

FIRST AMENDED AND RESTATED PEÑA BOULEVARD WELCOME SIGN AGREEMENT

BETWEEN

CITY AND COUNTY OF DENVER

AND

**PANASONIC ENTERPRISE SOLUTIONS COMPANY
Division of Panasonic Corporation of North America**

AT

DENVER INTERNATIONAL AIRPORT

**FIRST AMENDED AND RESTATED PEÑA BOULEVARD WELCOME SIGN AGREEMENT
DENVER INTERNATIONAL AIRPORT**

This First Amended and Restated Peña Boulevard Welcome Sign Agreement (“Agreement”), Contract Number PLANE201631761-01, is made and entered into as of the date stated on the signature page (“Effective Date”), by and between the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado (“City”), and **PANASONIC ENTERPRISE SOLUTIONS COMPANY (“PESCO”), Division of Panasonic Corporation of North America**, a corporation organized under the laws of Delaware and authorized to do business in Colorado (“Contractor”). The City and Contractor are sometimes collectively referred to as the “Parties.”

RECITALS

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

WHEREAS, the City solicited proposals through a competitive selection process for On-Call Innovation Partners consulting services to assist DEN with the implementation of its strategic objectives utilizing innovative, technology-based solutions;

WHEREAS, PESCO was selected to provide Innovation Partners consulting services and the City and PESCO entered into an On-Call Innovation Partners Agreement on March 8, 2016 (the “Innovation Partners Agreement”);

WHEREAS, PESCO submitted a task order proposal to DEN pursuant to the Innovation Partners Agreement for the creation and maintenance of a state-of-the-art digital welcome sign (the “DEN Welcome Sign”) and for the recovery of the capital cost of the DEN Welcome Sign through PESCO’s sale and management of advertising content to be displayed on the DEN Welcome Sign;

WHEREAS, DEN accepted PESCO’s task order proposal and issued a Task Order under the Innovation Partners Agreement for PESCO to design, prototype, fabricate and deliver the DEN Welcome Sign (the “Innovation Partners Task Order”), attached hereto as “Exhibit A”;

WHEREAS, the Parties entered into a Peña Boulevard Welcome Sign Cost Recovery, Services and Advertising License Agreement dated December 23, 2016 (the “Original Agreement”) to pursue recovery of the capital investment in the DEN Welcome Sign and define the roles and responsibilities of the Parties for the maintenance, repair and operation of the DEN Welcome sign;

WHEREAS, the Parties desire to amend and restate the Original Agreement to adjust the allocation of cost, risk, and recovery of capital investment, and to more precisely define the scope of work for maintenance and repair of the DEN Welcome Sign and establish Service Levels for the operation and content management of the DEN Welcome Sign; and,

WHEREAS, the premises set forth in these recitals are hereby made a part of this Agreement;

NOW THEREFORE, for good and valuable consideration the sufficiency of which is hereby acknowledged; the Parties hereto, intending to be legally bound by the terms and conditions of this Agreement, agree as follows:

SECTION 1 – GENERAL

A. Consideration.

The City and Contractor enter into this Agreement for and in consideration of the payment of compensation by City as herein provided, the construction of all Improvements by Contractor as herein provided, the operation, support, maintenance and content management of the DEN Welcome Sign by Contractor and the performance and observance by the Parties of the terms, conditions, requirements, covenants and agreements set forth herein.

B. Incorporation of Attached Exhibits and Addenda.

The Exhibits and Addenda attached and referred to in this Agreement and all general rules and regulations adopted by the City or the Chief Executive Officer of the Department of Aviation for the management, operation, or control of the Airport, either promulgated by the City on its own initiative or in compliance with regulations or actions of the FAA or other authorized agency, as they may be amended from time to time, are intended to be, and hereby are, deemed incorporated into this Agreement by this reference.

SECTION 2 – DEFINITIONS AND INTERPRETATIONS

All terms shall be defined as set forth in the Exhibits, and as defined elsewhere in this Agreement.

SECTION 3 – SCOPE OF WORK

A. Contractor's Scope of Work and Service Level.

Contractor shall design, develop, install, and refurbish in accordance with Exhibit A, Scope of Work, and shall operate, manage, and maintain in accordance with Exhibit B, Service Level Agreement, a state of the art Welcome Sign and Advertising Display at the Assigned Location for the term of this Agreement subject to the terms, conditions and covenants of this Agreement.

B. Construction Obligation.

PESCO's construction obligation is as described in Exhibit A, the Innovation Partners Task Order

C. Completion of Design and Placement.

Contractor covenants and agrees that all construction will be Substantially Complete by a date mutually agreed by the Parties. Contractor agrees that time is of the essence in the performance of terms of this agreement.

D. Express Restrictions.

1. Contractor shall not use any part of the Airport for any unlawful purpose whatsoever and shall not commit or permit any nuisance for or upon the Airport property by any of the Contractor's employees, assigns, contractors, or agents.

2. Contractor agrees that it will not engage in any transaction, activity or conduct which would result in a conflict of interest under this Agreement as defined by the Code of Ethics for the City and County of Denver, the Charter of the City and County of Denver and the Denver Revised Municipal Code. Contractor 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 Contractor by placing the Contractor's own interests, or the interest of any party with whom the Contractor 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 Contractor written notice which describes the conflict and opportunity to eliminate or cure the conflict. The Contractor shall have forty-five (45) days after the notice is received to eliminate or cure the conflict of interest in a manner that is acceptable to the City.

E. Rights Not Exclusive.

1. The City reserves the right to allow others to conduct operations and/or sell goods or services, including but not limited to advertising, in other locations at the Airport that are the same, similar, or even identical to those described in this Agreement. Contractor understands and agrees that its right to conduct operations and/or sell any goods or services at the Airport is not exclusive and that the use of the property subject to this Agreement is restricted by all applicable rules, regulations, statutes, or ordinances promulgated by any federal, state, or municipality having jurisdiction over the Airport.
2. All locations not expressly set forth in Exhibit A, including but not limited to indoor advertising, additional outdoor advertising, Sponsorships, Wi-Fi, and loading bridge interiors and exteriors are specifically excluded from within the scope of this Agreement.
3. Nothing in this Agreement shall be construed to:
 - a. Prevent the City from advertising or promoting the Airport, the City of Denver, or any events that may occur in, or are sponsored by, the City of Denver, in any medium of its choice, using any of the Airport's facilities.
 - b. Prohibit any airline, tenant, concessionaire or Contractor in the Airport from engaging in display advertising of their own or related businesses within their leased premises, inside or upon storefronts in accordance with their agreements with the City.
 - c. Prevent the City from advertising or selling the right to advertise to any entity at any location not specifically listed on Exhibit A.

F. Means of Access.

1. **Non-Exclusive Access.** Contractor, its agents, invitees, guests, employees, contractors and suppliers have a non-exclusive right of ingress to and egress from the Assigned Location by a means of access located outside the boundaries of such space as specified by City. Such access shall, without exception, be in common with such other persons (including, at the option of the City, the general

public) as the City may authorize or permit, and the City may at any time close, relocate, reconstruct or modify such means of access, provided that a reasonably convenient and adequate means of ingress and egress is available for the same purpose.

2. **Subject to Security.** Such right of access is subject to such rules and regulations as the Chief Executive Officer of the Department of Aviation, the FAA, TSA, or other governmental authority, may reasonably implement. Moreover, without exception, nothing in this Agreement shall be construed to prevent the City from charging the operators of vehicles carrying passengers and property a fee for the privilege of entering upon the Airport or using the roadways in or on the Airport, or soliciting passengers upon the Airport, or otherwise operating on the Airport; and City reserves the right to make such charges provided that they do not discriminate unreasonably against the operators of vehicles used for carrying officers, employees, passengers or property of Contractor.

3. **City's Right of Inspection; Access.** The City, its agents and employees, retain at all times during the Term of this Agreement, the full right of entry in and to the Assigned Location for any purpose necessary, incidental to or in connection with its obligations hereunder, in the exercise of its governmental functions, or for the purpose of making any inspection it deems necessary, with or without advance notice, without liability, and without in any manner affecting Contractor's obligations under this Agreement. Without limiting the foregoing, such entry may be made to make such repairs, alterations, improvements, or additions as the City is required to make or authorized to make under this Agreement, to determine whether Contractor has complied with the terms and conditions of this Agreement, to cure any breach that remains uncured by Contractor after reasonable notice and opportunity to cure have been given to Contractor. In addition, during any emergency, the City, or its agents, may enter the Assigned Location forcibly, if necessary. Nothing herein contained, however, shall be deemed to impose upon the City any obligation, responsibility or liability whatsoever, for any care, maintenance or repair, except as otherwise expressly provided for in this Agreement. No such reasonable entry by or on behalf of the City upon the Assigned Location shall constitute or cause a termination of this Agreement nor shall such entry be deemed to constitute an interference with the use thereof by the Contractor.

SECTION 4 – TERM

This Agreement shall be effective and binding upon the Parties as of the date signed by all signatories of the City and County of Denver (the "Effective Date"). The Term of this Agreement shall terminate on December 31, 2028, unless terminated sooner under the provisions of this Agreement.

SECTION 5 – COMPENSATION AND PAYMENT

A. Fee. The City agrees to pay to the Contractor, and the Contractor agrees to accept as its sole compensation for construction and delivery of the DEN Welcome Sign (in such amounts as described in Attachment 6 to **Exhibit B**), and services rendered and costs incurred under this

Agreement, the amounts set forth on **Exhibit B** and as may be further described herein.

B. Reimbursement Expenses. There are no reimbursable expenses allowed under this Agreement, unless approved in writing, in advance, by the City.

