and in equity, will in all circumstances be adequate. The foregoing waiver and release shall apply in all actions or proceedings between the Parties and for all causes of action or theories of liability, whether for breach of the Development Agreement or for violation of any other duty owing by either Party to the other which may in any way relate to Developer's management or operation of the Project. Both Parties will further acknowledge that they are experienced in negotiating agreements of like kind, have had the advice of counsel in connection therewith, and have been advised as to, and fully understand, the nature of the waivers therein contained. Affiliates or agents, or its or their officers or employees, where the damage or destruction is covered by the insurance policies in effect and maintained by the releasing Party.</p> <p><u>Consequential Damages.</u> The indemnities shall apply to consequential damages only to the extent covered by insurance policies maintained or required to be maintained under the Development Agreement.</p>
RETENTION OF INFORMATION:	<p>The Development Agreement will require the Developer to keep and maintain, and cause its contractors to keep and maintain, in an office or offices in the City of Denver, appropriate books and records in which complete and accurate entries will be made of its transactions-relating to the Project or the Development Agreement, in accordance with GAAP or any other generally accepted accounting standards that are</p>

	<p>acceptable to the City (in its reasonable discretion) (collectively, the “Retained Information”). The Retained Information must include information with respect to and evidence of (i) all matters with respect to the costs of construction, (ii) all matters that the Developer is required to certify to the City pursuant to the Development Agreement and (iii) any and all other matters relating to the Developer’s operations at the Project Premises or the construction of the Project with respect to which the City reasonably request.</p> <p>The obligation to keep and maintain the Retained Information will extend for an agreed upon period of time or such longer period as may be explicitly required by applicable Law or by any agreement related to the Development Agreement or the Project; provided, however, that if any Retained Information is, or is likely to become, material to litigation initiated within such timeframe, such Retained Information must be preserved until the final determination of the litigation in question.</p>
COLORADO GOVERNMENTAL IMMUNITY ACT	The Development Agreement will require the Developer and the City to acknowledge and agree that the City, and its officers, officials and employees, are relying on, and do not waive or intend to waive by any provisions of the Development Agreement, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. §§ 2410-101, et seq., or otherwise available to the City and its officers, officials and employees.
GOVERNING LAW:	The Development Agreement will be governed by the Laws of the State of Colorado.
<p>The summary of terms set forth in this Term Sheet does not include all material terms of the Development Agreement or the proposed transaction between the Parties and, except as set forth in in the introduction to this Term Sheet is not intended to be, nor shall it be construed or considered to be, a binding agreement or obligation on the part of any Party. Rather, this term sheet is intended only to set forth an indicative outline of certain contemplated baseline terms and conditions from which the definitive Development Agreement (and related, ancillary agreements) will be drafted by counsel to the City for submission to the parties for review and further negotiation. In particular, it is recognized and agreed that the on-going project development and negotiations process set forth in the RFP and in the Predevelopment Agreement may result in changes in the transaction (including the structure thereof, as to which this Term Sheet is not meant to be dispositive, except as set forth in the introduction, or the abandonment of the transaction.</p>	

