

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT FOR PROFESSIONAL SERVICES (“**Agreement**”) is made and entered into as of the date stated on City’s signature page below (the “**Effective Date**”) by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado acting on behalf of its Department of Aviation (“**City**”), and **Airport & Aviation Professionals, Inc.**, a corporation organized under the laws of the state of Florida and authorized to do business in Colorado (the “**Consultant**” or “**AvAirPros**”) (collectively “**Parties**”).

WITNESSETH:

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

WHEREAS, City desires to obtain professional consulting services for Enterprise Resource Planning (“**ERP**”) and reimplementation of PROPWorks as the complete airport revenue management contract system at DEN; and

WHEREAS, Consultant was selected based on professional preference since it possesses unique knowledge of the PROPWorks system; and

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

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

ARTICLE I LINE OF AUTHORITY

The Chief Executive Officer of the Department of Aviation (the “**CEO**”), her designee or successor in function, authorizes and directs all work performed under this Agreement. Until otherwise notified in writing by the CEO, the CEO has delegated the authority granted herein to the Deputy Chief Financial Officer (the “**Deputy CFO**”). The Deputy CFO will designate a Project Manager to coordinate Services under this Agreement. Reports, memoranda, correspondence, and other submittals required of Consultant hereunder shall be processed in accordance with the Project Manager directions.

ARTICLE II DUTIES AND RESPONSIBILITIES OF CONSULTANT

A. Scope of Services. Consultant will provide professional services and provide deliverables listed in this Article II B for the City as designated by the CEO, and/or her designee, from time to time and as described in the attached **Exhibit A** (“**Scope of Work**”) in accordance with schedules and budgets set by City.

B. Deliverables. Consultant will perform consulting services by offering guidance, training and assistance from the design phase through post implementation phase of the PROPWorks revenue management contracting system. Further, Consultant will assist DEN with the development of integration into and out of the ERP system.

C. Standard of Performance. Consultant shall faithfully perform the work required under this Agreement in accordance with the standard of care, skill, efficiency, knowledge, training, and judgment provided by highly competent professionals who perform work of a similar nature to the work described in this Agreement. Consultant hereby represents and warrants to City it will perform its services skillfully, carefully, diligently, and in a first-class manner. Consultant agrees and understands City, in its sole discretion, shall determine whether services are provided in a first-class manner. Consultant acknowledges that time is of the essence in its performance of all work and obligations under this Agreement.

D. Key Personnel Assignments

1. All key professional personnel identified in **Exhibit B, (“Staffing Assignment and Fee Proposal”)** will be assigned by Consultant or subconsultants to perform work under this Agreement. Only the key personnel identified will perform work under this Agreement, unless otherwise approved in writing by DEN Financial Management (Fiscal Policy, Accounting, and Business Management). It is the intent of the Parties that all key professional personnel be engaged to perform their specialty for all such services required by this Agreement and that Consultant's and the subconsultant's key professional personnel be retained for the life of this Agreement to the extent practicable and to the extent that such services maximize the quality of work performed.

2. If, during the term of this Agreement, the Project Manager determines that the performance of approved key personnel is not acceptable, the Project Manager shall notify Consultant, and may give Consultant notice of the period of time which the Project Manager considers reasonable to correct such performance. If the Project Manager notifies Consultant that certain of its key personnel will not be retained on this project, Consultant will use its best efforts to obtain adequate substitute personnel within ten (10) days from the date of the notice. Such substitute personnel shall be approved in writing by the Project Manager. Failure to obtain the requisite approval shall be grounds for termination for cause in accordance with Article III, Section B.

E. Subcontractors.

1. Although Consultant may retain, hire, and contract with outside subcontractors for work under this Agreement, no final agreement or contract with any such subcontractor shall be entered into without the prior written consent of the CEO. Requests for such approval must be made in writing and include a description of the nature and extent of the services to be provided, the name, address and professional experience of the proposed subcontractor, and any other information requested by City. Any final agreement or contract with an approved subcontractor must contain a valid and binding provision whereby the subcontractor waives any and all rights to make any claim of payment against City or to file or claim any lien or encumbrance against any City property arising out of the performance or non-performance of the contract.