C. Invoicing.

1. Except as specifically defined in Section 5.C.2., below, regarding invoicing for that portion of the Maximum Contract Liability allocated to Final Construction and Delivery in Section 5.D.1.(c), Contractor shall provide the City with a monthly invoice in a format and with a level of detail acceptable to the City. The City shall pay any undisputed amounts invoiced pursuant to this Section 5.C.1 and 5.C.2. in accordance with City's standard invoicing and payment procedures and its obligations under the City's Prompt Payment Ordinance

2. Contractor shall invoice, by three separate invoices at the times described below, for that portion of the Maximum Contract Liability allocated to Final Construction and Delivery in Section 5.D.1.(c) as follows:

(a) Contractor shall invoice the City for seventy percent (70%) of the Maximum Contract Liability allocated to Final Construction and Delivery in Section 5.D.1(c) upon execution of this agreement by all signatories hereto;

(b) Contractor shall invoice the City for twenty-five percent (25%) of the Maximum Contract Liability allocated to Final Construction and Delivery in Section 5.D.1(c) upon mutual agreement of the Parties that the DEN Welcome Sign has reached substantial completion;

(c) Contractor shall invoice the City for five percent (5%) of the Maximum Contract Liability allocated to Final Construction and Delivery in Section 5.D.1(c) upon final completion and acceptance by the City of the DEN Welcome Sign.

D. Maximum Contract Liability.

1. Any other provision of this Agreement notwithstanding, in no event shall the City be liable to pay for services rendered and expenses incurred by the Contractor under the terms of this Agreement for any amount in excess of Fourteen Million, Five Hundred Sixteen Thousand, Nine Hundred Fifty One Dollars and 00 Cents (\$14,516,951.00) (the "Maximum Contract Liability"). Funding under the provisions of this paragraph 4.D. may be payable from the City's Airport System Capital Replacement Fund and/or Airport Operations and Maintenance Fund. The Contractor acknowledges that the City is not obligated to execute an Order, agreement or an amendment to this Agreement for any services and that any services performed by Contractor beyond that specifically described in an Order are performed at Contractor's risk and without authorization under this Agreement. The Maximum Contract Liability is allocated as follows:

(a) DEN Pre-development Costs:	\$ 684,826.00
(b) DEN Capital Investment:	\$6,362,452.00
(c) Final Construction and Delivery:	\$4,500,000.00
(d) Operations and Maintenance, Content management, and additional Services:	\$2,969,673.00

2. Carry Over and Carry Back. If the total amount for any of the allocations described above are less than the amount allocated, the amount by which the allocation exceeds the cost or fee may be used, with the written approval of the CEO or their designee, to pay costs or fees for additional and related services rendered by Contractor in any other services if in the CEO or her designee's judgment, such costs or fees are reasonable and appropriate.

3. The Parties agree that the City's payment obligation, whether direct or contingent, shall extend only to funds appropriated as stated herein and encumbered for the purpose of this Agreement. The Parties agree that (a) the City does not by this Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years and (b) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

SECTION 6 – ACCOUNTING RECORDS AND REPORTS

A. U.S. Government Access.

As provided below and subject to compliance with all applicable laws, the Federal Aviation Administration, the Comptroller General of the United States and any of their duly authorized representatives shall have access within the Denver metropolitan area to any books, documents, papers and records of the Contractor and its Operators which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees that such records will contain information concerning the personnel, hours and specific tasks performed, along with the federal project number, if applicable, and Contractor covenants and agrees to include in each sublicense agreement, this and other pertinent requirements of this Section.

SECTION 7 [INTENTIONALLY OMITTED]

SECTION 8 [INTENTIONALLY OMITTED]

SECTION 9 – SERVICE STANDARDS AND ADVERTISING GUIDELINES

The Services Standards shall be in accordance with the standards set forth in the Service Level Agreement attached hereto as Exhibit B. PESCO, as the Content Manager, hereby agrees to manage advertisements in a manner that is consistent with the Airport's goals of avoiding controversy, preserving marketing potential, and minimizing disruption to the passenger experience.

SECTION 10 – CONTRACTOR'S OBLIGATIONS

A. Continuous Operation.

Contractor shall continuously operate the Welcome Sign throughout the Term of this Agreement. The failure of Contractor to continuously operate the Welcome Sign, or any part thereof, for any period of time, except as may otherwise be permitted under this Agreement, shall constitute a Contractor Default. Contractor shall be temporarily excused from complying with this covenant

as necessary during the renovation or remodeling of Assigned Location, as otherwise may be permitted under this Agreement, and as approved in writing by the Chief Executive Officer of the Department of Aviation.

SECTION 11 – RECOVERY OF CITY EXPENSE TO FULFILL CONTRACTOR'S OBLIGATIONS

- A.** If the City has paid any sum or sums or has incurred any obligations or expense for which the Contractor has agreed to pay or reimburse the City, or if the City is required or elects to pay any sum or sums or insure any obligations or expense (a) by reason of failure, neglect, or refusal of the Contractor to perform or fulfill anyone or more of the conditions, covenants, or agreements contained in this Agreement beyond any applicable notice or cure period; or (b) as a result of an act of omission of the Contractor contrary to the conditions, covenants, and agreements contained in this Agreement for which City has provided Contractor written notice and an opportunity to cure as provided herein, then, within seven (7) business days after written notice thereof by the City, the Contractor agrees to pay to the City the sum or sums so paid or the expenses so incurred shall be and become Additional Fees, recoverable by the City to the fullest extent of the law.
- B.** For all purposes under this Section, and in any suit, action, or proceeding of any kind between the Parties hereto, any receipt showing the payment of any sum or sums by the City for any work done or material furnished shall be evidence against the Contractor that the amount of such payment was necessary and reasonable. In the event the City brings suit to collect any delinquent payments due it by the Contractor, the City shall be entitled to recover all court costs and its reasonable attorney fees. Should the City elect to use its own operating and maintenance staff in making any repairs, replacements, and/or alterations and to charge the Contractor with the cost of same, any timesheet of any employee of the City showing hour of labor or work allocated to any such repair, replacement, and/or alteration, or any stock requisition of the City showing the issuance of materials for use in the performance thereof, shall be evidence against the Contractor that the amount of such charge was necessary and reasonable.

SECTION 12

[INTENTIONALLY OMITTED]

SECTION 13

[INTENTIONALLY OMITTED]

SECTION 14 – UTILITIES AND SERVICE

A. Utilities.

Utilities shall be provided by the City.

B. Access to Facility and Systems.

Contractor shall not do or permit to be done anything which might interfere with the effectiveness or accessibility of utility, heating, ventilating or air conditioning systems or portions thereof on the

Assigned Location or elsewhere on the Airport, nor do or permit to be done anything which may interfere with free access and passage in the Assigned Location or the public areas adjacent thereto, or hinder police, firefighting or other emergency personnel in the discharge of their duties.

SECTION 15 – NO PERSONAL LIABILITY

Notwithstanding any term or provision of this Agreement to the contrary, no director, officer, manager, member or employee of either Party hereto shall be held personally liable under this Agreement or because of its execution or attempted execution or enforcement.

SECTION 16 – DEFENSE AND INDEMNITY

A. Defense and Indemnity.

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

B. Waiver of Consequential Damages.

Each party hereby waives all rights to recover consequential, incidental, exemplary or punitive damages from the other party, including lost profits or income, claims of the other party’s customers, Contractors, and contractors, and other similar claims for damages.

C. Claims Against Contractor.

If a claim, demand, suit, or other action is made or brought by any person against the Contractor arising out of or concerning this Agreement, the Welcome Sign, or the Assigned Location, the Contractor shall give written notice thereof, to the City within ten (10) working days after being notified of such claim, demand, suit, or action. Such notice shall enclose a true copy of all written claims. If the claim is not written, or the information is not discernable from the written claim, Contractor shall state the date of notification of any such claim, demand, suit, or other action, the names and addresses of the person asserting such claim or that instituted or threatened to institute any type of action or proceeding, the basis of such claim, action, or proceeding, and the name of any person against whom such claim is being made. The notice shall be given to the City as provided herein, and to the City Attorney at 1437 Bannock St., RM 353, Denver, CO 80202.

SECTION 17 –INSURANCE AND GUARANTEES

A. Insurance.

1. **Required Insurance.** Contractor agrees to secure at its own expense and to keep in force at all times during the Term (or any extended term) hereof, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of obligations under this Agreement by the Contractor, its agents, representatives or employees. The types and amounts of insurance coverage Contractor must procure are specified in the Certificate of Insurance for Aviation, attached hereto as **Exhibit C**. Insurance requirements set forth on **Exhibit C** do not limit in any way the indemnity covenants contained in this Agreement or the amount or scope of liability of Contractor under this Agreement. The amounts listed indicate only the minimum amounts of insurance coverage that the City is willing to accept to help insure full performance of all terms and conditions of this Agreement. Contractor specifically agrees to comply with each condition, requirement or specification set forth in **Exhibit C** during all periods when the required coverage is in effect. Insurance must be maintained without any lapse in coverage during the entire Term (or any extended term) of this Agreement. Insurance canceled without the City's consent or failure by Contractor to provide evidence of renewal within seven (7) days after written notice by City upon renewal of insurance policies is a material breach and shall be deemed an immediate Event of Default under this Agreement. All insurance required by Contractor under this Agreement shall meet the following minimum requirements.
2. **City as Additional Insured.** The City shall be named as an additional insured in each general liability policy under blanket endorsement specified in Exhibit C. Such insurance shall provide cross-liability coverage equivalent to the standard Separation of Insured's clause published by the Insurance Services Offices or a successor organization. Each certificate shall further provide that any coverage afforded the City as additional insured shall apply as primary insurance and other insurance issued to the City shall apply as excess and non-contributing insurance, and will not require any contribution from any insurance or self-insurance carried by the City with respect to the liabilities assumed by Contractor under this Agreement.
3. **Waiver of Subrogation.** Contractor and the City waive any right of action that they and/or their insurance carriers might have against each other (including their

respective employees, officers, commissioners, or agents) or against other tenants of the Airport for any loss, cost, damage, or expense (collectively "Loss") to the extent that such loss or damage is covered by any property insurance policy or policies maintained or required to be maintained pursuant to this Agreement and to the extent that such proceeds (which proceeds are free and clear of any interest of third parties) are received by the party claiming the Loss. Contractor also waives any right of action it and/or its insurance carrier might have against the City (including its respective employees, officers, commissioners or agents) for any Loss, whether or not such Loss is insured. If any of Contractor's applicable insurance policies do not allow the insured to waive the insurer's rights of subrogation prior to a Loss, Contractor shall cause it to be endorsed with a waiver of subrogation that allows the waivers of subrogation required by this Agreement.

