

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 **STANTEC ARCHITECTURE INC.**, a Corporation organized and existing under and by virtue of the laws of the State of Colorado (“**Consultant**”) (collectively “**Parties**”).

WITNESSETH:

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

WHEREAS, City desires to obtain professional services to provide Engineering and Environmental services on an “on-call” basis, in accordance with the terms of this Agreement; and

WHEREAS, City has undertaken a competitive process to solicit and receive proposals for such services, and has selected the proposal submitted by the Consultant; and

WHEREAS, Consultant’s proposal was selected for award of the contract; 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**”) authorizes and directs all work performed under this Agreement. Until otherwise notified in writing by the CEO, DEN’s Chief Real Estate Officer (“**EVP**”), is designated as the authorized representative of the CEO through whom services performed under this Agreement shall be directed and coordinated. The EVP’s authorized representative for day-to-day administration of the Consultant’s services is the **Project Manager**, who has the authority 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’s directions.

ARTICLE II DUTIES AND RESPONSIBILITIES OF CONSULTANT

A. Scope of Services. Consultant will provide professional services and provide deliverables for the City as designated by the Project Manager from time to time and as described in the attached **Exhibit A (Scope of Work)**, including, but not limited to pre-development services for commercial real estate and public infrastructure projects to support DEN Real Estate in its implementation of the framework vision established in the DEN Strategic Development Plan.

B. Task Orders. The Scope of Work will be implemented through task-specific scopes of work will be defined through “**Task Orders**” on a project-by-project basis. Task Orders will define schedules, budgets, and deliverables for each task.

C. Standard of Performance. Consultant shall perform the work required under this Agreement in accordance with the standard of care, skill, efficiency, knowledge, training, and judgment provided by professionals who perform work of a similar nature to the work described in this Agreement. Consultant acknowledges that time is of the essence in its performance of all work and obligations under this Agreement.

D. Key Personnel Assignments.

1. Key professional personnel, who will lead or direct work within their area of expertise, are identified in **Exhibit B (Rate Schedule)**, and will be assigned by Consultant or subconsultants to perform work under this Agreement. 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. The key personnel identified in **Exhibit B** may be replaced only if approved in writing by the Project Manager.

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.

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 Project Manager. 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 or all or part of a Task Order, 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, and for that Task Order or part of a Task Order, 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. Use by the City of any work product prepared by Consultant beyond the intended use and purpose of such work product, as such use and purpose is identified in any applicable Task Order, shall be at the sole risk of the City.

ARTICLE III TERM AND TERMINATION

A. Term. The Term of this Agreement shall commence on the Effective Date. This Agreement shall be for a term of three (3) years from the Effective Date (“**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. The Term of this Agreement may be extended, upon mutual agreement by the parties, at its current terms and conditions for two additional one-year periods. These extensions, if exercised, shall be exercised by providing written notice to the Consultant on or six (6) months before the end of the current Term.

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 from the initial termination notice 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 One Million Dollars (\$1,000,000.00) ("**Maximum Contract Liability**"). Consultant will be performing the services on a time and material basis up to the Maximum Contract Liability. Consultant's fee is based on the time required by its professionals to complete the services. Individual hourly rates are set forth in **Exhibit B** and vary according to the experience and skill required. These rates shall apply to all Task Orders.

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. 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. All payments under this Agreement shall be paid solely and exclusively from the City's Funds of the Airport System and from no other fund or source. The City is under no obligation to make any future apportionments or allocations to said fund.

C. Payment Schedule. Subject to the Maximum Contract Liability set forth in section 4.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 be related to and in furtherance of the purposes of the Consultant's engagement.

D. Invoices. Payments shall be made to Consultant based upon monthly invoices and receipts submitted by Consultant, which invoices have been approved by the Project Manager, and subject to the Maximum Contract Liability. The Consultant agrees that City shall not be liable for the payment of taxes, late charges, interest or penalties of any nature, except for

any additional amounts that the City may be required to pay under the City's prompt payment ordinance D.R.M.C. § 20-107, *et seq.*.