2. Because Consultant's represented qualifications are consideration to City in entering into this Agreement, the CEO shall have the right to reject any proposed outside subcontractor for this work deemed by the CEO, in the CEO's sole discretion, to be unqualified or unsuitable for any reason to perform the proposed services, and the CEO

shall have the right to limit the number of outside subcontractors or to limit the percentage of work to be performed by them, all in the CEO's sole and absolute discretion.

3. Consultant is subject to Denver Revised Municipal Code (“**D.R.M.C.**”) § 20-112 wherein Consultant is to pay its subcontractors in a timely fashion. A payment is timely if it is mailed to the subcontractor no later than seven (7) days after receipt of any payment from City. Any late payments are subject to a late payment penalty as provided for in the prompt pay ordinance (§§ 20-107 through 20-118).

F. Ownership and Deliverables. Upon payment to Consultant, all records, data, deliverables, and any other work product prepared by the Consultant or any custom development work performed by the Consultant on or before the day of payment shall become the sole property of the City. Consultant, upon request by the City, or based on any schedule agreed to by Consultant and the City, Consultant shall provide City with copies of the data/files that have been uploaded to any database maintained by or on behalf of Consultant or otherwise saved or maintained by Consultant as part of the services provided to the City under this Agreement. All such data/files shall be provided to the City electronically in a format agreed to by the Consultant and the City. Consultant also agrees to allow the City to review any of the procedures the Consultant uses in performing any work or other obligations under this Agreement, and to make available for inspection any and all notes, documents, materials, and devices used in the preparation for or performance of any of the scope of work, for up to three (3) years after termination of this agreement. Upon written request from the City, the Consultant shall deliver any information requested pursuant to this Article II, Section F within ten (10) business days in the event a schedule or otherwise agreed upon timeframe does not exist. 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 Consultant to make disclosures in violation of state or federal privacy laws.

ARTICLE III TERM AND TERMINATION

A. Term. The Term of this Agreement shall commence on the date of execution (the “**Effective Date**”) and shall terminate three (3) years thereafter, unless sooner terminated in accordance with the terms stated herein (the “**Expiration Date**”). Should for any reason the Term expire prior to the completion by Consultant, in the CEO's sole discretion, this Agreement shall remain in full force and effect to permit completion of any services commenced prior to the Expiration Date.

B. Termination.

1. City has the right to terminate this Agreement without cause on thirty (30) days prior written notice to Consultant, and with cause on ten (10) days prior written notice to Consultant. In the event of termination by City for cause, Consultant shall be allowed five (5) days to commence remedying its defective performance, and in the event Consultant diligently cures its defective performance to City's satisfaction, within a reasonable time as determined solely by City, then this Agreement shall not terminate.

However, nothing herein shall be construed as giving Consultant the right to perform services under this Agreement beyond the time when such services become unsatisfactory to the CEO.

2. If Consultant is discharged before all the services contemplated hereunder have been completed, or if Consultant's services are for any reason terminated, stopped or discontinued because of the inability of Consultant to provide services in accordance with the terms of this Agreement, Consultant shall be paid only for those services deemed by the CEO satisfactorily performed prior to the time of termination.

3. Upon termination of this Agreement by City, Consultant shall have no claim of any kind whatsoever against City by reason of such termination or by reason of any act incidental thereto, except as follows: if the termination is for the convenience of City, Consultant shall be entitled to reimbursement for the reasonable cost of the work to the date of termination, and reasonable costs of orderly termination, provided request for such reimbursement is made no later than six (6) months from the effective date of termination. Consultant shall not be entitled to loss of anticipated profits or any other consequential damages as a result of any such termination for convenience, and in no event shall the total sums paid exceed the Maximum Contract Liability.