4. **Company Ratings.** Policies of insurance must be written by companies having an A.M. Best rating of "A-" or better or equivalent.
5. **Certificates Required.** Contractor shall furnish the City and County of Denver with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Agreement. The certificate of insurance for each policy is to be signed by a person authorized by the insurer to bind coverage on its behalf. All certificates required by this Agreement (including renewal certificates) shall be sent directly to Denver International Airport, Concessions Management Section, Airport Office Building, Room 9870, 8500 Pena Boulevard, Denver, Colorado 80249. The City's contract control number for this Agreement shall be noted on each certificate of insurance. All certificates and any required endorsements are to be received and approved by the City and each insurance policy required by this Agreement must be in effect at or prior to the Effective Date (or date of actual possession). Any renewal certificate shall be delivered to the Airport Concessions Management Section upon renewal of policies, except for any policy expiring after the Expiration Date of this Agreement or any extension thereof. Certificates evidencing the existence of the policies, in such form as the Chief Executive Officer of the Department of Aviation may require, shall be delivered to the Airport Concessions Management Section prior to the Effective Date.
6. **Contractor's Risk.** The City in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the terms and conditions of this Agreement by the Contractor, its agents, representatives or employees. Contractor shall assess its own risks and as it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. Contractor is not relieved of any liability or other obligations assumed or pursuant to the Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration or types. In no event shall the City be liable for any: (a) business interruption or other consequential damages sustained by Contractor; (b) damage, theft or destruction of Contractor's inventory, Improvements, or property of any kind; or (c) damage, theft or destruction of an automobile, whether or not insured. If at any time any of the insurance policies shall be or become unsatisfactory to the City as to form or substance, or if any of the carriers issuing such policies shall be or become unsatisfactory to the City, Contractor shall promptly obtain a new and satisfactory replacement policy and give the City an updated certificate of insurance that complies with the new insurance requirements of the City.

7. **Governmental Immunity.** 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.

SECTION 18 – INTELLECTUAL PROPERTY; OWNERSHIP

A. INTELLECTUAL PROPERTY INDEMNIFICATION AND LIMITATION OF LIABILITY.

Contractor shall (i) defend City against any third party claim that the work, or materials provided by Contractor to City infringe a patent, copyright or other intellectual property right, and (ii) pay the resulting costs and damages finally awarded against City by a court of competent jurisdiction or the amounts stated in a written settlement signed by Contractor. The foregoing obligations are subject to the following: the City (a) notifies the Contractor promptly in writing of such claim, (b) grants the Contractor sole control over the defense and settlement thereof subject to the final approval of the City Attorney, and (c) reasonably cooperates in response to request for assistance. Should such a claim be made, or in the Contractor's opinion be likely to be made, the Contractor may, at its option and expense, (1) procure for the City the right to make continued use thereof, or (2) replace or modify such so that it becomes non-infringing. If the preceding two options are commercially unreasonable, then Contractor shall refund the portion of any fee for the affected work. The Contractor shall have no indemnification obligation to the extent that the infringement arises out of or relates to: (a) the use or combination of the subject Work and/or materials with third party products or services, (b) use for a purpose or in a manner for which the subject Work and/or materials were not designed in accordance with Contractor's standard documentation; (c) any modification to the subject Work and/or materials made by anyone other than the Contractor or its authorized representatives, if the infringement claim could have been avoided by using the unaltered version of the Work and/or materials, (d) any modifications to the subject Work and/or materials made by the Contractor pursuant to the City's specific instructions, or (e) any technology owned or licensed by the indemnitee from third parties. THIS SECTION STATES THE INDEMNITEE'S SOLE AND EXCLUSIVE REMEDY AND THE INDEMNITOR'S ENTIRE LIABILITY FOR THIRD PARTY INFRINGEMENT CLAIMS.

B. COMPLIANCE WITH PATENT, TRADEMARK, COPYRIGHT AND SOFTWARE LICENSING LAWS.

1. The Contractor agrees that all work performed under this Agreement shall comply with all applicable patent, trademark, copyright and software licensing laws, rules, regulations and codes of the United States. The Contractor 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 the Contractor prepares any design documents which specify any material, equipment, process or procedure which is protected, the Contractor shall disclose such patents, trademarks and copyrights in the construction drawings or specifications.

2. The Contractor further agrees to release, indemnify and save harmless the City, its officers, agents and employees, pursuant to Section 16, "Defense and Indemnity," and Section 18.A, "Intellectual Property Indemnification and Limitation of Liability," 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 violates or infringes upon any patent, trademark, copyright or software license protected by law, except in cases where the Contractor's personnel are working under the direction of City personnel and do not have direct knowledge or control of information regarding patents, trademarks, copyrights and software licensing.

C. INTELLECTUAL PROPERTY RIGHTS; OWNERSHIP OF DEN WELCOME SIGN, HARDWARE AND SOFTWARE.

1. Ownership. The City and Contractor intend that all property rights to any and all materials, text, logos, documents, booklets, manuals, references, guides, brochures, advertisements, music, sketches, plans, drawings, prints, photographs, specifications, software, data, products, ideas, inventions, and any other work or recorded information created by the Contractor and paid for by the City pursuant to this Agreement, in preliminary or final forms and on any media (collectively, "Materials"), shall belong to the City. The Contractor shall disclose all such items to the City. To the extent permitted by the U.S. Copyright Act, 17 USC § 101, et seq., the Materials are a "work made for hire" and all ownership of copyright in the Materials shall vest in the City at the time the Materials are created. To the extent that the Materials are not a "work made for hire," the Contractor hereby sells, assigns and transfers all right, title and interest in and to the Materials to the City, including the right to secure copyright, patent, trademark, and other intellectual property rights throughout the world and to have and to hold such copyright, patent, trademark and other intellectual property rights in perpetuity. Upon the City's written concurrence that the hardware and software are satisfactorily installed and payment to the Contractor by City under the terms of this Agreement, title to the hardware shall automatically pass to the City. At any time, City may demand possession of any City property in Contractor's possession, which shall be delivered by Contractor to City without undue delay.

2. License Grant. *Reserved.*

3. Title to DEN Welcome Sign / Ownership of DEN Welcome Sign. Title to and Ownership of the DEN Welcome Sign shall vest in the City immediately upon acceptance by the City of the Completed DEN Welcome Sign.

4. Reservation of Rights. Contractor reserves all rights not expressly granted to City in this Agreement. Except as expressly stated, nothing herein shall be construed to: (1) directly or indirectly grant to a receiving party any title to or ownership of a providing party's intellectual property rights in services or materials furnished by such providing party hereunder, or (2) preclude such providing party from developing, marketing, using, licensing, modifying or otherwise freely exploiting services or materials that are similar to or related to the Work or materials provided hereunder. Notwithstanding anything to the contrary herein, City acknowledges that Contractor has the right to use any City provided materials solely for the benefit of City in connection with the Work performed hereunder for City.

SECTION 19 – LICENSES, FEES, TAXES AND LIENS

A. Licenses, Fees, Taxes and Liens

1. **Business Licenses.** Contractor, at all times and at its sole cost and expense, shall maintain current federal, State, and local licenses, certificates, permits and any other such documents necessary or required by law for the operation of Contractor's business at the Airport. Contractor shall allow duly authorized representatives of governmental entities access to the Assigned Location for inspection purposes.
2. **Doing Business in Colorado.** In the event that Contractor shall be a corporation or a limited liability company, the Parties executing this Agreement on behalf of Contractor hereby covenant and warrant that Contractor is a duly qualified corporation or limited liability company and all necessary steps have been taken to become authorized to do business in Colorado; corporate taxes have been paid to date; and all future forms, reports, fees and other documents or payments necessary to comply with applicable laws will be filed or paid when due.
3. **Fees.** Contractor agrees to promptly pay all excises, license fees and permit fees of whatever nature applicable to its operations hereunder and to take out and keep current and display when required all municipal, state or federal licenses required for the conduct of its business at and upon the Assigned Location and further agrees not to permit any of said excises, license fees or permit fees to become delinquent.
4. **Taxes and Assessments.** The Contractor shall pay all taxes and assessments of whatever character that may be levied, assessed, or charged upon the property, possessory interest, personal, occupied, used, or owned by the Contractor, or upon the rights of the Contractor to occupy the Assigned Location, or upon the Contractor's Tenant Improvements and any other property thereon, or upon the Contractor's rights or operations hereunder. The Contractor shall have the right at its sole cost or expense to contest such taxes as may have been or may be levied, assessed or charged.
5. **Liens.** Contractor also shall not permit, create, or suffer to be created or to remain, any mechanic's, materialman's or any other lien to become attached or be foreclosed upon the Assigned Location or improvements thereto, or any part or parcel thereof, by reason of any construction, services, work or labor performed or materials furnished by any mechanic or materialman. If any such lien shall at any time be filed, Contractor may contest the same in good faith. Notwithstanding such contest, Contractor shall, within fifteen (15) calendar days after the filing thereof, cause such lien to be released of record by payment, bond, or order of a court of competent jurisdiction. In the event Contractor fails to clear the record of any such lien within the aforesaid period, the City may remove said lien by paying the full amount thereof, or by bonding, or in any other manner the City deems appropriate, without investigating the validity thereof, and irrespective of the fact that Contractor may contest the propriety or the amount thereof. Thereafter Contractor shall pay the City the amount paid by the City in connection with the discharge of said lien. Upon demand, Contractor agrees to reimburse the City as provided in this Agreement. Nothing contained in this Agreement shall be construed as consent on the part of the City to subject the Assigned Location to any lien or liability.
6. **Prompt Payment.** Contractor agrees to furnish to the Chief Executive Officer of the Department of Aviation, upon request, duplicate receipts or other satisfactory

evidence showing the prompt payment by it of Social Security, unemployment insurance and worker's compensation insurance, and all required licenses and all taxes. Contractor further agrees to promptly pay when due all bills, debts and obligations incurred by it in connection with its operations hereunder and not to permit the same to become delinquent and to suffer no mortgage, judgment or execution to be filed against the Assigned Location or improvements thereon which will in any way impair the rights of the City under this Agreement.

