

SECOND AMENDMENT TO THE AGREEMENT

THIS SECOND AMENDMENT TO THE AGREEMENT, is made and entered into as of the date stated on the signature page (“**Effective Date**”), by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (“**City**”), and **HOLDER-FCI**, a Joint Venture authorized to conduct business in the State of Colorado (“**Contractor**” or “**CMR**”).

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, Contract No. 201733063 dated December 6, 2017 (“**Agreement**” or “**Contract**”) wherein they agreed Contractor will provide all labor, tools, supplies, equipment, materials and everything necessary and required for the construction of the Concourse Expansion Program issued under Contract No. 201733063, Concourse Expansion Program, Denver International Airport; and

WHEREAS, the City and Contractor entered into that First Amendment to the Agreement, Contract No. 202053454 dated June 1, 2020 (“**First Amendment**”), to accommodate increased passenger forecasts, additional air service and the need for more gate space by adding additional scope, increasing the project cost and extending the term of the Agreement; and

WHEREAS, the City and Contractor now wish to add additional funding, terms and clarification to the Agreement with this Second Amendment; 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. The second paragraph of Article III, titled Terms of Performance, is hereby deleted in its entirety and replaced with the following:

The term of this Agreement shall commence on December 6, 2017 (“**Effective Date**”), and shall terminate on December 31, 2024, unless sooner terminated as provided in this Agreement.

2. The first and second paragraphs of Article V, titled Terms of Payment, subsection A, Maximum Contract Amount, are hereby deleted in their entirety and replaced with the following:

Maximum Contract Amount. The maximum contract amount is One Billion Eight Million Dollars and No Cents (\$1,008,000,000.00) (the “**Maximum Contract Amount**”). The

City agrees to pay the Contractor for the performance and completion of all Work required by this Contract through the issuance of authorized CGMPs, in accordance with the Contract Documents. CGMPs shall be paid based on actual costs incurred which shall in no event exceed the authorized CGMP amount. In no event, however, shall the total amount of compensation paid to the Contractor by the City exceed the Maximum Contract Amount, as modified by any duly authorized Change Order, specified herein.

Payment hereunder will be in accordance with the provisions of the Contract Documents, including Title 9 of the General Conditions, and will be made solely and exclusively from funds appropriated and otherwise lawfully made available for the purposes of this Contract from the City and County of Denver Airport System Fund, Operations and Maintenance and Capital Improvement funds. The City has no obligation to make payments from any other fund or source.

3. Article VI, titled Liquidated Damages and Incentives, is hereby deleted in its entirety and replaced with the following:

ARTICLE VI – LIQUIDATED DAMAGES AND INCENTIVES

A. It is understood and agreed by and between the City and the Contractor that, if the Contractor fails to complete the Work described in a milestone area within the time set forth in a CGMP or completes the Work ahead of schedule, the City may suffer substantial damages or benefits, which damages or benefits would be difficult to accurately determine.

B. When drafting the final CGMP for all Work for those milestones, including those identified in Table 1 of this Article VI, the parties hereto will consider the possible elements of damages and/or benefit for early completion and mutually agree that the amount of liquidated damages and/or incentive for the Contractor's failure to substantially complete the Work within the Contract Time shall be those amounts listed in that CGMP. Liquidated damages are not a penalty, but agreed to be a reasonable pre-estimate of damages the City will incur as a result of delayed completion of the Work.

C. The liquidated damages and/or incentive amounts shall be those amounts listed in the final CGMP and based on the Substantial Completion date. The Contractor's liability for liquidated damages shall not exceed an aggregate amount to be agreed upon in a CGMP. If the Parties are unable to reach an agreement, the liquidated damages amount shall be set at a minimum of ten thousand dollars (\$10,000.00) a day for the first 60 days following Substantial Completion and twenty thousand (\$20,000.00) dollars a day thereafter.