The City reserves the right to reject and not pay any invoice or part thereof where the City reasonably determines that the amount invoiced to date exceeds the amount that should be paid based upon its determination of the Work that has been performed. The City, however, shall pay any undisputed items contained in the invoice. Disputes concerning payments under the provisions of this Agreement shall be resolved by administrative hearing pursuant to the procedures of D.R.M.C. § 5-17.

Invoices shall be submitted in accordance with Exhibit B and shall include documentation, including the following where applicable:

(1) A brief status report that describes the progress of the Work and a summary of the Work performed under each Task Authorization 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 the Consultant and shall be available for examination by the City, at City request.

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

(4) The 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 the Consultant, along with such officer's certification that it has examined the invoice and has found it to be correct, shall be included on all invoices.

E. CPI Adjustment. The rates set forth in **Exhibit B** of this Agreement, for years two (2), and three (3) of the initial three-year term, shall be subject to an adjustment effective January 1 following the applicable lease year. These adjustments will apply to the two extensions available under this Agreement. The adjustments shall be established based upon the annual percentage increase in the U.S. Government's Consumer Price Index (CPI) for the worked set forth in the Scope of Work in the Denver metropolitan area. Notwithstanding the above, a flat percentage increase can be provided pending mutual agreement. Any increase agreed upon shall be no more than 3% in a given year.

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.

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, Colorado Revised Statute ("C.R.S."), or otherwise available to City and County of Denver, its officers, officials and employees.

B. Defense and Indemnification.

1. To the fullest extent permitted by law, the 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 related to the work performed under this Agreement that are attributable to the negligence or fault of the Consultant or the Consultant's agents, representatives, subcontractors, or suppliers ("Claims"). This indemnity shall be interpreted in the broadest possible manner consistent with the applicable law to indemnify the City.

2. Consultant's obligation to defend and indemnify may be determined after Consultant's liability or fault has been determined by adjudication, alternative dispute resolution, or otherwise resolved by mutual agreement between the parties. Consultant's

duty to defend and indemnify City shall relate back to the time written notice of the Claim is first provided to City regardless of whether suit has been filed and even if Consultant is not named as a Defendant.

3. 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.

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 the 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 Project Manager. Any attempt by Consultant to assign or transfer its rights hereunder without such prior written consent shall, at the option of the Project Manager, 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 Project Manager.

C. Compliance with all Laws and Regulations. All of the work performed under this Agreement by 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 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, defend and save harmless City, its officers, agents and employees, subject to Article V, Section B of this Agreement, 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:

Stantec Architecture Inc.
1050 17th Street, Suite A200
Denver, Colorado 80265
Contact: Andrew Irvine, Principal-in-Charge

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 U.S. 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. Small Business Enterprises. Consultant is subject to City's ordinance, DRMC Chapter 28, Article III (MBE/WBE Ordinance) which prohibits discrimination in the awarding of contracts and subcontracts and directs the DSBO Director to establish goals for MBE and WBE participation in the preconstruction and construction of City-owned facilities. **The goal for this Agreement is 20%.** Project goals must be met with certified MBE and WBE participants or by demonstrating good faith efforts under the MBE/WBE Ordinance. The Consultant must comply with the terms and conditions of the MBE/WBE Ordinance in soliciting and contracting with its sub-contractors and sub-contractors in administering the performance of the work hereunder. It shall be an ongoing, affirmative obligation of the Consultant to maintain, at a minimum, compliance with the originally achieved level of MBE/WBE participation upon which this Agreement was awarded (20%), for the duration of this Agreement, unless City initiates a material alteration to the Scope of Work.

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. 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 Project Manager shall be notified in advance of the date and time of any such presentations. Nothing herein, however, shall preclude Consultant's use of this Agreement and its component parts in GSA Forms 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.

F. 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 Colorado Open Records Act, and Consultant agrees that any disclosure of information by City consistent with the provisions of the Colorado 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, pursuant to Article V, Section B of this Agreement, 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.