SECTION 20 – ENVIRONMENTAL COMPLIANCE

A. Compliance with Environmental Regulations.

Contractor, in conducting any activity on the Assigned Location or in any common area outside of the Assigned Location, shall comply with all applicable local, state or federal environmental rules, regulations, statutes, laws or orders (collectively "Environmental Requirements") including but not limited to Environmental Requirements regarding the storage, use and disposal of Hazardous Materials or Special Wastes and regarding releases or threatened releases of Hazardous Materials or Special Wastes to the environment. For purposes of this Agreement the terms "Hazardous Materials" shall refer to those materials, including without limitation asbestos and asbestos-containing materials, polychlorinated biphenyls (PCBs), oil or any other petroleum products, natural gas, source material, pesticides, and any hazardous waste, toxic substance or related material, including any substance defined or treated as a "hazardous substance," "hazardous waste" or "toxic substance" (or comparable term) in the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Sec. 9601 et seq. (1990)), the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq. (1990)), and any rules or regulations promulgated pursuant to such statutes or any other applicable federal or state statute. Contractor shall comply with the City's Ordinance 196, as amended on March 18, 1991 (amendments to the City Uniform Public Code related to water conservation fixtures).

Contractor shall acquire and comply with all necessary federal, state and local environmental permits and requirements.

Contractor shall maintain copies of Material Safety Data Sheets (MSDS) for all chemicals used in the operation of the Welcome Sign, including for cleaning and maintenance. This obligation is continuing for the Term (or any extended term) of this Agreement and Contractor shall make this documentation available for inspection by DEN upon request.

Contractor agrees to ensure that its Assigned Location is designed, constructed, operated and maintained in a manner that minimizes environmental impact through appropriate preventive measures and complies with all federal, state and local environmental requirements. Contractor agrees to evaluate methods to reduce the generation and disposal of waste materials. Wastewater from maintenance or operational activities shall be pretreated with sand and grease traps.

In the case of a release, spill or leak as a result of Contractor's construction, operation or maintenance activities, Contractor shall immediately control and remediate the contaminated media to applicable federal, state and local standards. Contractor shall reimburse the City for any penalties and all cost and expense, including without limitation attorney's fees, incurred by the City as a result of the release or disposal by Contractor of any pollutant or hazardous material on the Airport.

B. Waste or Impairment of Value.

Contractor agrees that nothing shall be done or kept in any location subject to this Agreement that might impair the value of the City's property or constitute waste.

C. Unsafe or Hazardous Conditions.

Contractor agrees that nothing shall be done or kept in any location subject to this Agreement and no improvements, changes, alterations, additions, maintenance or repairs shall be made to any location subject to this Agreement which might be unsafe or hazardous to any person or property. Further, Contractor shall not do or permit to be done any act or thing any location subject to this Agreement which will invalidate, suspend or increase the rate of any fire insurance policy required under this Agreement, or carried by the City, covering any location subject to this Agreement or the buildings in which any location subject to this Agreement are located or which, in the opinion of the Chief Executive Officer of the Department of Aviation or the Chief Executive Officer of the Department of Aviation's authorized representative, may constitute a hazardous condition that will increase the risks normally attendant upon the operations contemplated under this Agreement. If, by reason of any failure by Contractor to comply with the provisions of this Section, after receipt of notice in writing from the City, any fire insurance rate on any location subject to this Agreement or on the buildings in which the same is located, shall at any time be higher than it normally would be, then Contractor shall pay the City, on demand, that part of all fire insurance premiums paid by the City which have been charged because of such violation or failure of Contractor; provided, that nothing herein shall preclude Contractor from bringing, keeping or using on or about any location subject to this Agreement such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its business, or from carrying on the normal operations contemplated herein.

Any nuisance, annoyance or hazardous or potentially hazardous condition, on or emanating from any location subject to this Agreement created by Contractor, an Operator or any person or entity acting by, through or under Contractor, shall be corrected immediately upon Contractor's actual knowledge of the condition, or receipt of oral or written notice from the City. If, in the City's sole discretion, such a hazard or potentially hazardous condition presents an unreasonable and imminent risk of bodily injury, the City may require Contractor to close any location subject to this Agreement, without compensation and bar the public from any location subject to this Agreement until the hazard or potentially hazardous condition has been abated. Nothing in this Section shall be deemed to preclude the City from pursuing any available remedy for breach of the provisions of this Agreement. Contractor's failure to correct promptly a nuisance, annoyance or hazardous or potentially hazardous condition under this Section shall be a material breach of this Agreement.

D. Waste Disposal and Recycling.

Contractor shall gather, sort, and transport all garbage, refuse and recyclable materials daily to the City's designated holding area along routes established by the City and in a manner that eliminates spillage and avoids damage to City property. Garbage, refuse and other debris shall be placed in non-broken, non-punctured, new 3-mil trash bags or such other garbage containers as may be required by the City suitable for transportation to a designated bin or compactor in the manner and at the time and places specified by the City. Contractor shall participate in the Airport's waste recycling program. Contractor shall place all garbage, refuse and recyclable materials in the appropriate containers at the City designated holding area, taking all reasonable measures to reduce the amount of waste it generates by requiring suppliers to remove

nonessential over wrap, containers and other packaging, and to use recyclable materials for essential packaging whenever possible. The City currently provides containers for recycling the following: (a) corrugated cardboard; (b) magazines; (c) newspapers; (d) tin and steel cans; (e) glass that is clear, brown, or green; (f) batteries, and (g) high grade office paper, including letterhead, typing paper, colored paper, photocopy paper, and computer paper. Recyclable materials, including food waste, should be placed into the appropriate containers. Except for the recycling of batteries, Contractor shall ensure that the following materials are not deposited in City recycling containers: (i) Hazardous Substances, (ii) cans or other containers used to store paint, oil, solvent, cleaning fluids, or other Hazardous Substances; and (iii) un-clean paper, including paper that is soiled with food, paper with plastic covers or windows and wax coated paper. In addition, the City may establish other specific requirements concerning the storage and transport of waste and recyclables in the Airport's Rules and Regulations.

SECTION 21 -TERMINATION; REMEDIES

A. Non Compliance and Violation.

The Chief Executive Officer of the Department of Aviation or the Chief Executive Officer of the Department of Aviation's authorized representative shall have the right to make reasonable objections to Contractor's failure to perform its obligations under this Agreement in a manner satisfactory to the Chief Executive Officer of the Department of Aviation or the Chief Executive Officer of the Department of Aviation's authorized representative. Should Contractor violate the provisions of this Agreement, the City shall give the Contractor notice and a reasonable opportunity to cure said violation or violations. Contractor agrees to promptly discontinue or remedy any objectionable practice or condition within the cure period stated in any notice issued by the Chief Executive Officer of the Department of Aviation or Chief Executive Officer of the Department of Aviation's authorized representative or within such additional time as the Parties agree is reasonably necessary if Contractor promptly commences to cure the same and thereafter diligently prosecutes the cure of such breach or violation.

B. Cumulative or Continuous Violations

Should Contractor violate any provision- of this Agreement, the City may place the Contractor on notice to cure said violation or violations without declaring the violation an Event of Default, with consequences for each form as notice as set forth below. In addition, the City may enforce the Performance Standards set forth in Exhibit B to this Agreement, the Service Level Agreement.

Form of notice	Consequence
Pre-written Notice(s)	Verbal notification(s) issued by City to Contractor (cure period allowed)
1st Written Notice	First written notice issued by City to Contractor (cure period allowed)
2nd Written Notice	Second written notice issued by City to Contractor (cure period allowed)
3rd Written Notice thereafter	Third written notice by City to Contractor (cure period allowed).

C. Remedies Non-Exclusive

The City reserves the right, in the Chief Executive Officer of the Department of Aviation's sole and absolute discretion, not to impose Liquidated Damages and instead to seek any other remedy available to the City as an Event of Default, including termination of this Agreement.

The remedies provided in this are in addition to all other rights and remedies that the City may have for a breach or violation of this Agreement. Nothing in this shall be deemed to be a waiver by the City of any breach or violation of this Agreement, nor shall imposition of any of these sanctions be deemed to stop the City from terminating this Agreement or from asserting any other of its other rights or remedies under this Agreement, or at law or in equity. If any or all of these Sanctions are found to be unenforceable, then the unenforceable Sanction(s) will be discontinued.

D. Default

1. **Event of Default.** The occurrence of any of the following shall constitute an "Event of Default" (also referred to as a "Default").
2. **Insurance.** An Event of Default shall occur if insurance is canceled without City consent and not reestablished promptly after written notice by City to Contractor.
3. **Bankruptcy/Insolvency.** The Insolvency of Contractor shall be an Event of Default for which no notice or opportunity to cure need be given. For the purposes of this Agreement, and to the extent permitted by the United States Bankruptcy Code, "Insolvency" shall be deemed to include: (a) an assignment by Contractor for the benefit of creditors; (b) the filing by Contractor of a voluntary petition in bankruptcy; (c) dissolution; (d) the appointment of a receiver, trustee or liquidator of any or substantially all of the properties of Contractor and the receiver, trustee or liquidator is not discharged within forty- five (45) days; (e) the filing of an involuntary petition of bankruptcy and failure of Contractor to secure a dismissal of the petition within sixty (60) days after filing; and, (f) attachment of, or the levying of execution on this Contractor's interest, and failure of Contractor to secure discharge of the attachment or release of the levy of execution within forty-five (45) days.
4. **Unapproved Transfers.** An Event of Default shall occur if Contractor transfers its interest under this Agreement, without the prior written approval of the City, by reason of death, operation of law, assignment, sublease or otherwise, to any other person, entity or corporation.
5. **Failure of Contractor's Obligation to Construct and Use Assigned Location.** An Event of Default shall occur if Contractor fails to timely submit plans and specifications, bonds and other preconstruction submittals, fails to promptly begin or timely complete construction of Improvements, or fails to operate the Welcome Sign.

