

A G R E E M E N T

THIS AGREEMENT is made and entered as of the date set forth on the signature page, below, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, through and on behalf of its Department of Aviation (the “City”), and **CAPITAL HOTEL MANAGEMENT LLC**, a limited liability company organized under the laws of the State of Delaware and authorized to do business in Colorado, (“Consultant”).

W I T N E S S E T H:

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

WHEREAS, the City and Westin DIA Operator, LLC entered into a Hotel Management Agreement, which permitted the City to retain an Asset Manager to perform certain of its duties and responsibilities relating to the Hotel Project; and

WHEREAS, the City solicited and received proposals for such services and the Consultant’s proposal was selected; and

WHEREAS, the Consultant is qualified and ready, willing, and able to perform the services as set forth in this Agreement;

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

1. LINE OF AUTHORITY: The City’s Manager of Aviation, his designee or successor in function (hereinafter referred to as the “Manager of Aviation” or the “Manager”) authorizes all work performed under this Agreement. The Manager hereby delegates her authority over the work described in this Agreement to the Deputy Manager, as the Manager’s authorized representative for the purpose of administering, coordinating, and approving work under this Agreement. The Consultant shall submit its reports, memoranda, correspondence and submittals to the Deputy Manager.

2. PROFESSIONAL SERVICES:

A. General: The Consultant will provide professional asset management services for the Hotel, on projects designated by the Manager or the Deputy Manager from time to time as described in the attached **Exhibit A** (“Scope of Services”) in accordance with schedules and budgets to be mutually agreed upon.

B. Professional Responsibility: The Consultant shall faithfully perform the work required under this Agreement in accordance with the standard of care, skill, training, diligence and judgment provided by competent professionals who perform work of a similar nature to the work described in this Agreement. Consultant hereby represents and warrants to the City that it will perform its services in a professional and workmanlike manner.

C. Authority and Coordination with Others: The Consultant shall be considered the principal liaison and representative of the City to the Hotel under the Hotel Management Agreement, but shall be entitled to act on behalf of the City only to the extent expressly authorized under this Agreement, **Exhibit A**, or otherwise in writing by the Manager. The Consultant shall coordinate its Services with the services of the City's other contractors and consultants.

3. COMPENSATION AND PAYMENT; MAXIMUM CONTRACT LIABILITY:

A. Notwithstanding any other provision of the Agreement, the City's maximum payment obligation will not exceed Nine Hundred Thousand Dollars \$900,000.00 (the "Maximum Contract Amount"). The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by Consultant beyond that specifically described in **Exhibit A**. Any services performed beyond those in **Exhibit A** are performed at Consultant's risk and without authorization under the Agreement.

B. The City's payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by the Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. The Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

C. Payment Schedule / Invoicing: Subject to the Maximum Contract Liability set forth at section 3.A. of this Agreement, Consultant's fee shall be paid in the following manner:

i. Billing Rates: The Consultant shall be paid a fee for its services in accordance with the billing rates outlined in the attached **Exhibit B**.

ii. Expenses: Subject to receipt by the City of acceptable monthly invoices and supporting documentation from the Consultant, expenses incurred in connection with its work under this Agreement shall be reimbursed in accordance with the following schedule:

- a. Long Distance Telephone Charges at cost
- b. Copying, postage, and courier services at cost
- c. Specialized computer services at cost
- d. Subconsultants at cost
- e. Parking at cost
- f. Travel at cost (not to exceed \$2,000 per trip Pre-Opening and \$1,500 per trip Post-Opening)
- g. Other expenses with prior written approval of the Deputy Manager at cost

All reimbursable travel shall have the prior written approval of the Deputy Manager, and be related to and in furtherance of the purposes of Consultant's engagement. Vehicle rental costs are allowed when efficiency and economy are served, taking into consideration the elements of time and distance. Use of such vehicle for personal travel shall not be reimbursed. Sleeping accommodation costs are limited to a reasonable amount, taking into account costs of alternate facilities in the location and other relevant factors. Reimbursement for meals and incidentals is limited to the per diem allowed by the City's fiscal accountability rules. Non-business and strictly personal expenses shall not be reimbursed, and hourly rates will not be paid for any period of time a trip is extended for personal convenience.