G. 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.

H. 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.

I. City Smoking Policy. Consultant and its officers, agents and employees shall cooperate and comply with the provisions of Executive Order 99 and the Colorado Indoor Clean Air Act, prohibiting smoking in all City buildings and facilities.

J. 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.

K. Prohibition against Employment of Illegal Aliens to Perform Work under this Agreement.

1. The Agreement is subject to Article 17.5 of Title 8, C.R.S. and D.R.M.C. §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 (3) 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 Code of Federal Regulations (“**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 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 (“**TSA**”). 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 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:	Rates
Exhibit C:	Certificate of Insurance

In the event of an irreconcilable conflict between the provisions 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 (2) 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 FOLLOW]

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 _____



Contract Control Number: PLANE-201843518-00

Contractor Name: STANTEC ARCHITECTURE INC

By:  _____



Name: John Yonushewski
(please print)

Title: Senior Principal / BCML
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



APPENDIX NO. 1

STANDARD FEDERAL ASSURANCES AND NONDISCRIMINATION

NOTE: As used below the term "contractor" shall mean and include the Consultant, 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, creed, color, sex, 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. The Consultant for itself, representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this agreement for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, the Consultant shall maintain and operate such facilities and services in compliance with all other

requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

8. The Consultant for itself, representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land: (1) that no person on the grounds of race, color, sex, creed or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, sex, creed or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Consultant shall use the premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

9. NONDISCRIMINATION IN AIRPORT EMPLOYMENT OPPORTUNITIES

The Consultant 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.

EXHIBIT A

Urban Design and Architecture Services Scope of Work

A. Overview:

- a. Consultant will provide pre-development services for commercial real estate and public infrastructure projects to support DEN RE in its implementation of commercial development on DEN land. Consultant will work collaboratively with DEN RE staff and other Consultant Teams to provide DEN with the supporting due diligence and documentation needed to prepare property offerings for development, including but not limited to refining the DEN development vision, analyzing development opportunities, and developing concept designs for horizontal infrastructure and vertical development up to 30% design.
- b. Work will be authorized on a task-order basis. The Scope of Work identified below will be used as a guide for the development of specific task orders. For each Task Order, Consultant will prepare a proposed scope of services and cost estimate, including anticipated hours, rates, and reimbursable expenses. Consultant will be expected to cooperate with and coordinate with other Consultant Teams issued Task Orders for related projects or different aspects of a particular project.

B. Scope of Work: Urban Design and Architecture:

- a. Assist DEN RE in a variety of tasks working in conjunction with DEN's brokers and financial advisors to refine DEN's vision to concept level design;
- b. Test urban design and concept level building programs to assist with developing revenue projections, block layouts, and capacities, including providing construction cost estimates for vertical development and open space / public realm amenities for input into financial models;
- c. Develop short and long-term mobility and multi-modal transportation strategies;
- d. Develop phasing strategies that balance flexibility for a long-term build-out program with strong urban design and place-making for public spaces;
- e. Refine landscape planning and landscaping guidelines. Specialized expertise is required to coordinate with Airport Infrastructure Management (AIM) and the U.S. Department of Agriculture (USDA) to create native, drought resistant landscapes that promote storm water quality and reduce runoff while meeting FAA requirements by discouraging wildlife;
- f. Refine planning and guidelines for incorporating sustainability principles as defined in LEED credits related to site planning, transportation, water quality and conservation, and waste reduction into all future development;

- g. Utilize comprehensive systems-engineering and planning to evaluate the synergies of various buildings, systems, and development to determine feasibility of implementing high-performance building and district-scale solutions for net-zero and regenerative energy, water and waste.
- h. Coordinate with DEN aviation planning, landside planning and engineering projects;
- i. Coordinate with other DEN on-call consultants.
- j. Assist DEN RE with securing entitlement approvals from local, state and federal agencies to support commercial development of DEN land;
- k. Assist DEN RE in the presentation of project recommendations to internal leadership, and external stakeholders;
- l. Provide concept images for marketing efforts and assist with attracting tenants;
- m. Assist DEN RE with prioritization of projects and programs;
- n. Coordinate with DEN staff and consultants on project feasibility analysis, including the total cost of ownership or lifecycle cost analysis;
- o. Assist DEN staff and their consultant team of financial advisors and brokers in the evaluation of phasing strategies and project delivery approaches.
- p. Assist DEN RE with inter-agency and other local, state and federal agency coordination.
- q. Provide contract administration for sub-consultants to coordinate and submit monthly invoices and progress reports in accordance with DEN standards and provide program management assistance to DEN RE team.
- r. Assist DEN RE with monitoring project progress and providing project oversight.

