

## 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 by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (“**City**”), and **HENSEL PHELPS CONSTRUCTION CO.**, a Delaware General Partnership authorized to do 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, Contract No. 202053359-00 with an Effective Date of February 24, 2020 (“**Agreement**”), wherein they agreed Contractor will provide all labor, tools, supplies, equipment, materials and everything necessary and required to complete the work described in the Agreement and generally known as the Great Hall Project; and

**WHEREAS**, the City and Contractor amended the Agreement in Contract No. 202056840/202053359-01, to, among other things, increase the Term, scope of the Work, and Maximum Contract Amount so that Contractor could complete Phase 2 of the Project; and

**WHEREAS**, the City and the Contractor anticipate completion of Phase 1 and Contractor has commenced work on Phase 2, as provided in the Agreement; and

**WHEREAS**, the City now wishes to add additional funding and Term to the Agreement and to make other revisions with this Second Amendment so that Contractor can perform work related to the Completion Phase of the Project; and

**WHEREAS**, terms and conditions of the Agreement not specified as amended in this Amendment shall remain the same, including Article XXVI, Compliance with Minority/Women Business Enterprise Requirements, and Article XXIX, Workforce Program; 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 III, titled Term of Contract is hereby deleted in its entirety and replaced with the following:

The Term of this Agreement shall commence on the date of execution of the agreement (the “**Effective Date**”) and shall expire on December 31, 2028 unless terminated earlier in accordance with this Contract (the “**Term**”). The Contractor agrees to begin the performance of the work required under this Contract within ten (10) days

after receiving a Task Order Notice to Proceed from the Senior Vice President of Aviation – Special Projects (the “SVP-GH”) and agrees to complete the Work in accordance with the Contract Documents within the time frame established for each Task Order. This period of performance for each Task Order is also referred to as “Contract Time.” The Contractor is not authorized to commence the Work prior to its receipt of each Task Order Notice to Proceed.

If, at the expiration of the Contract Term, there remains any outstanding Work to be completed under a validly issued Task Order, the SVP-GH, in his or her sole discretion, may direct the Contractor to complete the Work in accordance with the terms and conditions of the Task Order and this Contract.

2. Article IV, titled Terms of Payment, Subsection A is hereby deleted in its entirety and replaced with the following.

A. The Contractor acknowledges and accepts that there are limited funds available to construct the Project. The City agrees to pay Contractor for the performance and completion of all of the Work as required by Task Order(s) in accordance with the Contract Documents, and Contractor agrees to accept as its full and only compensation therefor, a total amount not to exceed One Billion, Two Hundred and Sixty-Five Million Dollars and No Cents (\$1,265,000,000.00) (the “**Maximum Contract Amount**”). In no event will the City’s liability exceed the Maximum Contract Amount, as adjusted by duly authorized Change Orders in accordance with this Contract. The Parties specifically agree that any performance by Contractor hereunder shall not subject the City to any cost, charge, or fee not specified herein. The City is not obligated to issue nor is the Contractor entitled to receive Task Orders up to and including all funds authorized in the Maximum Contract Amount. The amount of each Task Order shall be considered as the Contract Amount as defined in the General Conditions, GC 103 and as utilized in this Contract.

3. Article XVII, titled No Discrimination in Employment is hereby deleted in its entirety and replaced by the following:

**No Discrimination in Employment.** In connection with the performance of work under the Agreement, the Consultant 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 Consultant shall insert the foregoing provision in all subcontracts.

4. Article XXIII, titled Examination of Records, Sections A and B, are hereby deleted in their entirety and replaced by the following:

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 Contract, provision of any goods or services to the City, and any other transactions related to this Contract. 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 Contract or expiration of the applicable statute of limitations. When conducting an audit of this Contract, 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 this Contract , any duly authorized representative of the City, including the CEO or their representative, shall have the right to examine any pertinent books, documents, papers and records of Contractor related to Contractor’s performance of this Contract, 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.

5. Exhibit E, Special Conditions, SC-9, Liquidated Damages is hereby deleted in its entirety and replaced by the following:

The Work shall be prosecuted in accordance with the Construction Schedule established in Exhibit L as may be amended via a Task Order. The Contractor shall anticipate situations which would cause difficulty in completing the Work within the time described in the Construction Schedule. If the Work is not completed on or before the applicable Milestone Completion date (the “**Milestone Completion Date**”), as set forth in the table below, the Contractor shall pay to the City as liquidated damages, and not as a penalty, an amount to be assessed as follows:

<b>Milestone</b>	<b>Amount</b>	<b>Milestone NTP Date</b>	<b>Milestone Completion Date</b>
Mod 2 – Ticket Pod Steel Completion	\$1,000 daily	March 2, 2020	August 1, 2020
Mod 2 – Ticketing Pods Completion	\$1,000 daily	March 2, 2020	October 20, 2021
Mod 2 – Commissioning Completion	\$2,000 daily	July 1, 2020	December 2, 2021
Mod 2 – Substantial Completion	\$5,000 daily	March 2, 2020	December 16, 2021
Mod 1 West – Structural Steel Complete	\$1,000 daily	July 6, 2021	November 15, 2022

Mod 1 West – Level 5 North Security Lanes Fully Returned to Operation	\$2,000 daily	July 6, 2021	July 1, 2023
Mod 1 West – Level 6, Mod 1 West Checkpoint Substantial Completion	\$5,000 daily	July 6, 2021	December 19, 2023

Milestone NTP Dates and Milestone Completion Dates may be amended in a Task Order. Milestones, Milestone NTP Dates, Milestone Completion Dates, and Liquidated Damages Amounts shall be specified in each Task Order issued for work not identified in a Milestone above, if appropriate to the work assigned therein.

Contractor performance shall rely upon the Drawings and Technical Specifications as set forth in Exhibit L and clarified in the relevant Task Order.

The Contractor shall be issued Milestone NTPs in the relevant Task Order to start Work. If issuance of the Milestone NTP is later than the date set forth in the table above, as amended or provided in a Task Order then the Milestone Completion Date, as set forth in the table above, shall be extended on a day for day basis until the NTP is issued. If no Milestone NTP incorporating one or more of the Milestones above is issued, then Contractor shall not be liable for Liquidated Damages for failing to complete the Milestone by the Milestone Completion Date.

Article IV of the Contract and General Contract Condition 602 provide additional terms and conditions regarding payment and withholding of liquidated damages.

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

**311 NO EMPLOYMENT OF A WORKER WITHOUT AUTHORIZATION TO PERFORM WORK UNDER THE AGREEMENT**

- .1 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**”).
- .2 The Contractor certifies that:
  - A. 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.
  - B. 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.

- C. 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.
  - D. 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.
  - E. 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.
  - F. 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.
- .3 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]**