ARTICLE IV COMPENSATION AND PAYMENT

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 Consultant under the terms of this Agreement for any amount in excess of the sum of **Two Million Five Hundred Thousand Dollars and No Cents (\$2,500,000.00)** ("**Maximum Contract Liability**"). Consultant will be performing the services on a time and material basis up to the Maximum Contract Amount. Consultant's fee is based on the time required by its professionals to complete the services.

B. The obligations of City under this Agreement shall extend only to monies encumbered for the purposes of this Agreement. Consultant acknowledges and understands City does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of City.

C. Payment under this Agreement shall be paid from the Airport System Fund and from no other fund or source. City has no obligation to make payments from any other source. City is not under any obligation to make any future encumbrances or appropriations for this Agreement nor is City under any obligation to amend this Agreement to increase the Maximum Contract Liability above.

D. Payment Schedule. Subject to the Maximum Contract Amount set forth in Article IV, Section A of this Agreement, Consultant's fees and expenses shall be paid in accordance with this Agreement. Unless otherwise agreed to in writing, Consultant will invoice the City on a regular basis in arrears, and the City will pay each invoice in accordance with Denver's Prompt Pay Ordinance, D.R.M.C. § 20-107, *et seq.*, subject to the Maximum Contract Liability set forth above. Consultant understands and agrees interest and late fees shall be payable by City only to the extent authorized and provided for in City's Prompt Payment Ordinance. Travel and any other

expenses are not reimbursable unless Consultant receives prior written approval of the Project Manager and are related to and in furtherance of the purposes of the Consultant's engagement.

E. Invoices. Payments shall be based upon monthly progress invoices and receipts submitted by Consultant, audited and approved by City and Article IV, C as follows:

(1) An executive summary and status reports that describe the progress of the services and summarize the work performed during the period covered by the invoice.

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

(3) The amounts shown on the invoices shall comply with and clearly reference the relevant services, the hourly rate and multiplier where applicable, and allowable reimbursable expenses.

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

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

All invoices must be submitted electronically in PDF format to: ContractAdminInvoices@Flydenver.com. Invoices must be submitted, at the City's sole discretion otherwise, with:

- Company name
- Project name
- Contract number
- Task order number
- Line # if multiple funding source per Task order
- Invoice date
- Invoice billing period
- All backup documentation/receipts for work performed

Receipt of Contractor invoices to: ContractAdminInvoices@Flydenver.com starts the official prompt payment process step one. Any invoices submitted to other parties will not be considered part of the process, and all other methods of invoice submittal will be rejected.

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

F. Carry Over and Carry Back. If Consultant's total fees for any of the services described above are less than the amount budgeted for, the amount by which the budget exceeds

the fee may be used, with the written approval of the CEO or their designee, to pay fees for additional and related services rendered by Consultant in any other services if in the CEO or her designee's judgment, such fees are reasonable and appropriate.

ARTICLE V INSURANCE, INDEMNIFICATION, AND DISPUTE RESOLUTION

A. Insurance.

1. Consultant shall obtain and keep in force during the entire term of this Agreement, all of the insurance policies described in City's form of insurance certificate which is attached to this Agreement as **Exhibit C** and incorporated herein. Such insurance coverage includes workers' compensation and employer liability, commercial general liability, business automobile liability, and professional liability. Upon execution of this Agreement, Consultant shall submit to City a fully completed and executed original of the attached insurance certificate form, which specifies the issuing company or companies, policy numbers and policy periods for each required coverage. In addition to the completed and executed certificate, Consultant shall submit a copy of a letter from each company issuing a policy identified on the certificate, confirming the authority of the broker or agent to bind the issuing company, and a valid receipt of payment of premium.

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

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

4. Unless specifically excepted in writing by City's Risk Management Administrator, Consultant shall include all subcontracts performing services hereunder as insureds under each required policy or shall furnish a separate certificate (on the form certificate provided), with authorization letter(s) for each subcontractor, or each subcontractor shall provide its own insurance coverage as required by and in accordance with the requirements of this Section of the Agreement. All coverages for subcontractors shall be subject to all of the requirements set forth in the form certificate and Consultant shall insure that each subcontractor complies with all of the coverage requirements.