EXHIBIT B

Key Personnel for Professional Design Services Task-Orders, Article II, D

Name and Job Title	Firm (Include Subconsultants)
Andrew Irvine, Principal Urban Designer	Stantec Architecture Inc.
John Yonushewski, Principal Architect	Stantec Architecture Inc.
Alexander Thome, Project Manager	Stantec Architecture Inc.
Nancy Locke, Urban Designer IV	Stantec Architecture Inc.
Matt Shawaker, Urban Designer IV	Stantec Architecture Inc.
Rachel Bannon-Godfrey, Sustainability Director	Stantec Architecture Inc.
David Dixon, Principal Urban Designer	Stantec Architecture Inc.
Ryan Dawson, Architect IV	Stantec Architecture Inc.
Rod Schebesch, Principal, Transportation Planner	Stantec Architecture Inc.
George Cole, Transportation Planner	Stantec Architecture Inc.
Drew Leff, Principal, Real Estate Advisor	Stantec Architecture Inc.
Maixuan Phan, Real Estate Advisor	Stantec Architecture Inc.
Liza Cohen, Transportation Planner IV	Stantec Architecture Inc.
Jason Schrieber, Transportation Planner IV	Stantec Architecture Inc.
Jeffrey Simon, Principal, Real Estate Advisor	Stantec Architecture Inc.
Michael Musgrave, Principal, Program Specialist	Stantec Architecture Inc.
Amy Broughton, Principal, Financial Analyst	Stantec Architecture Inc.
Jeff Sauser, Urban Designer III	Stantec Architecture Inc.
Larry Weeks, Principal, Designer	Stantec Architecture Inc.
Jeff Weber, Senior Environmental Graphic Designer	Stantec Architecture Inc.
Nate Hawley, Senior Environmental Graphic Designer	Stantec Architecture Inc.
Bruce O'Donnell, Principal, Real Estate Advisor	STARBOARD Realty Group, LLC
Arleen Taniwaki, Principal, Financial Analyst	ArLand LLC DBA ArLand Land Use Economics
Mary L. Powell, Principal, Environmental Planner	CORVUS Environmental Consulting LLC

Vicki David, Principal	Iron Horse Architects, Inc.
Jeff Fleischer, Architect IV	Iron Horse Architects, Inc.
Molly Blakley, Architect III	Iron Horse Architects, Inc.
John Lutz, Architect III	Iron Horse Architects, Inc.
Heather Noyes, Manager of Landscape Architecture	Parks & Gardens LLC d/b/a StudioCPG
Billy Gregg, Manager of Landscape Architecture	Parks & Gardens LLC d/b/a StudioCPG
Jamie Mandel, Managing Director/Principal	Rocky Mountain Institute
Victor Olgyay, Principal	Rocky Mountain Institute
Seth Coan, Senior Energy Consultant	Rocky Mountain Institute
Sheldon Mendoca, Senior Energy Consultant	Rocky Mountain Institute
Matthew Jungclaus, Project Manager	Rocky Mountain Institute

Billing Rates for Professional Design Services Task-Orders

Billing Rates for Professional Design Services Task-Orders are defined below, subject to the CPI adjustment provision in Article IV.E

