

SECOND AMENDMENT TO THE AGREEMENT

THIS SECOND AMENDMENT TO THE AGREEMENT (“Second Amendment”), is made and entered into as of the date stated on the signature page, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (“**City**”), and **HENSEL PHELPS CONSTRUCTION CO.**, a partnership organized under the laws of the state of Delaware and authorized to conduct business in the State of Colorado (“**Contractor**”).

WITNESSETH:

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

WHEREAS, the City and Contractor entered into a written Agreement for professional maintenance and scheduled or emergency repair services for the chillers, boilers and associated equipment at DEN, dated February 14, 2020, Contract No. 201846835-00, a First Letter Extension, dated December 1, 2022, a First Amendment, dated February 2, 2023, Contract No. 202263304-01, and a Second Letter Extension, dated October 4, 2023 (“**Existing Agreement**”); and

WHEREAS, the City intends to procure a new contract through a competitive Request for Proposals and award the new opportunity in 2025; and

WHEREAS, the City wishes to add additional funds to the Existing Agreement with this Second Amendment in order for Contractor to continue to provide continuity of services for the maintenance, repair and overhaul services at the Central Utility Plant (CUP), Main Terminal Building, Airport Office Building (AOB), Concourses A, B & C, including the provision of personnel, equipment, tools, materials, supervision, and all other items and services necessary to perform emergency equipment repair and emergency response services; and

WHEREAS, the terms and conditions of the Existing Agreement not specified as amended in this Amendment shall remain the same; and

WHEREAS, Contractor is willing and able to perform the Work;

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

1. Article IV, Section A, titled “Maximum Contract Liability”, is hereby deleted in its entirety and replaced with the following.

A. Maximum Contract Liability. Notwithstanding any other provision of this Agreement, in no event shall City be liable for payment for services rendered and expenses incurred by Contractor under the terms of this Agreement for any amount in excess of the sum of Three Million Seven Hundred Thousand Dollars and Zero Cents (\$3,700,000.00) (“Maximum Contract Liability”). Contractor will be performing the services on a time and material basis up

to the Maximum Contract Amount. Contractor's fee is based on the time required by its professionals to complete the services.

2. Article V, Section A, titled "Insurance" is hereby deleted in its entirety and replaced with the following:

A. Contractor shall obtain and keep in force all of the minimum insurance coverage forms and amounts set forth in *Exhibit C* ("**Insurance Requirements**"), attached hereto, during the entire Term of this Agreement, including any extensions of the Agreement or other extended period stipulations stated in *Exhibit C*. All certificates of insurance must be received and accepted by the City before any airport access or work commences.

B. Contractor shall ensure and document that all subcontractors performing services or providing goods hereunder procure and maintain insurance coverage that is appropriate to the primary business risks for their respective scopes of performance. At minimum, such insurance must conform to all applicable requirements of DEN Rules and Regulations Part 230 and all other applicable laws and regulations.

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

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

E. The Parties understand and agree that the City, its elected and appointed officials, employees, agents and volunteers are relying on, and do not waive or intend to waive by any provisions of this Agreement, the monetary limitations and any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 to 120, or otherwise available to the City, its elected and appointed officials, employees, agents and volunteers.

3. Article VII, Section C, titled "No Discrimination in Employment" is hereby deleted in its entirety and replaced with the following:

In connection with the performance of work under the Agreement, Contractor may not refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or disability. Contractor shall insert the foregoing provision in all subcontracts.

4. Article VII, Section B, titled “Small Business Enterprises”, is hereby deleted in its entirety and replaced with the following:

A. Minority Women Owned Business.

i. This Agreement is subject to D.R.M.C Article III, Divisions 1 and 3 of Chapter 28, designated as §§ 28-31 to 28-40 and 28-51 to 28-90 (the “DSBO Ordinance”); and any Rules and Regulations promulgated pursuant thereto. The contract goal for MWBE participation established for this Agreement by the Division of Small Business Opportunity (“DSBO”) is 15 %.