5. City in no way warrants and/or represents the minimum limits contained herein are sufficient to protect Consultant from liabilities arising out of the performance of the terms and conditions of this Agreement by Consultant, its agents, representatives, or employees. Consultant shall assess its own risks and as it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. Consultant is not relieved of any liability or other obligations assumed or pursuant to this Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. In no event shall City be liable for any: (i) business interruption or other consequential damages sustained by Consultant; (ii) damage, theft, or destruction of Consultant's inventory, Improvements, or property of any kind; or (iii) damage, theft, or destruction of an automobile, whether or not insured.

6. The Parties hereto understand and agree that 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 City and County of Denver, its officers, officials and employees.

B. Defense and Indemnification.

1. Consultant agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement (“**Claims**”), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Consultant or its subcontractors either passive or active, irrespective of fault, including City’s concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

2. Consultant’s duty to indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Consultant’s duty to indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City’s negligence or willful misconduct was the sole cause of claimant’s damages.

3. In addition to the duty to indemnify and hold harmless, Consultant will have the duty to defend City, its agents, employees, and officers from all liabilities, claims, expenses, losses, costs, fines, and damages (including but not limited to attorney’s fees and court costs) and causes of action of every kind and character. The duty to defend under this paragraph is independent and separate from the duty to indemnify, and the duty to defend exists regardless of any ultimate liability of Consultant, City, and any indemnified party. The duty to defend arises immediately upon written presentation of a claim to Consultant.

4. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Consultant under the terms of this indemnification obligation. The Consultant shall obtain, at its own expense, any additional insurance that it deems necessary for City’s protection.

5. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

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

ARTICLE VI GENERAL TERMS AND CONDITIONS

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

B. Assignment. Consultant shall not assign, pledge or transfer its duties, obligations, and rights under this Agreement, in whole or in part, without first obtaining the written consent of the CEO. Any attempt by Consultant to assign or transfer its rights hereunder without such prior written consent shall, at the option of the CEO, automatically terminate this Agreement and all rights of Consultant hereunder. Such consent may be granted or denied at the sole and absolute discretion of the CEO.

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

D. Compliance with Patent, Trademark and Copyright Laws.

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

2. Consultant further agrees to release, indemnify and save harmless City, its officers, agents and employees, pursuant to Article V, Section I, "Defense and Indemnification," from any and all claims, damages, suits, costs, expenses, liabilities, actions or proceedings of any kind or nature whatsoever, of or by anyone whomsoever, in any way resulting from, or arising out of, directly or indirectly, the performance of work under this Agreement which infringes upon any patent, trademark or copyright protected by law.

E. Notices. Notwithstanding the above, notices concerning termination of this Agreement, notices of alleged or actual violations of the terms of this Agreement, and other notices of similar importance shall be made as follows:

by Consultant to:

Chief Executive Officer
Denver International Airport
Airport Office Building
8500 Peña Boulevard, 9th Floor

Denver, Colorado 80249-6340

And by City to:

Airport & Aviation Professionals, Inc.
3555 Kraft Road, Suite 300
Naples, Florida 34105

Said notices shall be delivered personally during normal business hours to the appropriate office above or by prepaid U.S. certified mail, return receipt requested. Mailed notices shall be deemed effective upon deposit with the United States Postal Service. Either party may from time to time designate substitute addresses or persons where and to whom such notices are to be mailed or delivered, but such substitutions shall not be effective until actual receipt of written notification thereof.

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

G. No Third Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement shall be strictly reserved to City and Consultant, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on this Agreement. It is the express intention of City and Consultant that any person other than City or Consultant receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

H. Governing Law; Bond Ordinances; Venue.

1. This Agreement is made under and shall be governed by the laws of the State of Colorado. Each and every term, provision or condition herein is subject to the provisions of Colorado law, the Charter of City and County of Denver, and the ordinances and regulations enacted pursuant thereto.