Job Title	Hourly Rate charged to the City (range, based on experience within job classification)
Principal	\$200 - \$325
Project Manager	\$147 - \$180
Principal Designer	\$229 - \$236
Designer 4	\$137 - \$158
Designer 3	\$108 - \$129
Designer 2	\$108 - \$129
Designer 1	\$108
Principal Urban Designer	\$151 - \$229
Urban Designer 4	\$151 - \$229
Urban Designer 3	\$151 - \$158
Urban Designer 2	\$121 - \$130
Urban Designer 1	\$102 - \$121
Director of Design	\$152 - \$175
Design Manager	\$151 - \$180
Principal Landscape Architect	\$175 - \$236
Landscape Architect 4	\$151 - \$175
Landscape Architect 3	\$130 - \$144
Landscape Architect 2	\$102 - \$121
Landscape Architect 1	\$102
Manager of Landscape Architecture	\$150 - 175
Principal Transportation Planner	\$216 - \$324
Transportation Planner IV	\$151 - \$180

Planner II	\$121
Sustainability Director	\$151 - \$180
Principal Architect	\$157 - \$229
Architect IV	\$137 - \$156
Architect III	\$129 - \$151
Architect II	\$102 - \$115
Architect I	\$95 - \$108
Energy Consultant	\$111 - \$118
BIM Manager	\$110 - \$137
Senior Environmental Graphic Designer	\$137 - \$156
Program Specialist	\$300 - \$325
Managing Consultant (Finance)	\$200 - \$240
Principal Financial Analyst	\$200 - \$240
Financial Analyst	\$125 - \$165
Principal Real Estate Advisor	\$250 - \$323
Real Estate Advisor	\$180 - \$205
Environmental Planner	\$154
Project Administrator	\$70 - \$105
Communications Staff	\$105 - \$186

**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
Denver CO 80249

CONTRACT NAME & NUMBER TO WHICH THIS INSURANCE APPLIES: 201737179 – On Call Professional Design Services

I. MANDATORY COVERAGE

Colorado Workers' Compensation and Employer Liability

Minimum Limits of Liability (In Thousands) \$100, \$500, \$100

1. Contractor expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of the Contractor's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement. Any such rejections previously effected, must have been revoked as of the date Contractor executes this Agreement.
2. If the contractor/consultant is a sole proprietor, Workers' Compensation is waived per State of Colorado law.

Commercial General Liability

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

The policy must provide the following:

1. That this Agreement is an Insured Contract under the policy.
2. Defense costs are outside the limits of liability.
3. A severability of interests or separation of insureds provision (no insured vs. insured exclusion).
4. A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.
5. The full limits of coverage must be dedicated to apply to each project/location.

Business Automobile Liability

Minimum Limits of Liability (In Thousands):

Combined Single Limit	\$1,000
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The policy must provide the following:

1. Coverage applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.
2. If transporting wastes, hazardous material, or regulated substances, Contractor shall carry a pollution coverage endorsement and an MCS 90 endorsement on their policy.

II. ADDITIONAL COVERAGE

Excess/Umbrella Liability

Minimum Limits of Liability (In Thousands):

Umbrella Liability Non-Controlled Area	Each Occurrence and aggregate	\$1,000
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The policy must provide the following:

1. Coverage must be written on a "follow form" or broader basis.
2. Any combination of primary and excess coverage may be used to achieve required limits.
3. If operations include unescorted airside access at DIA, then a \$9 million Umbrella Limit is required.

Professional Liability, Design, Engineering and Construction Supervision

Minimum Limits of Liability (In Thousands)

Per Claim	\$1,000
Aggregate	\$1,000

The policy must provide the following:

1. Coverage shall extend to cover the full scope of all cost estimating work performed under the insured's contract with City.
2. Coverage shall apply for three (3) years after project is complete.
3. Coverage is to be on a primary basis, if other professional coverage is carried.

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:

1. For Commercial General Liability, Auto Liability and Excess Liability/Umbrella (if required), Contractor and subcontractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.
2. All coverage provided herein shall be primary and any insurance maintained by the City shall be considered excess.
3. For all coverages required under this Agreement, Contractor's insurer shall waive subrogation rights against the City.
4. 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.
5. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better.
6. For claims-made coverage, the retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier.
7. 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.