ii. Under D.R.M.C. § 28-68, Contractor has an ongoing, affirmative obligation to maintain for the duration of this Agreement, at a minimum, compliance with the MWBE participation upon which this Agreement was awarded, unless the City initiates a material modification to the scope of work affecting MWBEs performing on this Agreement through change order, contract amendment, force account, or other modification under D.R.M.C. § 28-70. Contractor acknowledges that:

- a. If directed by DSBO, Contractor is required to develop and comply with a Utilization Plan in accordance with D.R.M.C. § 28-62(b). Along with the Utilization Plan requirements, Contractor must establish and maintain records and submit regular reports, as directed by DSBO, which will allow the City to assess progress in complying with the Utilization Plan and achieving the MWBE participation goal. The Utilization Plan is subject to modification by DSBO.
- b. If change orders or any other contract modifications are issued under the Agreement, Contractor shall have a continuing obligation to promptly inform DSBO in writing of any agreed upon increase or decrease in the scope of work of such contract, upon any of the bases under D.R.M.C. § 28-70, regardless of whether such increase or decrease in scope of work has been reduced to writing at the time of notification of the change by the City.
- c. If change orders or other amendments or modifications are issued under the contract that include an increase in the scope of work of this Agreement, whether by amendment, change order, force account or otherwise, which increases the dollar value of the contract, whether or not such change is within the scope of work designated for performance by an MWBE at the time of contract award, such change orders or contract modification shall be promptly submitted to DSBO for notification purposes.
- d. Those amendments, change orders, force accounts or other contract modifications that involve a changed scope of work that cannot be performed by existing project subcontractors are subject to the original contract goal. Contractor shall satisfy the goal with respect to such changed scope of work by soliciting new MWBEs in accordance with D.R.M.C. § 28-70. Contractor must also satisfy the requirements under D.R.M.C. §§ 28-60 and 28-73, with

regard to changes in scope or participation. Contractor shall supply to DSBO all required documentation under D.R.M.C. §§ 28-60, 28-70, and 28-73, with respect to the modified dollar value or work under the contract.

- e. If applicable, for contracts of one million dollars (\$1,000,000.00) and over, Contractor is required to comply with D.R.M.C. § 28-72, regarding prompt payment to MWBEs. Payment to MWBE subcontractors shall be made by no later than thirty-five (35) days after receipt of the MWBE subcontractor's invoice.
- f. Termination or substitution of an MWBE subcontractor requires compliance with D.R.M.C. § 28-73.
- g. Failure to comply with these provisions may subject Contractor to sanctions set forth in D.R.M.C. § 28-76 of the DSBO Ordinance.
- h. Should any questions arise regarding specific circumstances, Contractor should consult the DSBO Ordinance or may contact the Project's designated DSBO representative at (720) 913-1999.

5. Article VII, Section F, titled "Examination of Records and Audits", is hereby deleted in its entirety and replaced with the following:

A. Examination of Records and Audits.

i. Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and records related to Contractor's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. Contractor shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require Parties to make disclosures in violation of state or federal privacy laws. Parties shall at all times comply with D.R.M.C. §20-276.

ii. Additionally, Contractor agrees until the expiration of three (3) years after the final payment under the Agreement, any duly authorized representative of the City, including the CEO, shall have the right to examine any pertinent books, documents, papers and records of Contractor related to Contractor's performance of this Agreement, including communications or correspondence related to Contractor performance, without regard to whether the work was paid for in whole or in part with federal funds or was

otherwise related to a federal grant program.

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

6. Article VII, Section J, titled “No Employment of a Worker Without Authorization to Perform Work Under the Agreement” is hereby deleted in its entirety.

7. Article IX, Section B, titled “Minimum Wage Ordinance”, is hereby deleted in its entirety and replaced with the following:

A. Denver Wage Laws. To the extent required by law, Contractor shall comply with and agrees to be bound by all rules, regulations, requirements, conditions and City determinations regarding the City Minimum Wage and Civil Wage Theft Ordinances, D.R.M.C. §§ 58-1 through 58-26, including, but not limited to, the requirement that every covered worker shall be paid all earned wages under applicable state, federal and city law in accordance with the foregoing D.R.M.C. sections. By executing this Contract, Contractor expressly acknowledges that Contractor is aware of the requirements of the City’s Minimum Wage Ordinance and Civil Wage Theft Ordinances that any failure by Contractor, or any other individual or entity acting subject to this Contract, to strictly comply with the foregoing D.R.M.C. Sections shall result in the penalties and other remedies authorized therein.