D. Prompt Payment Ordinance: The City shall process all invoices for payment received from the Consultant on a timely basis in accordance with Denver's Prompt Payment Ordinance, Section 20-107 *et seq.* of the Denver Revised Municipal Code.

E. Source of Funds: All payments under this Agreement shall be paid from the City and County of Denver Airport Revenue Fund and from no other fund or source. The City is under no obligation to make payments to or to make any future appropriations or allocations to said fund.

4. CONSULTANT'S REPRESENTATIONS AND WARRANTIES:

A. Review and Understanding of Documents and Services Required:

Consultant represents and warrants that in connection with the execution of this Agreement, Consultant has received complete copies of and has reviewed **Exhibit A**. Consultant acknowledges that based upon its review of the **Exhibit A**, it is familiar with all duties, responsibilities, and rights assigned to the Consultant and the City thereunder. Consultant represents and warrants that by its own independent investigation it has ascertained (a) the nature of the Services required; (b) the conditions involved in performing the Services; and (c) its obligations under this Agreement.

B. Qualification to Perform the Services: Consultant represents and warrants that it is fully qualified to perform the Services and to satisfy the requirements of this Agreement and that the Services are within its area of expertise. Consultant also represents and warrants that its employees, subcontractors, or any others performing the Services on its behalf are fully qualified to perform the Services and any Services performed by such employees, subcontractors, or others are within their individual areas of expertise.

C. Subcontractors: Consultant shall not subcontract for the Services under this Agreement except with the prior written approval of the Manager, which approval shall be provided in the Manager's sole discretion.

D. Representatives: Consultant and the Manager shall each designate, in writing, one or more individuals to serve as the lead representative(s) in the giving or making of any and all approvals, consents or decisions under this Agreement, and the action of any such representative shall be binding upon the Party designating such representative(s). The Parties

may substitute or otherwise modify the designation of representative(s) by written notice delivered to the other Party. The City's Deputy Manager of Aviation for Commercial ("Deputy Manager") is designated as the authorized representative of the Manager. The Deputy Manager may designate the Project Manager, if applicable, under this Agreement. The lead representative of the Consultant is the Project Asset Manager.

5. TERM:

A. Term: The term of this Agreement shall commence on November 1, 2014, and shall terminate on October 31, 2017, unless terminated earlier in accordance with this Agreement.

B. Cooperation with Successor Asset Managers: If this Agreement is terminated for any reason or expires, Asset Manager shall make every reasonable effort to assure an orderly transition to another provider of Services, if any. Asset Manager shall provide uninterrupted Services until the Termination Date or expiration of this Agreement, whichever is earlier, deliver all documents in a timely manner as required under Section IV.B, and otherwise comply with the reasonable requests and requirements of the Authority in connection with the transition of Services.

6. DEFENSE AND INDEMNIFICATION:

A. Consultant hereby agrees to defend, indemnify, and hold harmless City, its appointed and elected officials, agents and employees 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.

B. Consultant's duty to defend and 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 defend and 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.

C. Consultant will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.

D. 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 the City's protection.

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

7. INSURANCE:

A. The Consultant shall obtain and keep in force during the entire term of this Agreement, including any warranty periods, all of the minimum insurance coverage forms and amounts set forth in **Exhibit C**, which is incorporated into this Agreement by this reference. The Consultant shall submit to the City fully completed and executed certificates of insurance (ACORD form or equivalent approved by the City) which specifies the issuing company or 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 the Consultant signs this Agreement.

B. All certificates and any required endorsements must be received and approved by the City before any work commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of the project, including any warranty periods. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of the Agreement. All subcontractors' work shall also be subject to the minimum requirements identified in **Exhibit C**. All subcontractors' certificates and endorsements must be received and approved by the Consultant before work commences. The City reserves the right to request copies of these certificates at any time.

C. All certificates required by this Agreement shall be sent directly to Denver International Airport, Risk Management, Airport Office Building, Room 8810, 8500 Peña Boulevard, Denver, Colorado 80249. The City Project/Agreement number and project description shall be noted on the certificate of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Agreement at any time.