6. **Illegal Use.** An Event of Default shall occur if Contractor uses, or gives its permission to any person to use, for any illegal purpose any portion of the Airport made available to Contractor for its use under this Agreement.
7. **Abandonment.** An Event of Default, for which no notice or opportunity to cure need be given, may be declared, at the City's option, if the City discovers that Contractor has abandoned, deserted or vacated the Assigned Location.
8. **Liens against City Property.** If Contractor suffers any lien or attachment adverse to the interest of the City, including but not limited to mechanic's or materialman's liens to be filed against the Assigned Location, or any lien or attachment to be filed against the Airport or the City's property because of any act or omission of Contractor, an Event of Default shall occur if such lien or attachment is not discharged or contested by Contractor in good faith by proper legal proceedings within thirty (30) days after receipt of notice thereof by Contractor.
9. **Material Misrepresentation.** An Event of Default, for which no notice or opportunity to cure need be given, may be declared, at the City's option, if the City discovers that Contractor made a material misrepresentation to the City that induced the City to enter into this Agreement.
10. **Default in Other Covenants.** An Event of Default shall occur if Contractor fails to keep, perform and observe any other material promise or violates any material term, covenant or condition of this Agreement and such failure or violation is not cured within thirty (30) days after written notice by the City describing the nature of the failure or violation. This provision shall be complied with if (i) the violation is of such a nature that it cannot be completely cured within the thirty (30) day period, (ii) Contractor begins to perform whatever may be required to correct its failure to perform its obligation or to correct the violation within such thirty (30) day period and (iii) Contractor proceeds in good faith and continues such performance with all due diligence and without interruption, except for causes beyond its control, to effect the cure as soon as practical.

E. Remedies

1. **Remedies on Default.** Immediately upon the occurrence of an Event of Default, the City may, at its option, immediately exercise any of the following rights and remedies in addition to any other rights and remedies provided elsewhere in this Agreement, or otherwise at law or in equity.
2. **Elect to Continue and Enforce Agreement.** The City may elect to allow this Agreement to continue in full force and effect without termination and to enforce all of City's rights and remedies hereunder.
3. **Termination of Agreement.** Subject to Contractor's right to cure, if any, the City may terminate this Agreement and Contractor's right to possession immediately upon the occurrence of an Event of Default. Any notice to terminate may be given before or within the applicable cure period and may be included in a notice of failure of compliance. The City may cancel and terminate this Agreement and repossess the Assigned Location, with or without process of law, and without liability for so doing, upon giving thirty (30) days written notice to Contractor of its intention to

terminate, at the end of which time all the rights hereunder of the Contractor shall terminate, unless the default, which shall have been stated in such notice, is by its nature curable and shall have been cured within such thirty (30) days. The cure period shall extend beyond thirty (30) days if (i) the default is non-monetary in nature and (ii) the violation is of such a nature that it cannot be completely cured within the thirty (30) day period, and (iii) Contractor begins to perform whatever may be required to correct its failure to perform its obligation or to correct the violation within such thirty (30) day period and (iv) Contractor proceeds in good faith and continues such performance with all due diligence and without interruption, except for causes beyond its control, to effect the cure as soon as practical. If this Agreement is terminated pursuant to this Section of the Agreement, the Contractor shall be entitled to reimbursement for the actual cost of materials provided to and accepted by City 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.

4. **Damages upon Termination.** If City elects to terminate, Contractor shall be liable to City for all amounts sufficient to fully compensate City for all loss of compensation, damages, and costs, including attorney's fees, caused by Contractor's failure to perform its obligations hereunder, or which in the ordinary course would likely result therefrom. Nothing in this Section shall be construed to grant a right to Contractor to cure a default, which by its nature is not capable of being cured.

F. Remedies Cumulative.

Each right and remedy in this Agreement shall be deemed cumulative and will be in addition to every other right or remedy in this Agreement, or existing at law or in equity, including, without limitation, suits for injunctive relief and specific performance. Such rights and remedies shall not be in lieu of or exclusive of each other and shall in no way affect any other remedy available at law or in equity. The exercise or beginning of the exercise, by the City of any such rights or remedies will not preclude the simultaneous or later exercise by the City of any other such rights or remedies. All such rights and remedies are nonexclusive. Nothing contained herein shall be construed to require the City to accept delinquent Percentage Payments. Acceptance of full or partial payment of delinquent Percentage Payments, shall not constitute a waiver of any of the City's other rights and remedies under this Section. The City may sue periodically to recover damages during the period corresponding to the remainder of the Term (or any extended term) of this Agreement, and no action for damages shall bar a later action for damages subsequently accruing.

G. Termination for Cause

Subject to any cure period as may be stated in any written notice given by the City, if any, the City may terminate this Agreement for cause due to the actions or inactions of the Contractor upon written notice to Contractor. Such reasons for termination for cause include but are not limited to the following:

1. The occurrence of an uncured breach or violation under this Agreement that is not cured within such period as may be stated in a written notice by the City describing the breach, violation or such additional time as the Parties agree is reasonably

necessary if Contractor promptly commences to cure the same and thereafter diligently prosecutes the cure of such breach or violation.

2. Insurance canceled without City consent and not reestablished promptly after written notice by City to Contractor.
3. The Insolvency of Contractor, which for the purposes of this Agreement, and to the extent permitted by the United States Bankruptcy Code, "Insolvency" shall be deemed to include: (a) an assignment by Contractor for the benefit of creditors; (b) the filing by Contractor of a voluntary petition in bankruptcy; (c) dissolution; (d) the appointment of a receiver, trustee or liquidator of any or substantially all of the properties of Contractor and the receiver, trustee or liquidator is not discharged within forty-five (45) days; (e) the filing of an involuntary petition of bankruptcy and failure of Contractor to secure a dismissal of the petition within sixty (60) days after filing; and, (f) attachment of, or the levying of execution on this Contractor's interest, and failure of Contractor to secure discharge of the attachment or release of the levy of execution within forty-five (45) days.
4. A transfer of Contractor's interest under this Agreement, without the prior written approval of the City, by reason of death, operation of law, assignment, sublicense or otherwise, to any other person, entity or corporation; provided that with respect to a sublicense, no breach shall occur hereunder if such sublicense is terminated within five (5) business days after written notice from City to Contractor.
5. Using, or giving permission to any person to use, for any illegal purpose any portion of the Airport made available to Contractor for its use under this Agreement.

H. Administrative Hearing.

Disputes arising out of this Agreement shall be resolved by administrative hearing before the Chief Executive Officer of the Department of Aviation following the procedures outlined in Denver Revised Municipal Code Section 5-17; provided, that the City shall retain its right to obtain an order of eviction in accordance with applicable state law. It is further agreed that no cause of action shall be brought against the City until there has been full compliance with the terms of this paragraph. The Parties hereto agree that the Chief Executive Officer of the Department of Aviation's determination resulting from said administrative hearing shall be final, subject only to the Contractor's right to appeal the determination under Colorado Rules of Civil Procedure, Rule 106.

I. Waivers.

1. **Non-Waiver of Rights – Default.** No waiver of a breach or violation of this Agreement by the City of any of the terms, covenants, and conditions hereof to be performed, kept, and observed by the Contractor shall be construed as, or shall operate as, a waiver of any subsequent breach or violation of any of the terms, covenants, or conditions herein contained, to be performed, kept, and observed by the Contractor.
2. **Non-Waiver of Rights – Partial Payment.** No failure of City to insist upon the strict performance of a term, covenant or agreement contained in this Agreement,

no failure by City to exercise any right or remedy under this Agreement, and no acceptance of full or partial payment during the continuance of any breach of this Agreement by Contractor shall constitute a waiver of any such term, covenant or agreement or a waiver of any such right or remedy or a waiver of any breach of this Agreement by Contractor.

SECTION 22

[INTENTIONALLY OMITTED]

SECTION 23 – COMPLIANCE WITH ALL LAWS AND REGULATIONS

A. No Prohibited Use.

Contractor agrees not to use or permit the Assigned Location to be used for any purpose not authorized hereunder or prohibited by the laws of the United States or the State of Colorado, the ordinances or Charter of the City and County of Denver, and it further agrees that it will use the Assigned Location in accordance with all applicable federal, state and local laws and all general rules and regulations adopted by the City or the Chief Executive Officer of the Department of Aviation for the management, operation and control of the Airport, either promulgated by the City on its own initiative or in compliance with regulations or actions of the Federal Aviation Administration or other authorized federal agency. Nor will the Contractor do or permit to be done anything which may interfere with the effectiveness or accessibility of existing and future utilities systems or portions thereof on the Assigned Location or elsewhere, or do or permit to be done anything which may interfere with free access and passage in the Terminal or in the streets and sidewalks adjacent thereto, or do or permit to be done any act or thing upon the Assigned Location or upon any other portion of the Airport which will invalidate or conflict with any fire insurance policies covering the Assigned Location or any part thereof or which, in the opinion of the Chief Executive Officer of the Department of Aviation, may constitute a hazardous condition, so as to increase the risks normally attendant upon the operations contemplated herein and elsewhere at the Airport. Contractor further agrees to submit any report, reports or information which the City is required by law or regulation to obtain from Contractor or which the Chief Executive Officer of the Department of Aviation may request relating to Contractor's operations.

B. Prevailing Wages.

Contractor shall require its contractor and sub-contractors performing any work at DEN that is covered by §20-76 of the Denver Revised Municipal Code to pay every worker, laborer or mechanic employed by them in the performance of the fabrication and placement of improvements on the Locations Subject to this Agreement prevailing wages, including fringe benefits or their cash equivalent, for the same class and kind of work in the City and County of Denver, as determined by the Career Service Board under the provisions of Section 20-76 of the Denver Revised Municipal Code and shall furnish to the City for each week during which covered work was performed copies of certified payroll records for all such workers. In the design and construction of improvements, if any, to any Location Subject to this Agreement, Contractor agrees to comply with the Minority Business Enterprises and Women Business Enterprises requirements of Article III, Divisions 1 and 3 of Chapter 28, of the Denver Revised Municipal Code, or applicable successor ordinance, and any rules and regulations issued by the Manager of the Division of Small Business Opportunity ("DSBO"), a division of the Mayor's Office of Economic Development.

C. Americans with Disabilities Act.

Without limiting the foregoing, Contractor shall determine and assess the requirements to design, construct, operate and shall at all times maintain the Assigned Location in accordance with and in compliance with the requirements of the Americans with Disabilities Act, 42 USC §12,000 et seq., including the ADA Accessibility Guidelines and all federal regulations adopted pursuant to the ADA. In the event that compliance cannot be achieved, Contractor shall proceed formally to the federal agency having jurisdiction for a waiver of compliance. If, as a result of Contractor's use or occupancy of the Assigned Location, or the making of any alterations, additions, or improvements therein, any additions, alterations, or improvements must be made by the City to any part of the Airport in order to comply with any requirements of the ADA, or any other laws, codes or regulations, Contractor shall reimburse the City, on demand, for the costs incurred by the City to effect such compliance.