8. Except as modified by this Second Amendment, all of the terms and conditions of the Existing Agreement shall remain in full force and effect.

9. This Second Amendment to the Existing Agreement shall not be effective or binding on the City until approved and fully executed by all signatories of the City and County of Denver.

[SIGNATURE PAGES FOLLOW]

Contract Control Number: PLANE-202472901-02/201846835-02
Contractor Name: HENSEL PHELPS CONSTRUCTION CO.

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

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver


By:

By:

By:

Contract Control Number:
Contractor Name:

PLANE-202472901-02/201846835-02
HENSEL PHELPS CONSTRUCTION CO.

By:  _____
D04D89423ECB4A0...

Name: Joel Douglass
(please print)

Title: General Manager
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

EXHIBIT C

**CITY AND COUNTY OF DENVER
INSURANCE REQUIREMENTS FOR DEPARTMENT OF AVIATION
PROFESSIONAL SERVICES AGREEMENT**

A. Certificate Holder and Submission Instructions

Contractor must provide a Certificate of Insurance as follows:

Certificate Holder: CITY AND COUNTY OF DENVER
Denver International Airport
8500 Peña Boulevard
Denver CO 80249
Attn/Submit to: contractadmininvoices@flydenver.com

- ACORD Form (or equivalent) certificate is required.
- Contractor must be evidenced as a Named Insured party.
- Electronic submission only, hard copy documents will not be accepted.
- Reference on the certificate must include the City-assigned Contract Number, if applicable.

The City may at any time modify submission requirements, including the use of third-party software and/or services, which may include an additional fee to the Contractor.

B. Defined Terms

1. "Agreement" as used in this exhibit refers to the contractual agreement to which this exhibit is attached, irrespective of any other title or name it may otherwise have.
2. "Contractor" as used in this exhibit refers to the party contracting with the City and County of Denver pursuant to the attached Agreement.

C. Coverages and Limits

1. Commercial General Liability

Contractor shall maintain insurance coverage including bodily injury, property damage, personal injury, advertising injury, independent contractors, and products and completed operations in minimum limits of \$1,000,000 each occurrence, \$2,000,000 products and completed operations aggregate; if policy contains a general aggregate, a minimum limit of \$2,000,000 annual per project aggregate must be maintained.

- a. Coverage shall include Contractual Liability covering liability assumed under this Agreement (including defense costs assumed under contract) within the scope of coverages provided.
- b. Coverage shall include Mobile Equipment Liability, if used to perform services under this Agreement.
- c. If a "per location" policy aggregate is required, "location" shall mean the entire airport premises.

2. Business Automobile Liability

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

- a. If operating vehicles unescorted airside at DEN, a \$10,000,000 combined single limit each occurrence for bodily injury and property damage is required.
- b. If Contractor does not have blanket coverage on all owned and operated vehicles and will require unescorted airside driving privileges, then a schedule of insured vehicles (including year, make, model and VIN number) must be submitted with the Certificate of Insurance.
- c. If transporting waste, hazardous material, or regulated substances, Contractor shall carry a Broadened