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

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

F. The insurance coverage forms specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Consultant under the terms of this Agreement, including the Indemnification provisions herein.

The Consultant shall maintain, at its own expense, any additional kinds and amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

8. COLORADO GOVERNMENTAL IMMUNITY ACT: The parties hereto understand and agree that the City and County of Denver, its officers, officials and employees, are relying on, and do not waive or intend to waive by any provisions of this Agreement, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 to 120, C.R.S., or otherwise available to the City and County of Denver, its officers, officials and employees.

9. NO AUTHORITY TO BIND CITY TO CONTRACTS: The Consultant has no authority to bind the City on any contractual matters. Final approval of all contractual matters which obligate the City must be by the City as required by Charter and ordinance.

10. ASSIGNMENT: The Consultant covenants and agrees that it will not assign or transfer its rights hereunder without first obtaining the written consent of the City's Manager of Aviation thereto. Any attempt by the Consultant to assign or transfer its rights hereunder without such prior written consent of the Manager shall, at the option of said Manager, automatically terminate this Agreement and all rights of the Consultant hereunder. Such consent may be granted or denied at the sole and absolute discretion of said Manager.

11. INSPECTION OF RECORDS:

A. In connection with any consulting services performed hereunder on items of work toward which federal funds may be received under the Airport and Airway Improvement Act of 1982, as amended, the City and County of Denver, the Federal Aviation Administration, the Comptroller General of the United States and any other duly authorized representatives shall have access to any books, documents, papers and records of the Consultant which are directly pertinent to a specific grant program for the purpose of making audit, examination, excerpts and transcriptions. The Consultant further agrees that such records will contain information concerning the hours and specific tasks performed along with the applicable federal project number.

B. The Consultant agrees that until the expiration of three years after the final payment under this Agreement, any duly authorized representative of the City, including the Manager or City Auditor or their representatives, shall have access to and the right to examine any directly pertinent books, documents, papers and records of the 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.

12. INFORMATION FURNISHED BY CITY: The City will furnish to the Consultant available information concerning the Airport and any such other matters that may be necessary or useful in connection with the work to be performed by the Consultant under this Contract. The Consultant shall be responsible for the verification of the information provided to the Consultant.

13. COLORADO OPEN RECORDS ACT: The Consultant acknowledges that the City is subject to the provisions of the Colorado Open Records Act, Colorado Revised Statutes §24-72-201 et seq., and the Consultant agrees that it will fully cooperate with the City in the event of a request or lawsuit arising under such act for the disclosure of any materials or information which the 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 the Consultant to the City shall be considered confidential by the City only to the extent provided in the Open Records Act, and the Consultant agrees that any disclosure of information by the City consistent with the provisions of the Open Records Act shall result in no liability of the City.

14. STATUS OF CONSULTANT AS INDEPENDENT CONTRACTOR: It is understood and agreed by and between the parties hereto that the status of the Consultant shall be that of an independent contractor retained on a contractual basis to perform professional or technical services for limited periods of time as described in Section 9.1.1.(E)(x) of the Charter of the City, and it is not intended nor shall it be construed that the Consultant, its employees or subcontractors are employees or officers of the City under Chapter 18 of the Revised Municipal Code or for any purpose whatsoever.

15. TERMINATION:

A. The City has the right to terminate this Agreement without cause on thirty (30) days written notice to the Consultant and with cause on ten (10) days written notice to the Consultant. However, nothing herein shall be construed as giving the Consultant the right to perform services under this Agreement beyond the time when such services become unsatisfactory to the Manager.

B. If this Agreement is terminated by the Consultant, or if this Agreement is terminated by the City for cause, the Consultant shall be compensated for, and such compensation shall be limited to, (1) the sum of the amounts contained in invoices which it has submitted and which have been approved by the City, (2) the reasonable value to the City of the work which the Consultant performed prior to the date of the termination notice, but which had not yet been approved for payment, and (3) the cost of any work which the Manager approves in writing which he determines is needed to accomplish an orderly termination of the work. If this Agreement is terminated for the convenience of the City and without the fault of the Consultant, the Consultant shall also be compensated for any reasonable costs it has actually incurred in performing services hereunder prior to the date of the termination.