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

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

ARTICLE VII STANDARD CITY PROVISIONS

A. Diversity and Inclusiveness.

1. The City encourages the use of qualified small business concerns doing business within the metropolitan area that are owned and controlled by, economically or socially disadvantaged individuals.

2. The Consultant is encouraged, with respect to the goods or services to be provided under this Contract, to use a process that includes small business concerns, when considering and selecting any subcontractors or suppliers.

B. Minority Business Enterprise and Women Business Enterprise Participation.

The project below has been reviewed by DSBO and it has been determined that it is not subject to the DSBO Ordinance and therefore will not have an M/WBE goal assigned. While the work performed under this contract is not subject to the DSBO Ordinance, the Director of the Division of Small Business Opportunity encourages all participants in City projects to seek independent partnerships with SBEs, MBEs, WBEs, and other business enterprises in supply chain activities, prime/subcontractor partnerships, and joint ventures for all contracts and purchase orders.

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

D. Prevailing Wage. Consultant shall comply with City's Prevailing Wage Ordinance, D.R.M.C. § 20-76 et seq., as such Ordinance may apply to Consultant's activities under this Agreement. The Consultant is prohibited from hiring any subcontractor that is currently debarred by City in accordance with D.R.M.C § 20-77.

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

F. Advertising and Public Disclosures. Consultant shall not include any reference to this Agreement or to work performed hereunder in any of its advertising or public relations materials without first obtaining the written approval of the Project Manager. Any oral presentation or written materials related to DEN shall include only presentation materials, work product, and technical data which have been accepted by City, and designs and renderings, if any, which have been accepted by City. The CEO shall be notified in advance of the date and time of any such presentations. Nothing herein, however, shall preclude Consultant's use of this contract and its component parts in GSA form 254 or 255 presentations, or the transmittal of any information to

officials of City, including without limitation, the Mayor, the CEO, any member or members of City Council, and the Auditor.

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

In the event of a request to City for disclosure of such information, time, and circumstances permitting, City will make a good faith effort to advise Consultant of such request in order to give Consultant the opportunity to object to the disclosure of any material Consultant may consider confidential, proprietary, or otherwise exempt from disclosure. In the event Consultant objects to disclosure, City, in its sole and absolute discretion, may file an application to the Denver District Court for a determination of whether disclosure is required or exempted. In the event a lawsuit to compel disclosure is filed prior to City's application, City will tender all such material to the court for judicial determination of the issue of disclosure. In both situations, Consultant agrees it will either waive any claim of privilege or confidentiality or intervene in such legal process to protect materials Consultant does not wish disclosed. Consultant agrees to defend, indemnify, and hold harmless City, its officers, agents, and employees from any claim, damages, expense, loss, or costs arising out of Consultant's objection to disclosure, including prompt reimbursement to City of all reasonable attorney fees, costs, and damages City may incur directly or may be ordered to pay by such court.

H. Examination of Records.

1. In connection with any services performed hereunder on items of work toward which federal funds may be received the City, 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 Consultant which are directly pertinent to a specific grant program for the purpose of making audit, examination, excerpts and transcriptions. Consultant further agrees that such records will contain information concerning the hours and specific services performed along with the applicable federal project number.

2. Consultant agrees until the expiration of three (3) years after the final payment under this Agreement, any duly authorized representative of City, including the CEO, City's Auditor or their representatives, shall have the right to examine any pertinent books, documents, papers and records of Consultant involving transactions related to this Agreement, without regard to whether the work was paid for in whole or in part with federal funds or was otherwise related to a federal grant program.

I. Use, Possession or Sale of Alcohol or Drugs. Consultant 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 City's barring Consultant from City facilities or participating in City operations.