D. MBE/WBE.

To the extent applicable, Contractor agrees to comply with the Minority Business Enterprises ("MBE") and Women Business Enterprises ("WBE") requirements of Article III, Divisions 1 and 3 of Chapter 28, of the Denver Revised Municipal Code ("MBE/WBE Ordinance"), or applicable successor ordinance, in the design and construction of Improvements throughout the Term of this Agreement. Contractor agrees to comply with rules and regulations issued by the Manager of the Division of Small Business Opportunity ("DSBO"), a division of the Mayor's Office of Economic Development. At the time of execution of this Agreement, the DSBO Manager has determined that MBE/WBE requirements are: NOT APPLICABLE

E. Colorado Open Records Act.

1. The Contractor acknowledges that the City is subject to the provisions of the Colorado Open Records Act, Colorado Revised Statutes §24-72-201 et seq., and all documents prepared or provided by Contractor under this Agreement may be subject to the provisions of the Colorado Open Records Act. 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 Contractor to the City shall be considered confidential by the City only to the extent provided in the Open Records Act and the Contractor 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. The Contractor agrees that it will fully cooperate with the City in the event of a request for disclosure of such documents or a lawsuit arising under such act for the disclosure of any documents or information, which the Contractor asserts, is confidential and exempt from disclosure.
2. In the event of a request to the City for disclosure of such information, time and circumstances permitting, the City will make a good faith effort to advise the Contractor of such request in order to give the Contractor the opportunity to object to the disclosure of any of material the Contractor may consider confidential, proprietary or otherwise exempt from disclosure. In the event of the filing of a lawsuit to compel disclosure, the City will tender all such material to the court for judicial determination of the issue of disclosure and the Contractor agrees it will either intervene in such lawsuit to protect materials the Contractor does not wish

disclosed, or waive any claim of privilege or confidentiality. If the Contractor chooses to intervene in such a lawsuit and oppose disclosure of any materials, the Contractor agrees to defend, indemnify, and save and hold harmless the City, its officers, agents, and employees, from any claim, damages, expense, loss or costs arising out of the Contractor's intervention including, but not limited to, prompt reimbursement to the City of all reasonable attorney fees, costs and damages that the City may incur directly or may be ordered to pay by such court.

F. Wages and Benefits.

The City may periodically review the Contractor's records to verify compliance with this section. Contractor shall offer health insurance with optional family coverage for all full time Contractor employees employed at the Airport. Proof of the health care plan shall be provided to the City upon request. Contractor shall maintain throughout the term of this Agreement basic employment and wage information for each employee as required by the Fair Labor Standards Act (FLSA). The City may review Contractor's FLSA employee records to verify compliance with this provision.

G. Use, Possession or Sale of Alcohol or Drugs.

Contractor, its officers, agents and employees shall cooperate and comply with the provisions of the Federal Drug-Free Workplace Act of 1988 and Denver Executive Order No. 94, or any successor thereto, concerning the use, possession or sale of alcohol or drugs. Except as otherwise may be provided herein, Contractor shall also prohibit consumption of alcohol within Locations Subject to this Agreement. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City's barring Contractor from City facilities or participation in City operations.

H. City Smoking Policy.

Contractor agrees that it will prohibit smoking by its employees and the public in the locations subject to this Agreement and will not sell or advertise tobacco products. Contractor acknowledges that smoking is not permitted in Airport buildings and facilities except for designated smoking lounges. Contractor and its officers, agents and employees shall cooperate and comply with the provisions of the City's Executive Order No. 99 dated December 1, 1993, Executive Order No. 13 dated July 31, 2002, the provisions of Denver Revised Municipal Code, §§ 24-301 to 317 et. seq., and the Colorado Clean Indoor Air Act, C.R.S. §§ 25-14-201 et. seq.

I. Compliance with Airport Security.

It is a material requirement of this Agreement that the Contractor shall comply with all rules, regulations, written policies and authorized directives from the City and/or the Transportation Security Administration with respect to Airport security. Contractor shall cause its officers, contractors, agents and employees to comply with any and all existing and future security regulations adopted by the City or the Transportation Security Administration ("TSA"), including 49 CFR Subtitle B, Chapter XII, as amended from time to time. Contractor understands and acknowledges that its ability to remain open and sell the items it is authorized to sell under this Agreement is subject to changes in alert status as determined by TSA. Violation by Contractor or any of its employees of any rule, regulation or authorized directive from the City or the

Transportation Security Administration with respect to Airport Security shall constitute a material breach of this Agreement and any person who violates such rules may be subject to revocation of his/her access authorization. Contractor will reimburse the City, in full, for any fines or penalties levied against the City for security violations as a result of any actions on the part of Contractor, its agents, contractors, suppliers, guests, customers or employees and for any attorney fees or related costs paid by the City as a result of any such violation. The Contractor shall return to the City at the expiration or termination of this Agreement, or upon demand by the City all access keys or access badges issued to it for any area of the Airport, whether or not restricted. If the Contractor fails to do so, the Contractor shall be liable to reimburse the City for all the City's costs for work required to prevent compromise of the Airport security system. The City may withhold funds in the amount of such costs from any amounts due and payable to the Contractor under this Agreement. The security status of the Airport is subject to change without notice. If the security status of the Airport changes at any time during the Term (or any extended term) of this Agreement, the Contractor shall take immediate steps to comply and assist its Operators with compliance with security modifications which occur as a result of the changed status. The Contractor may at any time obtain current information from the Airport Security Office regarding the Airport's security status in relation to the Contractor's operations at the Airport.

J. Grant Assurances.

This Agreement is subject to the provisions of any agreement made between City and the United States Government relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to City for Airport purposes, or the expenditure of federal funds for the development of the Airport, including the expenditure of federal funds for the development of the Airport in accordance with the provisions of the FAA's Airport Improvement Program, or in order to impose and use passenger facilities charges under 49 U.S.C. Section 40117 or any successor thereto. The provisions of the attached "Appendix: Federal Required Contract Language" are incorporated herein by reference.

K. Amendment.

In the event that the FAA, TSA, or other governmental authority of competent jurisdiction, shall require any modifications or changes in this Agreement as a condition precedent to the granting of funds for the improvement of the Airport to use or impose Passenger Facility Charges, or if it is necessary to modify this Agreement to comply with the requirements of Applicable Law, including regulations, orders and decisions of the FAA or TSA, City shall notify Contractor in writing. If the Parties are unable to agree upon and execute a suitable amendment within the time frame required by the governmental authority, Contractor agrees that City may unilaterally modify this Agreement, upon advice of its legal counsel, as may reasonably be required to obtain such funds or comply with law. Nothing herein shall preclude Contractor from contesting such orders or decisions, but Contractor shall abide by the unilateral modification by City until such time if any as such governmental authority's order or decision is stayed, rescinded or invalidated as long as such stay, rescission or invalidation remains in effect.

L. No Employment of Illegal Aliens to Perform Work under the Agreement.

1. The Agreement is subject to Article 17.5 of Title 8, Colorado Revised Statutes, and Den. Rev. Mun. Code 20-90 and the Contractor is liable for any violations as provided in said statute and ordinance.

2. The Contractor 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 Contractor 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 Contractor 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 the City within three days. The Contractor 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.

(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 the City Auditor under authority of Den. Rev. Mun. Code 20-90.3.

SECTION 24 – MISCELLANEOUS

A. Agreement Binding Upon Successors.

This Agreement, subject to the provisions of the Section entitled "Assignment ," shall be binding upon and shall inure to the heirs, personal representatives, successors and assigns of the City and Contractor where permitted by this Agreement. The term "Contractor" shall include an assignee or sub lessee from the Contractor on any assignment or sublease approved by the City, but no such assignment or sublease shall be approved or shall have any effect unless the Contractor and its proposed assignees or sub lessee shall thereafter be jointly bound thereby as

the Contractor hereunder. Moreover, in the event the Contractor is authorized to assign, or sublet to, or contract with, a third party to sell any item or perform or provide any service, Gross Revenues as used herein shall include the total gross revenues generated by the performance or sale by such third party, and not the amount received by the Contractor from such third party.

B. Agreement Made in Colorado; Venue.

This Agreement shall be deemed to have been made in and shall be construed in accordance with the laws of the State of Colorado and the Charter and Ordinances of the City and County of Denver and the Parties agree that venue for any action arising from this Agreement shall be in the District Court in and for the City and County of Denver. The Contractor agrees that any and all notices, pleadings and process may be made by serving two copies of the same upon the Colorado Secretary of State, State Capitol, Denver, Colorado, and by mailing by return mail an additional copy of the same to the Contractor at the address shown herein; that said service shall be considered as valid personal service, and judgment may be taken if, within the time prescribed by Colorado law or Rules of Civil Procedure, appearance, pleading or answer is not made.

C. Agreements with the United States.

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 or airport system.

D. Agreement Subject to Aviation Priority.

Contractor's right to use the Assigned Location for the purposes as set forth in this Agreement shall be secondary to, and subordinate to, the operation of the Airport. Contractor acknowledges that because of the location of the Assigned Location at the Airport, noise, vibrations, fumes, debris and other interference with the Permitted Use will be caused by Airport operations. Contractor hereby waives any and all rights or remedies against the City arising out of any noise, vibration, fumes, debris and/or interference that is caused by the operation of the Airport. The City specifically reserves for itself, and for the public, a right of flight for the passage of aircraft in the airspace above the surface of the Airport together with the right to cause in said airspace such noise, vibration, fumes, debris, and other interference as may be inherent in the present and future operation of aircraft.

E. Modifications Requested by FAA.

In the event that the FAA or its successors requires modifications or changes in this Agreement as a condition precedent to the granting of funds for the improvement of the Airport, or otherwise, Contractor agrees to consent to such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this Agreement as may be reasonably required to satisfy the FAA requirements.