C. If this Agreement is terminated, the City shall take possession of all materials, equipment, tools and facilities owned by the City which the Consultant is using by whatever method it deems expedient, and the Consultant shall deliver to the City all drafts or other documents it has completed or partially completed under this Agreement, together with all other items, materials and documents which have been paid for by the City, and these documents and materials shall be the property of the City. This paragraph specifically excludes any software

licenses, and the rights granted to the City there under, shall, upon termination, cease and the software programs shall be deinstalled and returned to Consultant or destroyed.

D. Upon termination of this Agreement by the City, the Consultant shall have no claim of any kind whatsoever against the City by reason of such termination or by reason of any act incidental thereto, except for compensation for work satisfactorily performed as described herein.

E. The Consultant has the right to terminate this contract with or without cause by giving not less than thirty (30) days prior written notice to the City.

16. NOTICES: Notices concerning termination of this Agreement, notices of alleged or actual violations of the terms or conditions of this Agreement and other notices of similar importance shall be made:

by Consultant to: Manager of Aviation
Denver International Airport
8500 Peña Boulevard
Denver, Colorado 80249-6340

and by City to: Capital Hotel Management, LLC
548 Cabot Street
Beverly, MA 01915

17. NO WAIVER OF RIGHT: No assent, expressed or implied, to any breach of any one or more of the covenants, terms and provisions of this Agreement shall be deemed or taken to be by the City a waiver of any succeeding or other breach.

18. ADMINISTRATIVE HEARING: 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 Section 5-17, Revised Municipal Code of the City and County of Denver. The parties hereto agree that the Manager’s determination resulting from said administrative hearing shall be final, subject only to the Consultant’s right to appeal the determination under Colorado Rule of Civil Procedure, Rule 106.

19. NO DISCRIMINATION IN EMPLOYMENT: In connection with the performance of work under this Agreement, the Consultant agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation, terms, conditions or privileges of employment against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and the Consultant further agrees to insert the foregoing provision in all subcontracts hereunder.

20. CONFLICT OF INTEREST: The Consultant agrees that it will not engage in any transaction, activity or conduct which would result in a conflict of interest under this Agreement. The 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 the Consultant by placing the Consultant's own interests, or the interest of any party with whom the Consultant has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, shall determine the existence of a conflict of interest and may terminate this Agreement in the event such a conflict exists after it has given the Consultant written notice which describes the conflict. The Consultant shall have thirty (30) days after the notice is received to eliminate or cure the conflict of interest in a manner acceptable to the City.

21. TAXES AND COSTS: The Consultant shall promptly pay, when due, all taxes, bills, debts and obligations it incurs performing work under this Agreement and shall allow no lien, mortgage, judgment or execution to be filed against land, facilities or improvements owned by the City. If the City is exempt from the payment of such sales or use taxes, the City shall promptly, upon the execution of this Agreement, notify and provide to Consultant a tax-exempt certificate.

22. COMPLIANCE WITH ALL LAWS AND REGULATIONS: All of the work performed under this Agreement by the Consultant shall comply with all applicable laws, rules, regulations and codes of the United States and the State of Colorado and with the charter, ordinances, and rules and regulations of the City and County of Denver.

23. NO THIRD PARTY BENEFICIARIES: The enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to the City and the 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 such Agreement. It is the express intention of the City and the Consultant that subconsultants and any other person other than the City or the Consultant receiving any benefits from this Agreement shall be deemed to be incidental beneficiaries only.

24. ADVERTISING AND PUBLIC DISCLOSURES: The Consultant shall not reference this Agreement or its work hereunder in marketing or public relations materials without first obtaining the written approval of the Manager, which approval will not be unreasonably withheld. Any oral presentation or written materials related to Denver International Airport shall include only presentation materials, work product, designs, renderings and technical data which have been submitted to the Deputy Manager for review and approval. The Deputy Manager shall review and either reject, modify, or approve submittals in a timely manner so that the Scope of Work is not adversely affected. Nothing herein shall preclude the transmittal of by the City any information to officials of the City, including without limitation, the Mayor, the Manager of Aviation, member or members of City Council, or the Auditor.