- Pollution Endorsement and an MCS 90 endorsement on its policy.
- d. If Contractor does not own any fleet vehicles and Contractor's owners, officers, directors, and/or employees use their personal vehicles to perform services under this Agreement, Contractor shall ensure that Personal Automobile Liability including a Business Use Endorsement is maintained by the vehicle owner, and if appropriate, Non-Owned Auto Liability by the Contractor. This provision does not apply to persons solely commuting to and from the airport.
 - e. If Contractor will be completing all services to DEN under this Agreement remotely and not be driving to locations under direction of the City to perform services this requirement is waived.
3. **Workers' Compensation and Employer's Liability Insurance**
Contractor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits no less than \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.
- a. Colorado Workers' Compensation Act allows for certain, limited exemptions from Worker's Compensation insurance coverage requirements. It is the sole responsibility of the Contractor to determine their eligibility for providing this coverage, executing all required documentation with the State of Colorado, and obtaining all necessary approvals. Verification document(s) evidencing exemption status must be submitted with the Certificate of Insurance.
4. **Property Insurance**
Contractor is solely responsible for any loss or damage to its real or business personal property located on DEN premises including, but not limited to, materials, tools, equipment, vehicles, furnishings, structures and personal property of its employees and subcontractors unless caused by the sole, gross negligence of the City. If Contractor carries property insurance on its property located on DEN premises, a waiver of subrogation as outlined in Section F will be required from its insurer.
5. **Professional Liability (Errors and Omissions) Insurance**
Contractor shall maintain a minimum limit of \$1,000,000 each claim and annual policy aggregate, providing coverage for all applicable professional services outlined in this Agreement.
6. **Technology Errors and Omissions**
Contractor shall maintain a minimum limit of \$1,000,000 per occurrence and \$1,000,000 annual policy aggregate including cyber liability, network security, privacy liability and product failure coverage.
- a. Coverage shall include, but not be limited to, liability arising from theft, dissemination and/or use of personal, private, confidential, information subject to a non-disclosure agreement, including information stored or transmitted, privacy or cyber laws, damage to or destruction of information, intentional and/or unintentional release of private information, alteration of information, extortion and network security, introduction of a computer virus into, or otherwise causing damage to, a customer's or third person's computer, computer system, network or similar computer related property and the data, software, and programs thereon, advertising injury, personal injury (including invasion of privacy) and intellectual property offenses related to internet.
7. **Excess/Umbrella Liability**
Combination of primary and excess coverage may be used to achieve minimum required coverage limits. Excess/Umbrella policy(ies) must follow form of the primary policies with which they are related to provide the minimum limits and be verified as such on any submitted Certificate of Insurance.

D. Reference to Project and/or Contract

The City Project Name, Title of Agreement and/or Contract Number and description shall be noted on the Certificate of Insurance, if applicable.

E. Additional Insured

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

F. Waiver of Subrogation

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

If Contractor will be completing all services to the City under this Agreement remotely and not be traveling to locations under direction of the City to perform services, this requirement is waived specific to Workers' Compensation coverage.

G. Notice of Material Change, Cancellation or Nonrenewal

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

1. Such notice shall reference the DEN assigned contract number related to this Agreement.
2. Such notice shall be sent thirty (30) calendar days prior to such cancellation or non-renewal or reduction in required coverage unless due to non-payment of premiums for which notice shall be sent ten (10) calendar days prior.
3. If such written notice is unavailable from the insurer or afforded as outlined above, Contractor shall provide written notice of cancellation, non-renewal and any reduction in required coverage to the Certificate Holder within three (3) business days of receiving such notice by its insurer(s) and include documentation of the formal notice received from its insurer(s) as verification. Contractor shall replace cancelled or nonrenewed policies with no lapse in coverage and provide an updated Certificate of Insurance to DEN.
4. In the event any general aggregate or other aggregate limits are reduced below the required minimum per occurrence limits, Contractor will procure, at its own expense, coverage at the requirement minimum per occurrence limits. If Contractor cannot replenish coverage within ten (10) calendar days, it must notify the City immediately.

H. Cooperation

Contractor agrees to fully cooperate in connection with any investigation or inquiry and accept any formally tendered claim related to this Agreement, whether received from the City or its representative. Contractor's failure to fully cooperate may, as determined in the City's sole discretion, provide cause for default under the Agreement. The City understands acceptance of a tendered claim does not constitute acceptance of liability.