D. The parties agree that if the following milestone Work as set forth in Table 1 of this Article VI is not completed on or before the applicable Milestone Completion date (“**Milestone Completion Date**”) the Contractor shall pay, and not as a penalty, the City the liquidated damages amount as set forth in the final CGMP:

TABLE 1

<i>Milestone</i>	<i>Milestone Completion Date ⁽¹⁾</i>
DS Taxiway Phase 1 Deice Pad	NTP + 270 days
Gate Apron Rehab Gates C40/C42	NTP + 270 days

⁽¹⁾ NTP Date is defined as the date an executed Task Order or COOC is issued

Milestone Completion Dates specified above in Table 1 of this Section VI may be amended in a Change Order to the applicable Task Order CGMP to the extent permitted schedule changes are allowed pursuant to the terms of this Contract.

E. If the Contractor shall fail to pay such liquidated damages promptly upon demand therefor, the Surety on its Performance Bond and Payment Bond shall pay such damages. Also, the City may withhold all, or any part of, such liquidated damages from any payment due the Contractor. Additional provisions relating to liquidated damages are set forth in the Construction Contract General Conditions and the CGMP's. The scheduled milestone incentive is met if the contractor reaches Substantial Completion of the milestone incentive area. The detail of each milestone incentive is set forth in the appropriate CGMP. Punch list and other minor remaining Work shall not be cause for withholding the incentive payment. In the event schedule impacts occur that are outside of the Contractors control, a day for day delay will be added to the milestone dates. The determination of whether the delay was outside of the Contractors control shall be made by the Project Manager. These key milestones provide interim measurements of project schedule accomplishments.

4. Article XIII, titled No Discrimination in Employment, is hereby deleted in its entirety and replaced with the following:

ARTICLE XIII – NO DISCRIMINATION IN EMPLOYMENT:

In connection with the performance of work under the Agreement, the 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. The Contractor shall insert the foregoing provision in all subcontracts.

5. The Agreement is hereby amended by the addition of new Article XXII, titled Examination of Records, which shall read as follows:

ARTICLE XXII – EXAMINATION OF RECORDS:

A. Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and

records related to Contractor's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. Contractor shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of six (6) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require Contractor to make disclosures in violation of state or federal privacy laws. Contractor shall at all times comply with D.R.M.C. §20-276.

B. Additionally, Contractor agrees until the expiration of six (6) years after the final payment under the Agreement, any duly authorized representative of the City, including the CEO, 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's performance, without regard to whether the work was paid for in whole or in part with federal funds or was otherwise related to a federal grant program.

C. 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. Exhibit F, General Conditions, GC-311, No Employment of Illegal Aliens to Perform Work Under this Agreement is hereby deleted in its entirety and replaced with the following:

311. NO EMPLOYMENT OF A WORKER WITHOUT AUTHORIZATION 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. The Contractor certifies that:

- i. At the time of its execution of this Agreement, it does not knowingly employ or contract with a worker without authorization who will perform work under this Agreement, nor will it knowingly employ or contract with a worker without authorization to perform work under this Agreement in the future.

- ii. It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., and confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.
- iii. It will not enter into a contract with a subconsultant or subcontractor that fails to certify to the Contractor that it shall not knowingly employ or contract with a worker without authorization to perform work under this Agreement.
- 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 it is 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.
- v. If it obtains actual knowledge that a subconsultant or subcontractor performing work under this Agreement knowingly employs or contracts with a worker without authorization, it will notify such subconsultant or subcontractor and the City within three (3) days. The Contractor shall also 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 worker without authorization, unless during the three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with a worker without authorization.
- vi. It will comply with a 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.

C. The Contractor is liable for any violations as provided in the Certification Ordinance. If the Contractor violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If this Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the City. Any 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 the Contractor from submitting bids or proposals for future contracts with the City.

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

8. This Second Amendment to the 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-202262569-02 / Alfresco-201733063-02
Contractor Name: HOLDER-FCI JV

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

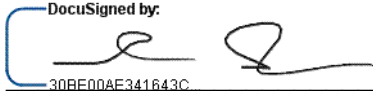
By:

By:

By:

Contract Control Number:
Contractor Name:

PLANE-202262569-02 / Alfresco-201733063-02
HOLDER-FCI JV

By:  30BF00AE341643C

Name: Mike Raponi
(please print)

Title: executive vice president
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)