25. OWNERSHIP OF WORK PRODUCT: The City may, without restriction, make use materials and documents created by Consultant and/or submitted to the City by the

Consultant under this Agreement. The product of any custom development work performed by the Consultant specifically for the City shall become the sole property of the City.

26. PROHIBITION AGAINST EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THIS AGREEMENT:

A. 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.

B. The Consultant certifies that:

(1) 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.

(2) It will participate in the E-Verify Program, as defined in § 8 17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

C. The Consultant also agrees and represents that:

(1) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(2) 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.

(3) 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.

(4) 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.

(5) 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 the City within three days. The Consultant will also then terminate such subcontractor or subconsultant if within three 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 subconsultant provides information to establish that the subcontractor or subconsultant has not knowingly employed or contracted with an illegal alien.

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

27. FEDERAL PROVISIONS: This Agreement is subject and subordinate to the terms, reservations, restrictions and conditions of any existing or future agreements between the City and the United States, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to the City for airport purposes, and the expenditure of federal funds for the extension, expansion or development of the Airport. The provisions of the attached Appendix 1 are incorporated herein by reference.

28. BOND ORDINANCES; GOVERNING LAW; VENUE: This Agreement shall be deemed to have been made in, and construed in accordance with the laws of, the State of Colorado and the Charter and Ordinances of the City and County of Denver. This Agreement is in all respects subject and subordinate to the Airport's General Bond Ordinance 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. Venue for any action hereunder shall be in the City and County of Denver, State of Colorado.

29. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS: The Consultant and Consultant's agents shall cooperate and comply with the provisions of the City and County of Denver Executive Order No. 94 and Attachment A thereto concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City's barring the Consultant and Consultant's agents from City facilities or participating in City operations.

30. CITY SMOKING POLICY: Consultant acknowledges that smoking is not permitted in Airport buildings and facilities except for designated Airport Smoking Concessions, and so agrees that it will prohibit smoking by its employees and the public in indoor areas and within 15 feet of entryways of the Airport Premises, except as may otherwise be permitted by the Colorado Clean Indoor Air Act, C.R.S. §§ 25-14-201 to 209. Consultant and its officers, agents, and employees shall cooperate and comply with the provisions of the Denver Revised Municipal Code, §§ 24-301 to 317 et. seq., the Colorado Clean Indoor Air Act, C.R.S. §§ 25-14-201 to 209, City's Executive Order No. 99 dated December 1, 1993, and Executive Order No. 13 dated July 31, 2002.

31. ENTIRE AGREEMENT: The parties acknowledge and agree that the provisions contained herein constitute the entire agreement and that all representations made by any officer, agent or employee of the respective parties unless included herein are null and void and of no effect. No alterations, amendments, changes or modifications to this Agreement, except those which are expressly reserved herein to the Manager, shall be valid unless they are contained in an instrument which is agreed to by all the parties with the same formality as this Agreement.

32. SEVERABILITY: In the event any of the provisions, or applications thereof, of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction,

the validity and enforceability of the remaining provisions, or applications thereof, shall not be affected.

33. HEADINGS: The heading contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

34. CONTRACT DOCUMENTS; ORDER OF PRECEDENCE: This Agreement consists of Articles 1 through 36, which precede the signature page, and the following exhibits and attachments which are incorporated herein and made a part hereof by reference:

Exhibit A	Scope of Services
Exhibit B	Schedule of Rates and Fees
Exhibit C	Certificate of Insurance
Appendix No. 1	Standard Federal Assurances and Nondiscrimination

In the event of an irreconcilable conflict (i) between a provision of Articles 1 through 34 and any of the listed exhibits or attachments or (ii) between provisions of any exhibits or 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 No. 1
- Articles 1 through 36 hereof
- Exhibit A
- Exhibit B
- Exhibit C

35. CITY EXECUTION OF AGREEMENT: This Agreement is expressly subject to, and shall not become effective or binding on the City, until it is fully executed by all signatories of the City and County of Denver. This Agreement may be signed electronically by either party in the manner specified by the City.