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

K. Conflict Of Interest. Consultant agrees that it and its subsidiaries, affiliates, subcontractors, principals, or employees will not engage in any transaction, activity or conduct which would result in a conflict of interest. Consultant represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities, or conduct that would affect the judgment, actions or work of Consultant by placing Consultant's own interests, or the interest of any party with whom Consultant has a contractual arrangement, in conflict with those of City. City, in its sole discretion, shall determine the existence of a conflict of interest and may terminate this agreement if such a conflict exists, after it has given Consultant written notice which describes such conflict.

Consultant shall have thirty (30) days after the notice is received in which to eliminate or cure the conflict of interest in a manner which is acceptable to City.

L. Prohibition Against Employment Of Illegal Aliens To Perform Work Under this Agreement.

1. The Agreement is subject to Article 17.5 of Title 8, Colorado Revised Statutes and Den. Rev. Municipal Code 20-90 and the Consultant is liable for any violations as provided in said statute and ordinance.
2. The Consultant certifies that:
 - (a) At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.
 - (b) It will participate in the E-Verify Program, as defined in § 8 17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.
3. The Consultant also agrees and represents that:
 - (a) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
 - (b) It shall not enter into a contract with a subcontractor or subconsultant that fails to certify to the Consultant that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
 - (c) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the E-Verify Program.

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

(e) If it obtains actual knowledge that a subcontractor or subconsultant performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subcontractor and City within three (3) days. The Consultant will also then terminate such subcontractor or subconsultant if within three (3) days after such notice the subcontractor or subconsultant does not stop employing or contracting with the illegal alien, unless during such three-day period the subcontractor or subcontractor provides information to establish that the subcontractor or subconsultant has not knowingly employed or contracted with an illegal alien.

(f) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of §8-17.5-102(5), C.R.S. or City Auditor under authority of D.R.M.C. §20-90.3.

ARTICLE VIII STANDARD FEDERAL PROVISIONS

A. Sensitive Security Information. Consultant acknowledges that, in the course of performing its work under this Agreement, Consultant may be given access to Sensitive Security Information (“**SSI**”), as material is described in federal regulations, 49 C.F.R. part 1520. Consultant specifically agrees to comply with all requirements of the applicable federal regulations specifically, 49 C.F.R. Parts 15 and 1520. Consultant understands any questions it may have regarding its obligations with respect to SSI must be referred to the DEN’s Security Office.

B. DEN Security. Consultant, its officers, authorized officials, employees, agents, subcontractors, and those under its control, will comply with safety, operational, or security measures required of Consultant or City by the FAA or Transportation Security Administration. If Consultant, its officers, authorized officials, employees, agents, subcontractors or those under its control, fail or refuse to comply with said measures and such non-compliance results in a monetary penalty being assessed against City, then, in addition to any other remedies available to City, Consultant covenants to fully reimburse City any fines or penalties levied against City, and any attorney fees or related costs paid by City as a result of any such violation. This amount must be paid by Consultant within fifteen (15) days from the date of the invoice or written notice.

C. Federal Rights. This Agreement is subject and subordinate to the terms, reservations, restrictions and conditions of any existing or future agreements between 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 City for DEN purposes and the expenditure of federal

funds for the extension, expansion or development of the Denver Municipal Airport System. The provisions of the attached **Appendix A** are incorporated herein by reference.

ARTICLE IX CONTRACT DOCUMENTS; ORDER OF PRECEDENCE

This agreement consists of Articles I through X which precede the signature page, and the following attachments which are incorporated herein and made a part hereof by reference:

Appendix A:	Standard Federal Assurances
Exhibit A:	Scope of Work
Exhibit B:	Staffing Assignment and Fee Proposal
Exhibit C:	Certificate of Insurance

In the event of an irreconcilable conflict between a provision of Articles I through X and any of the listed attachments or between provisions of any attachments, such that it is impossible to give effect to both, the order of precedence to determine which document shall control to resolve such conflict, is as follows, in descending order:

- Appendix A
- Articles I through X hereof
- Exhibit A
- Exhibit B
- Exhibit C

ARTICLE X CITY EXECUTION OF AGREEMENT

A. City Execution. This Agreement is expressly subject to, and shall not become effective or binding on City, until it is fully executed by all signatories of City and County of Denver. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same, and it may be signed electronically by either party in the manner specified by City.