F. Assignment and Other Transfers.

Except as otherwise permitted herein and with the exception of affiliates of Contractor, Contractor shall not assign, transfer, sublicense, pledge, hypothecate, surrender, or otherwise encumber (collectively "Transfer"), or dispose of this Agreement or any interest created by this Agreement,

or any interest in any portion of the same, nor grant any Agreement or concession hereunder, or permit any other person or persons, company or corporation to occupy a Location Subject to this Agreement, without first obtaining the written consent of the Chief Executive Officer of the Department of Aviation, which consent may be granted or denied in the sole and absolute discretion of the Chief Executive Officer of the Department of Aviation. Any attempt by the Contractor to in any way Transfer its interest in this Agreement, in whole or in part, directly or indirectly (including any attempt to transfer the ownership of the equity or voting interest in the stock if Contractor is a corporate entity or the ownership interest in such other entity or control of Contractor or Contractor's operations through sale, exchange, merger, consolidation or other such Transfer), without the prior written consent of the Chief Executive Officer of the Department of Aviation shall, at the option of said Chief Executive Officer of the Department of Aviation, automatically terminate this Agreement and all rights of the Contractor hereunder. These restrictions on Transfer shall also apply to assignment of activities, uses, privileges, and obligations authorized under this Agreement.

The City's consent to a Transfer shall not include consent to enlarge the Term or modify other material provisions of this Agreement. The City's consent to a Transfer shall not constitute a release of liability of Contractor pursuant to the requested Transfer. The City's consent to one such Transfer shall not be deemed consent to subsequent Transfers.

In addition to the foregoing, the interest of the Contractor in the equipment installed at the Airport shall not be subject to assignment, alienation or pledge, without the prior written consent of the Chief Executive Officer of the Department of Aviation, which shall not be unreasonably withheld. With such consent by the Chief Executive Officer of the Department of Aviation, Contractor may grant a security interest in the associated equipment to a lender to secure financing for such equipment provided that such lender agrees that the City shall retain the rights reserved to it under this Agreement and after notice to the City by the lender of Contractor's default and a declaration of lender's rights to immediate possession of the equipment under any financing agreement Contractor may have with the lender, the City may terminate this Agreement for cause and pay to the lender for the benefit of Contractor the unamortized value of the equipment the City desires to retain, but excluding Contractor's Pursuit Costs; and thereafter, Contractor and the lender will take all steps required to transfer to the City good and marketable title to all tangible and personal property of the Contractor for which payment was made. The Contractor agrees that it shall have no claim of any kind whatsoever against the City by reason of such termination or by reason of any act incidental thereto. Lender must further agree that all financing statements or instruments or other such agreements that relate to the equipment or that effect this Agreement in any way, whether now existing or made in the future, shall be subject and subordinate to this covenant. Also, Lender must agree to attach this Agreement (or a memorandum of this Agreement containing the terms and provisions hereof sufficient to put third parties on notice of the existence of this Agreement, the subordination of the security interest to the City's purchase rights under this Agreement, and the remaining rights of the City under this paragraph with respect to such security interest) to any agreement, financing statement or instrument or other such agreement filed with any public agency for the purpose of recording Lender's security interest in the equipment.

G. Bond Ordinances.

This Agreement is in all respects subject and subordinate to any and all City bond ordinances applicable to the Airport and airport system and to any other bond ordinances, which should amend, supplement or replace such bond ordinances. The Parties to this Agreement acknowledge and agree that all property subject to this Agreement which was financed by the net proceeds of tax-exempt bonds is owned by the City, and Contractor agrees not to take any action

that would impair, or omit to take any action required to confirm, the treatment of such property as owned by the City for purposes of Section 142(b) of the Internal Revenue Code of 1986, as amended. In particular, the Contractor agrees to make, and hereby makes, an irrevocable election (binding on itself and all successors in interest under this Agreement) not to claim depreciation or an investment credit with respect to any property subject to this Agreement which was financed by the net proceeds of tax-exempt bonds and shall execute such forms and take such other action as the City may request in order to implement such election.

H. Force Majeure.

Neither Party hereto shall be liable to the other for any failure, delay or interruption in the performance of any of the terms, covenants or conditions of this Agreement due to causes beyond the control of that Party, including without limitation strikes, boycotts, labor disputes, embargoes, shortages of materials, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellion, sabotage or any other circumstance for which such Party is not responsible or which is not in its power to control. A lack of funds, however, will never be deemed beyond a Party's power to control, but in no event shall this paragraph be construed so as to allow Contractor to reduce or abate its obligation to pay any compensation due hereunder.

I. Inconveniences During Construction.

Contractor recognizes that from time to time during the Term (or any extended term) of this Agreement, it may be necessary for City to commence or complete extensive programs of construction, expansion, relocation, maintenance and repair in order that the Airport and its facilities may be maintained, improved, and operated in accordance with any present or future master layout plan, and that such construction, expansion, relocation, maintenance and repair may inconvenience the Contractor in its operation at the Airport. Contractor agrees that no liability shall attach to City, its officers, agents, employees, contractors, subcontractors and representatives by way of such inconveniences, and Contractor waives any right to claim damages or other consideration therefrom.

J. Master Plan.

Contractor agrees that no liability shall attach to the City, its officers, agents and employees by reason of any efforts or action toward implementation of any present or future master layout plan for the Airport, and waives any right to claim damages or other consideration arising therefrom.

K. Future Airport Planning.

Contractor agrees that no liability shall attach to the City, its officers, agents and employees by reason of any efforts or action toward implementation of any present or future planning for the Airport, and waives any right to claim damages or other consideration arising therefrom.

L. Nondiscrimination.

In connection with the performance of work under this Agreement, Contractor agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation 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 Contractor further agrees to insert the foregoing provision in all subcontracts hereunder.

M. Not Partnership.

It is understood and agreed by and between the Parties hereto that the status of the Contractor shall be that of an independent contractor. Notwithstanding the provisions herein for payment by Contractor to City of sums based upon a percentage of Gross Revenues, it is further expressly understood and agreed that the City shall not be construed by a third party or held by Contractor to be a partner, associate or joint venture partner of Contractor in the conduct of its business. Contractor shall at all times have the status of an independent contractor and is not intended nor shall it be construed that the Contractor, its employees or sub-contractors are employees or officers of the City under Chapter 18 of the Revised Municipal Code or for any purpose whatsoever with any right or City authority to impose tort or contractual liability upon the City. The Contractor has no authority to bind the City on any contractual matters. Final approval of all contractual matters that obligate the City must be by the City as required by Charter and Ordinance.

N. Notices.

All notices required to be given to the City or Contractor hereunder shall be in writing and sent by certified mail, return receipt requested, as follows:

To City:

Chief Executive Officer of the Department of Aviation
Denver International Airport
Airport Office Building, 9th Floor
8500 Pena Boulevard
Denver, CO 80249-6340

To Contractor:

President
Panasonic Enterprise Solutions Company
6144 North Panasonic Way
Denver, CO 80249

With copy to:

General Counsel and Secretary
Panasonic Corporation of North America
Legal Department, 12th Floor
Two Riverfront Plaza
Newark, New Jersey 07102-5490

Either Party hereto may designate in writing from time to time the address of substitute or supplementary persons within the State of Colorado to receive such notices. The effective date of service of any such notice shall be the date such notice is mailed or delivered to the intended Party and receives as follows: all notices required or permitted under this Agreement must be in writing and will only be deemed properly given and received (i) when actually given and received.

if delivered in person to a Party who acknowledges receipt in writing; or (ii) one business day after deposit with a private courier or overnight delivery service, if such courier or service obtains a written acknowledgment of receipt; or (iii) three business days after deposit in the United States mails, certified or registered mail, with return receipt requested and postage prepaid. All such notices must be transmitted by one of the methods described above to the Party to receive the notice at the address for such Party as stated in this Agreement or, in either case, at such other address(es) as either Party may notify the other of according to this Section.

O. Paragraph Headings.

The paragraph headings herein are for convenience in reference only and are not intended to define or limit the scope of any provision of this Agreement.

P. Exhibits.

The Parties agree that **Exhibits A and B** may be modified from time to time as provided herein without the requirement of a formal amendment to this Agreement.

Q. Patents and Trademarks.

Contractor represents that it is the owner of or fully authorized to use any and all services, processes, machines, articles, marks, names or slogans used by it in its operations under this Agreement. Contractor will not utilize any protected patent, trademark or copyright, including any patents, trademarks or copyrights owned by the City, in its operations under this Agreement unless it has obtained proper permission and all releases and other necessary documents. Contractor agrees to save and hold harmless the City, its officers, employees, agents and representatives from any loss, liability, expense, suit or claim for damages in connection with any actual or alleged infringement of any patent, trademark or copyright arising from any alleged or actual unfair competition or other similar claim arising out of the operations of Contractor under this Agreement.

R. Severability.

If any part, portion or provision of this Agreement or application thereof shall be found or declared null, void, or unenforceable for any reason whatsoever by any court of competent jurisdiction or any governmental agency having applicable authority, only such part, portion, or provision shall be affected thereby. The validity of the remaining portions or provisions or application thereof shall not be affected if the intent of the Parties can be fulfilled and all other parts, portions and provisions of this Agreement shall remain in full force and effect. No oral representations or other agreements have been made except as specifically stated in this Agreement.

S. Authority to Enter into Agreement.

The person(s) signing this Agreement represents and warrants that s/he possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement. Each person signing and executing this Agreement on behalf of Contractor represents and warrants that s/he has been fully authorized by Contractor to execute this Agreement on behalf of Contractor and validly and legally bind Contractor to all the terms, performances and provisions of this Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate this Agreement if there is a

dispute as to the legal authority of either Contractor or the person signing the Agreement to enter into this Agreement.

T. No Construction against Drafting Party.

This Agreement is the result of arm's length negotiations between the City and Contractor and each of the Parties acknowledge that they and their respective counsel have had the opportunity to review and revise this Agreement. Therefore, the Parties agree that any ambiguity in this Agreement shall not be construed against any Party merely because this Agreement or any of its provisions were prepared by a particular Party.