36. INCORPORATION EXHIBITS AND APPENDIX: The Exhibits and Appendix attached to this Agreement are incorporated into this Agreement. In addition, **Exhibits A and B** may be modified by mutual agreement of the parties from time to time as provided herein without the requirement of a formal amendment to this Agreement.

[SIGNATURE PAGES FOLLOW]

Contract Control Number: PLANE-201414896-00

Contractor Name: CAPITAL HOTEL MANAGEMENT LLC

By: 

Name: Chad L. Crowder
(please print)

Title: President / Co-Founder
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



Contract Control Number:

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

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____

By _____

By _____



EXHIBIT A

Scope of Services and Fee Structure



Hotel Asset Management Scope of Services

Pre-Opening (From Contract Execution to Opening)

- Serve as owner's representative and primary liaison to third-party property management and brand representatives, encouraging the achievement of company goals through detailed action plans. Specifically during pre-opening we will ensure:
 - The right leadership team is in place through evaluating candidates and providing approval (as to the extent allowable in the management agreement) on key executive hires;
 - A defined sales and marketing strategy exists and is refined to reflect changes in market conditions;
 - Starwood is providing appropriate corporate-level support and resources;
 - Starwood is effectively managing to the Pre-Opening Budget;
 - A strategy for recruiting and training operating team members is in place;
 - There is close coordination of key stakeholders to monitor hotel and other related construction activity to anticipate potential operational impact;
 - All space leases and/or service contracts are favorably negotiated and executed;
 - Reasonable, yet aspirational financial objectives are established for the initial opening period (stub-year budget);
 - Reporting and communication protocol is in place, both with the asset manager and the Aviation Department;
 - The proposed Year 1 (or "stub-year") operating budget is developed and reasonable;
 - The Business Plan is developed and meets underwriting objectives;
 - Planning occurs related to the cash management agreement for bond compliance; and,
 - The Aviation Department is kept apprised of all activities with an opportunity to weigh in on critical decisions in a timely manner, as necessary.
- Prepare monthly ownership reports detailing obligations of Starwood relative to the Pre-Opening Agreement and detail compliance with these Agreements. Report to the City with any recommendations for performance improvement or indications of non-compliance.

Post-Opening

- Serve as owner's representative and primary liaison to third-party property management and brand representatives, encouraging the achievement of company goals through detailed action plans.
- Understand and communicate outstanding construction items and coordinating with management to minimize operational and guest impact.
- Ensure management provides final reconciliation and close out of the Pre-Opening Budget.



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- Complete regular on-site property reviews and participate in owner meetings. Coordinate and communicate with hotel General Manager.
 - Maintain up to date knowledge of factors affecting markets and submarkets associated with the hotel, including demographics and changes in supply and demand.
 - Evaluate the impact of and implement brand initiatives with the goal of finding the most cost effective solution while still maintaining the highest guest standards.
 - Ensure third party management's compliance with management contracts and strategically negotiate with management when necessary to maximize return on investment.
 - Monitor operating and quality assurance standards and financial performance on a month to month basis. Advise the DIA and Starwood of Starwood's compliance.
 - Prepare monthly reports detailing obligations of Starwood relative to the Operating Agreements and detail compliance with these Agreements. Report to the DIA with any recommendations for performance improvement or indications of non-compliance.
 - Conduct analyses of individual hotel and hotel management companies' financial statements and operating performance, market positioning and other key indicators, diligently challenging hotel management to respond where areas of opportunity exist.
 - Participate in annual operating and capital budget discussions with Starwood to monitor and assess methodologies utilized in annual planning. Review, analyze and make recommendations relative to the annual and monthly budget performance.
 - Review and assess methodologies employed in ensuring forecast accuracy, implementation of labor resource standards and service. Participate in on-going discussion regarding additional capture of revenue from both in-house and local market patronage.
 - Participate in meetings with appropriate Starwood and DIA personnel to review hotel profit and loss statements. Discuss changes to budgeted objectives as they may impact annual financial planning.
 - Review and analyze all reports required to be delivered by Starwood on a monthly or annual basis pursuant to the Operating Agreement. Analyze income statements or prepare other analyses related to maximizing revenues and minimizing expenses that lead to strategies to improve asset performance.
 - Work with Operator's teams to successfully develop strategies and decisions relative to ADR's, RevPAR's occupancies, daily expenses, etc.
 - Use research, industry analysis/benchmarking, accounting, hotel financial analysis and computer modeling fundamentals to analyze hotel operations, hotel business plans, hotel capital investments, sales and marketing plans and strategic alternatives.