B. Electronic Signatures and Electronic Records. Consultant consents to the use of electronic signatures by the City. The 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 the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

SIGNATURE PAGES, APPENDIX AND EXHIBITS FOLLOW

APPENDIX A

COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS

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

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

1. **Compliance with Regulations.** The Contractor 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.

Contract Control Number: PLANE-202053264-00
Contractor Name: Airport & Aviation Professionals, Inc.

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

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

By:

By:

By:

Contract Control Number:
Contractor Name:

PLANE-202053264-00
Airport & Aviation Professionals, Inc.

By: DocuSigned by:
Luis Salomon
CE74F48180E0443...

Name: Luis salomon
(please print)

Title: President
(please print)

ATTEST: [if required]

By: DocuSigned by:
Luis Salomon
CE74F48180E0443...

Name: Luis salomon
(please print)

Title: President
(please print)

EXHIBIT A
Scope of Work

The Consultant shall perform professional Enterprise Resource Planning (ERP) and other airport consulting services for the financial management of the Airport, in a timely and competent manner and in accordance with all terms of this Agreement. Such services shall be performed at the direction of DEN Financial Management (Fiscal Policy, Accounting, and Business Management), in accordance with the schedules and budgets to be mutually agreed upon. When specifically requested and directed by DEN Financial Management, the Consultant shall provide services on matters affecting DEN, including the following areas: establish and maintain effective lines of communication with DEN Financial Management, participate in regular scheduled meetings as well as other meetings as needed during the project and if necessary, schedule meetings with others, but include DEN Management.

- 1) Professional ERP Services:
 - a. PROPWorks Re-implementation Project
 - b. Other ERP Services (i.e. Workday, Maximo, etc.)
- 2) Other requested services and special projects that have financial/accounting impact, as assigned by DEN Financial Management.

PROPWorks Re-implementation Project

- Assist with documenting, reconciling, testing, designing, integrating, and re-implementing PROPWorks as tasks assigned by DEN Financial Management for but not limited to the following sections within the Project:
 - Design and Structure
 - Data Conversion
 - Build Out
 - Prototype Testing
 - End User Training/Testing
 - Reporting
 - Integrations
 - Business Process
 - Post-Implementation
- Additional tasks assigned by DEN Management

EXHIBIT B
Staffing Assignment and Fee Proposal

Below is a listing of the individuals staffed for the contract and the related billing position. If any of the individuals or positions change throughout the contract, AvAirPros will notify the DEN Financial Management and will work with DEN Financial Management on replacement individuals, if necessary. If any additional resources are needed throughout the contract, AvAirPros will work with DEN Financial Management to receive approval the additional resources. Zoe Reyes (Managing Director) and Elizabeth Davidson (Senior Director) will be dedicated to the PROPWorks Re-implementation project.

Elizabeth Davidson is a subcontractor through Davidson Consulting. Any changes on this contract impacting the Scope of Work will be discussed with DEN Project Manager.

Rate Table:

<u>*Billing Position</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>
Officer	\$285	\$294	\$303	\$312
Senior Managing Director	\$267	\$275	\$283	\$291
Managing Director	\$255	\$263	\$271	\$279
Senior Director	\$240	\$247	\$254	\$262
Director	\$222	\$229	\$236	\$243
Senior Manager	\$194	\$200	\$206	\$212
Manager	\$178	\$183	\$188	\$194
Consultant	\$162	\$167	\$172	\$177
Support	\$77	\$79	\$81	\$83

*Note: Existing rates will be used for this rate table and will account for an annual 3% per year adjustment for inflation and other cost increases.

EXHIBIT C

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

A. Certificate Holder

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

B. Acceptable Certificate of Insurance Form and Submission Instructions

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

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

C. Coverages and Limits

1. Commercial General Liability:

Consultant 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 annual aggregate and \$2,000,000 annual aggregate. Coverage shall include contractual liability covering liability assumed under this Agreement (including defense costs assumed under contract) within the scope of coverages provided.