I. Additional Provisions

1. Deductibles or any type of retention are the sole responsibility of the Contractor.
2. Defense costs shall be in addition to the limits of liability. If this provision is unavailable that limitation must be evidenced on the Certificate of Insurance.
3. Coverage required may not contain an exclusion related to operations on airport premises.
4. A severability of interests or separation of insureds provision (no insured vs. insured exclusion) is included under all policies where Additional Insured status is required.
5. A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City under all policies where Additional Insured status is required.
6. If the Contractor procures or maintains insurance policies with coverages or limits beyond those stated herein, such greater policies will apply to their full effect and not be reduced or limited by the minimum requirements stated herein.
7. All policies shall be written on an occurrence form. If an occurrence form is unavailable or not industry norm for a given policy type, claims-made coverage will be accepted by the City provided the retroactive date is on or before the Agreement Effective Date or the first date when any goods or services were provided to the

City, whichever is earlier, and continuous coverage will be maintained or an extended reporting period placed for three years (eight years for construction-related agreements) beginning at the time work under this Agreement is completed or the Agreement is terminated, whichever is later.

8. Certificates of Insurance must specify the issuing companies, policy numbers and policy periods for each required form of coverage. The certificates for each insurance policy are to be signed by an authorized representative and must be submitted to the City at the time Contractor signed this Agreement.
9. The insurance shall be underwritten by an insurer licensed or authorized to do business in the State of Colorado and rated by A.M. Best Company as A- VIII or better.
10. Certificate of Insurance and Related Endorsements: The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements shall not act as a waiver of Contractor's breach of this Agreement or of any of the City's rights or remedies under this Agreement. All coverage requirements shall be enforced unless waived or otherwise modified in writing by DEN Risk Management. Contractor is solely responsible for ensuring all formal policy endorsements are issued by their insurers to support the requirements.
11. The City shall have the right to verify, at any time, all coverage, information, or representations, and the insured and its insurance representatives shall promptly and fully cooperate in any such audit the City may elect to undertake including provision of copies of insurance policies upon request. In the case of such audit, the City may be subject to a non-disclosure agreement and/or redactions of policy information unrelated to verification of required coverage.
12. No material changes, modifications, or interlineations to required insurance coverage shall be allowed without the review and written approval of DEN Risk Management.
13. Contractor shall be responsible for ensuring the City is provided updated Certificate(s) of Insurance prior to each policy renewal.
14. Contractor's failure to maintain required insurance shall be the basis for immediate suspension and cause for termination of this Agreement, at the City's sole discretion and without penalty to the City.

J. Part 230 and the DEN Airport Rules and Regulations

If the minimum insurance requirements set forth herein differ from the equivalent types of insurance requirements in Part 230 of the DEN Airport Rules and Regulations, the greater and broader insurance requirements shall supersede those lesser requirements, unless expressly excepted in writing by DEN Risk Management. Part 230 applies to Contractor and its subcontractors of any tier.

K. Applicability of ROCIP Requirements

The City and County of Denver and Denver International Airport (hereinafter referred to collectively as "DEN") has arranged for certain construction activities at DEN to be insured under an Owner Controlled Insurance Program (OCIP) or a Rolling Owner Controlled Insurance Program (ROCIP) (hereinafter collectively referred to as "ROCIP"). A ROCIP is a single insurance program that insures DEN, the Contractor and subcontractors of any tier, and other designated parties (Enrolled Parties), for work performed at the Project Site. **Contractor is NOT eligible for or provided insurance coverage under a ROCIP program. Contractor must provide its own insurance as specified in this Agreement. If Contractor is assigned work to be conducted within a ROCIP Project Site it must comply with the provisions of the DEN ROCIP Safety Manual, which is part of the Contract Documents and which is linked below to the most recent manual.**

[DEN ROCIP Safety Manual](#)

DEN is additionally providing links to the DEN ROCIP Insurance Manual and the DEN ROCIP Claims Guide solely for Contractor's information.

[DEN ROCIP Insurance Manual](#)

[DEN ROCIP Claims Guide](#)

Notice of Change to ROCIP: DEN reserves the right to assign work per task order to a specific ROCIP program, if more than one is active, as well as terminate or modify a DEN ROCIP or any portion thereof. Further, dependent on factors including, but not limited to, the official timing and duration of the ROCIP project for which services are provided or related to under this Agreement, DEN may need to transition from one ROCIP program

to another and introduce corresponding requirements for contractors. DEN will provide Contractor notice of changes regarding a ROCIP program as applicable to Contractor's work or responsibilities under the ROCIP Safety Manual.