EXHIBIT B

Hourly Billing Rates



FEE STRUCTURE

The following reflects our professional fee structure based on the Hotel Asset Management scope of services as outlined:

<i>Services</i>	<i>Proposed Fee</i>
Pre-Opening Hotel Asset Management	\$15,000/Month
Post-Opening Hotel Asset Management	\$22,500/Month

TIME ESTIMATE & HOURLY RATES

The following provides an estimate of time and professional staff hourly rates (Post-Opening).

Professional Staff	Monthly			DIA Fixed Fee	
	Estimated Hours	Hourly Rates	Monthly Fees	Hourly Rates	Monthly Fees
President/CEO	9	\$400	\$3,600	\$300	\$2,700
EVP	7	\$375	\$2,625	\$275	\$1,925
VP (Asset Manager)	34	\$350	\$11,900	\$255	\$8,670
VP (Support)	8	\$350	\$2,800	\$255	\$2,044
Controller	4	\$350	\$1,400	\$255	\$1,022
Associate	20	\$300	\$6,000	\$225	\$4,500
Staff Accounting	4	\$250	\$1,000	\$175	\$700
Analyst/Reporting	<u>10</u>	<u>\$150</u>	<u>\$1,500</u>	<u>\$100</u>	<u>\$1,000</u>
Total/Average	96	\$321	\$30,825	\$235	\$22,561

EXPENSE ESTIMATE

EXPENSE ESTIMATE	Pre-Opening	Post-Opening
	Visits	Visits
Airfare (1 to 2 people)	\$1,000	\$1,000
Transportation	\$50	\$0
Hotel (2 people, 1 night)	\$400	\$0
Meals (2 people, 2 days)	\$300	\$300
Misc.	<u>\$150</u>	<u>\$150</u>
Total	\$1,900	\$1,450

**CITY AND COUNTY OF DENVER
INSURANCE REQUIREMENTS FOR THE DEPARTMENT OF AVIATION**

Certificate Holder Information:

CITY AND COUNTY OF DENVER
Attn: Risk Management, Suite 8810
Manager of Aviation
Denver International Airport
8500 Peña Boulevard, Room 8810
Denver CO 80249

CONTRACT NAME & NUMBER TO WHICH THIS INSURANCE APPLIES: 201414896 – Hotel Asset Management Services

I. MANDATORY COVERAGE

Colorado Workers' Compensation and Employer Liability Coverage

Coverage: COLORADO Workers' Compensation

Minimum Limits of Liability (In Thousands)

WC Limits: \$500, \$500, \$500

And Employer's Liability Limits:

Any Policy issued under this section must contain, include or provide for the following:

1. All States Coverage or Colorado listed as a covered state for the Workers' Compensation
2. Waiver of Subrogation and Rights of Recovery against the City and County of Denver (the "City"), its officers, officials and employees.

Commercial General Liability Coverage

Coverage: Commercial General Liability (coverage at least as broad as that provided by ISO form CG0001 or equivalent)

Minimum Limits of Liability (In Thousands):

Each Occurrence:	\$1,000
General Aggregate Limit:	\$2,000
Products-Completed Operations Aggregate Limit:	\$2,000
Personal & Advertising Injury:	\$1,000
Fire Damage Legal - Any one fire:	\$1,000

Any Policy issued under this section must contain, include or provide for the following:

1. City, its officers, officials and employees as additional insureds, per ISO form CG2010 or equivalent.
2. Coverage for defense costs of additional insureds outside the limits of insurance, per CG0001.
3. Liability assumed under an Insured Contract (Contractual Liability).
4. Waiver of Subrogation and Rights of Recovery, per ISO form CG2404 or equivalent.
5. Separation of Insureds Provision required

Business Automobile Liability Coverage

Coverage: Business Automobile Liability (coverage at least as broad as ISO form CA0001)

Minimum Limits of Liability (In Thousands): Combined Single Limit \$1,000

Any Policy issued under this section must contain, include or provide for the following:

1. Symbol 1, coverage for any auto. If no autos are owned, Symbols 8 & 9, (Hired and Non-owned) auto liability.
2. If this contract involves the transport of hazardous cargo such as fuel, solvents or other hazardous materials may occur, then Broadened Pollution Endorsement, per ISO form CA 9948 or equivalent and MCS 90 are required.