2. Business Automobile Liability:

Consultant 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 Consultant does not have blanket coverage on all owned and operated vehicles, then a schedule of insured vehicles (including year, make, model and VIN number) must be submitted with the Certificate of Insurance.
- c. The policy must not contain an exclusion related to operations on airport premises.
- d. If transporting waste, hazardous material, or regulated substances, Consultant shall carry a pollution coverage endorsement and an MCS 90 endorsement on its policy.
- e. If Consultant is an individual or represents that Consultant does not own any motor vehicles and Consultant's owners, officers, directors, and employees use their personal vehicles for business purposes, Personal Automobile Liability insurance coverage will be accepted provided it includes a business use endorsement.
- f. If Consultant will be completing all services to DEN under this Agreement remotely, this requirement will be waived.

3. Workers' Compensation and Employer's Liability Insurance:

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

4. Professional Liability (Errors and Omissions) Insurance:

Consultant shall maintain a minimum limit of \$1,000,000 each claim and annual aggregate, providing coverage for all applicable services outlined in *Exhibit A*.

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

Consultant shall maintain a limit no less than \$1,000,000 each claim and annual aggregate; \$1,000,000 each claim and annual location aggregate for cyber extortion; and no less than \$250,000 each claim for invoice manipulation and email spoofing.

- a. Coverage shall include professional misconduct or lack of ordinary skill.
- b. 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.

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

E. Additional Insured

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

F. Waiver of Subrogation

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

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 coverage before the expiration date thereof.

1. Such notice shall reference the DEN assigned contract number related to this Agreement.
2. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal or reduction in coverage unless due to non-payment of premiums for which notice shall be sent ten (10) days prior.

3. If such written notice is unavailable from the insurer or afforded as outlined above, Consultant shall provide written notice of cancellation, non-renewal and any reduction in coverage to the Certificate Holder within seven (7) business days of receiving such notice by its insurer(s) and include documentation of the formal notice received from its insurer's as verification.

H. Additional Provisions

1. Deductibles, Self-Insured Retentions, or any other type of retention are the sole responsibility of the policyholder.
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. A severability of interests or separation of insureds provision (no insured vs. insured exclusion) is included.
4. A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City, excluding Professional Liability and Workers' Compensation policies, if required.
5. The insurance requirements under this Agreement shall be the greater of (i) the minimum limits and coverage specified hereunder or (ii) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Lessee. It is agreed that the insurance requirements set forth herein shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums set forth in this Agreement.
6. All policies shall be written on an occurrence form. If an occurrence form is unavailable, claims-made coverage may 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 discovery period of three years beginning at the time work under this Agreement is completed or the Agreement is terminated, whichever is later.
7. Consultant shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Consultant will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.
8. Certificates of Insurance must specify the issuing companies, policy numbers and policy periods for each required form of coverage. The certificates for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf and must be submitted to the City at the time Consultant 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 set forth in this Agreement shall not act as a waiver of Consultant's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's acceptance of any submitted insurance certificate is subject to the approval of DEN Risk Management. All coverage requirements specified in the certificate shall be enforced unless waived or otherwise modified in writing by DEN Risk Management. Consultant is solely responsible for ensuring all formal policy endorsements are issued by their insurers to support the requirements herein.
11. The City shall have the right to verify or confirm, at any time, all coverage, information or representations, and the insured and its undersigned agent shall promptly and fully cooperate in any such audit the City may elect to undertake.
12. No material changes, modifications or interlineations to insurance coverage shall be allowed without the review and approval of DEN Risk Management.
13. Consultant shall be responsible for ensuring DEN is provided updated Certificate(s) of Insurance ten (10) days prior to each policy renewal.
14. Consultant's failure to maintain the insurance required by this Agreement shall be the basis for immediate termination of this Agreement at DEN's sole discretion and without penalty to the City.