II. ADDITIONAL COVERAGE

Umbrella Liability

Coverage:

Umbrella Liability, Non Restricted Area		
Minimum Limits of Liability (In Thousands)	Each Occurrence and aggregate	\$1,000
Umbrella Liability Restricted Area		

Any Policy issued under this section must contain, include or provide for the following:

1. City, its officers, officials and employees as additional insureds.
2. Coverage in excess of, and at least as broad as, the primary policies in sections CGL-1, and BAL-1.
3. **If operations include unescorted airside access at DIA, then a \$9 million Umbrella Limit is required.**

Professional Liability

Coverage: Professional Liability

Minimum Limits of Liability (In Thousands)	Each Occurrence and aggregate	\$1,000
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Any Policy issued under this section must contain, include or provide for the following:

1. Policies written on a claims-made basis must remain in force for three years ERP in accordance with CRS 13-80-104.
2. If the coverage is written on a claims-made basis the Insured warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Contract.
3. Any cancellation notice required herein must be provided by Certified Mail. Coverage must extend, by endorsement or otherwise, to cover the full scope of all environmental services performed under the insured's contract with the City.
4. Professional Liability coverage shall include Errors & Omissions Liability coverage with the policy definition of Professional Services inclusive of those services defined in the Scope of Work included in the Asset Management Agreement between the insured and the City and County of Denver. Any policy limitations and/or exclusions shall not limit the coverage provided specifically for those services defined in the Scope of Work included in the Asset Management Agreement between the insured and the City and County of Denver.

III. ADDITIONAL CONDITIONS

It is understood and agreed, for the benefit of the City, that the following additional conditions shall apply to all coverage specified herein

- All coverage provided herein shall be primary and any insurance maintained by the City shall be considered excess.
- With the exception of professional liability and auto liability, a Waiver of Subrogation and Rights of Recovery against the City, its officers, officials and employees is required for each coverage period.
- The City shall have the right to verify or confirm, at any time, all coverage, information or representations contained herein, and the insured and its undersigned agent shall promptly and fully cooperate in any such audit the City may elect to undertake.
- Advice of renewal is required.
- All insurance companies issuing policies hereunder must carry at least an A-VI rating from A.M. Best Company or obtain a written waiver of this requirement from the City's Risk Administrator.
- Compliance with coverage requirement by equivalent herein must be approved in writing by the City's Risk Administrator prior to contract execution.
- No changes, modifications or interlineations on this document shall be allowed without the review and approval of the Risk Administrator prior to contract execution.

NOTICE OF CANCELLATION

It is understood and agreed that should any Policy issued hereunder be cancelled or non-renewed before the expiration date thereof, or sustain a material change in coverage adverse to the City, the issuing company or its authorized Agent shall give notice to the Department of Aviation in accordance with policy provisions.

APPENDIX 1

STANDARD FEDERAL ASSURANCES

NOTE: As used below the term "contractor" shall mean and include the "Party of the Second Part," 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 shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination.** The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
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 shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
4. **Information and Reports.** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall 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 Regulations, orders, 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 of the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance.** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the sponsor shall 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 the contract until the contractor complies, and/or
 - b. Cancellation, termination, or suspension of the contract, in whole or in part.
6. **Incorporation of Provisions.** The contractor shall include the provisions of paragraphs 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The contractor shall take such 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, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

7. Nondiscrimination In Airport Employment Opportunities. The contractor assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. It is unlawful for airport operators and their lessees, tenants, concessionaires and contractors to discriminate against any person because of race, color, national origin, sex, creed, or handicap in public services and employment opportunities.