U. Third Parties.

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 Contractor, and nothing contained in this Agreement shall be deemed or construed to confer upon or grant to any third party or parties (except parties to whom the Contractor may assign this Agreement in accordance with the terms hereof, and except any successor to the City) any right to claim damages or to bring any suit, action or other proceeding against either the City or the Contractor because of any breach hereof or because of any failure to comply with of any of the terms, covenants, agreements and conditions herein. It is the express intention of the City and the Contractor that any other person other than the City or the Contractor receiving any benefits from this Agreement shall be deemed to be incidental beneficiaries only.

V. Waiver of Claims.

Contractor hereby waives any claim against the City for consequential, special or punitive damages, including, without limitation, loss of anticipated profits caused by any suit or proceedings attacking the validity of this Agreement, or any part of this Agreement, or by any judgment or award in any suit declaring this Agreement null, void, or voidable, or delaying this Agreement or any part of it being carried out or the enforcement of this Agreement.

W. Number or Gender.

The use herein of the singular shall include the plural, and use of the masculine, feminine, or neutral genders shall include all others.

X. Joint and Several Liability.

If Contractor is a partnership or other business organization, the members of which are subject to personal liability, the liability of each such member shall be deemed to be joint and several.

Y. Required Federal Contract Provisions.

The provisions of the attached Appendix - Federal Aviation Administration Required Contract Provisions are incorporated herein by reference.

Z. No Limit on City's Powers.

Nothing in this Agreement shall limit, in any way, the power and right of the City to exercise its governmental rights and powers, including its powers of eminent domain.

AA. War or National Emergency.

During the time of war or national emergency, the City shall have the right to lease the Airport or any part thereof to the United States Government for military use, and if any such lease is executed, the provisions of this Agreement insofar as they are inconsistent with this Agreement to the Government shall be suspended, and in that event, a just proportionate part of the compensation payable hereunder shall be abated.

AB. Survival of Certain Contract Provisions.

The Parties understand and agree that all terms and conditions of this Agreement, (such as the indemnity agreement set forth herein) which by reasonable implication contemplate continued performance or compliance beyond the termination of this Agreement (by expiration of the Term (or any extended term) or otherwise) shall survive the expiration or earlier termination of this Agreement and shall continue to be fully enforceable as provided herein.

AC. Agreement as Complete Integration; Amendments.

The City and Contractor each warrant and represent to each other that this Agreement constitutes their legal, valid and binding obligation and that the provisions herein including all Exhibits and other documents incorporated by reference, contain the entire agreement and are intended as the complete integration of all understandings between the Parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied in a written amendment to this Agreement properly executed by the Parties. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written amendment or other agreement executed with the same formality as this Agreement. This Agreement and any subsequent amendments, form the entire agreement between the Parties and are fully binding on the Parties, their successors and assigns. No oral representations by any officer, official, employee or agent of the City and no other agreement at variance with the terms and conditions of this Agreement herein have been made.

AD. Final Approval; Counterparts.

This Agreement, which is expressly subject to, and shall not be or become effective or binding on the City until approved by the City Council, and fully executed by all signatories of the City and County of Denver, may be executed in two or more counterparts, each of which will be deemed an original signature page to this Agreement.

AE. Electronic Signatures and Electronic Records.

Contractor 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-201631761-01

Contractor Name: Panasonic Enterprise Solutions Company, division
of Panasonic Corporation of North America

By: James L. Doyle, III

Name: James L. Doyle, III
(please print)

Title: President
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



APPENDIX

Federal Aviation Administration Required Contract Provisions

ALL CONTRACTS – NON-AIP FUNDED

Federal laws and regulations require that recipients of federal assistance (Sponsors) include specific contract provisions in certain contracts, requests for proposals, or invitations to bid.

Certain provisions must be included in all sponsor contracts, regardless of whether or not the contracts are federally-funded. This requirement was established when a sponsor accepted the Airport Improvement Program (AIP) grant assurances.

As used in these Contract Provisions, “Sponsor” means The City and County of Denver, Department of Aviation, and “Contractor” or “Consultant” means the Party of the Second Part as set forth in Contract Number PLANE201631761

GENERAL CIVIL RIGHTS PROVISIONS

The contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the contractor and subtier contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

Compliance with Nondiscrimination Requirements

During the performance 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 (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will 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 will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor’s obligations under this contract and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.

APPENDIX

Federal Aviation Administration Required Contract Provisions

ALL CONTRACTS – NON-AIP FUNDED

4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

APPENDIX

Federal Aviation Administration Required Contract Provisions

ALL CONTRACTS – NON-AIP FUNDED

- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.

The [*contractor / consultant*] has full responsibility to monitor compliance to the referenced statute or regulation. The [*contractor / consultant*] must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division

APPENDIX

Federal Aviation Administration Required Contract Provisions

ALL CONTRACTS – NON-AIP FUNDED

OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Contractor retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Contractor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.



Task Order # 2

Panasonic Enterprise Solutions Company
 24735 E. 75th Ave.
 Denver, CO 80249
 Attn: John C. Greenwood
 E-mail: John.Greenwood@us.panasonic.com

Contract No.: 201626296
Title: On-Call Innovation Partners
Project: Pena Blvd. Welcome Sign
Date: 11/18/2016

GENERAL STATEMENT: The consultant is qualified and ready, willing and able to provide the requested professional services to the City, in accordance with the terms of the Agreement. If any conflict should arise between this task order and the Agreement, the Agreement overrides this task order and its content. All consulting personnel assigned to this task order shall provide a signed non-disclosure agreement prior to start date.

DESCRIPTION OF REQUEST

Panasonic has submitted the attached proposal as contemplated by the On-Call Innovation Partner Agreement, Contract No. 201626296. The objective for this project is to replace the existing welcome sign on Pena Blvd with a state of the art sign that is iconic and provides an inviting experience to the airport traveler. This Task Order is for the design and prototyping effort of the new sign. DEN is providing construction and site prep activities through their existing construction on-call agreements. Panasonic will provide build services and actual hardware and software for this effort. These details will be provided under a separate Cost Recovery agreement. Please refer to the attached Panasonic proposal for the Statement of Work tied to this Task Order.

You are hereby authorized to proceed with the work described in this Task Order in accordance with Contract No. 201626296. This Task Order is hereby incorporated into and made part of Contract No. 201626296. All payments for services rendered under this Task Order are subject to project approval by City Council. Any work by the consultant prior to City Council approval is considered at risk for payment.

SERVICES	Price
Pena Welcome Sign Services	\$ 1,600,000.00

The work requested in Task Order 2 will be funded by the following:

73850-ENG-1651-Z50B-6006-1150-16M01CS1

SUMMARY OF COMMITTED Funds

Total Authorization for Task Order 2	\$ 1,600,000.00
Total Authorization including this increase	\$ 1,600,000.00

[Signature Page Follows]



DENVER INTERNATIONAL AIRPORT TECHNOLOGIES DIVISION

8500 PENA BLVD, AOB RM 6843 DENVER, CO 80249

Joyce
Bunker

Digitally signed by Joyce Bunker
DN: cn=Joyce Bunker,
o=Technologies Division,
ou=Business Management,
email=joyce.bunker@flydenver.c
om, c=US
Date: 2016.11.30 12:45:11 -0700

Joyce Bunker Date
Supervisor, Business Management of Technologies

Kastelitz, Robert -
DIA

Digitally signed by Kastelitz, Robert - DIA
DN: dc=com, dc=flydenver, dc=ad, ou=Domain
Users, ou=Employees, cn=Kastelitz, Robert - DIA,
email=Robert.Kastelitz@flydenver.com
Date: 2016.11.30 16:56:02 -0700

Robert W. Kastelitz Date
Sr. Vice President of Technologies / CIO

Pape, Kelan
- DIA

Digitally signed by Pape, Kelan - DIA
DN: dc=com, dc=flydenver, dc=ad,
ou=Domain Users, ou=Employees,
cn=Pape, Kelan - DIA,
email=Kelan.Pape@flydenver.com
Date: 2016.11.30 11:28:08 -0700

Kelan Pape Date
Dir. of Portfolio Management of Technologies

Accepted by Consultant:

PANASONIC ENTERPRISE SOLUTIONS Co.

Consultant Company Name

DONALD W SZCZEPANIK / EVP

Consultant Representative / Title

 12/1/16
Signature Date

cc: Project Manager, DIA-Encumbrance



Panasonic Digital Welcome Sign Services Proposal for DIA

Panasonic Enterprise Solutions Company

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email: enterprise@us.panasonic.com

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Summary

Panasonic Enterprise Solutions Company (PESCO) is pleased to present Denver International Airport (DEN) with our proposed Statement of Work (SOW) for the Denver International Airport Digital Welcome Sign (WS) which is initially planned (but may change after final designs) as a 16' tall, ¼ mile visual wonder with state-of-the-art Panasonic technology located on the median on Pena Boulevard on airport property. The WS is envisioned as an iconic and inviting experience to the airport travelers. As part of our master On-Call Innovation Partner Agreement between Panasonic and the City and County of Denver executed March, 2016 we are excited to offer the following best-of-breed, proprietary solutions and technology.

PESCO proposes a service-based consulting engagement to most effectively align stakeholders, clearly define requirements, and ultimately achieve project goals.

Project Deliverables - PESCO

1. Determine what the WS will be and how it will operate.
2. Determine exact location(s) and manufacturing specifications.
3. Demonstrate the technology capabilities critical to the implementation of the WS.
4. Collaborate with City representatives to gather or provide requirements regarding such things as size, location, visual appearance, power, environmental specifications, data connectivity, remote management and media content management, overall performance criteria such as expected up-time...etc.
5. Provide wireless remote connectivity between Panasonic and the sign to manage content.
6. Provide consultation services to DEN to assist with design of the interface between all digital equipment and their supporting infrastructure.
7. Provide project management services for the entire project.
8. WS Schematic Design – collaborate with City representatives on a design concept for Design Review Committee (DRC) approval and necessary intermediary review steps.
9. Content Design and Development for media on the WS.
10. Attend meetings with City representatives throughout the design process as needed or requested.
11. Participate in any Community or Zoning review process as requested by the City.
12. Produce construction ready set of engineering certified drawings (in collaboration with DEN) of all hardware components to support installation. Support DEN on design of foundation, power, communications, and other infrastructure needed to install and

- operate the WS. Provide design services to develop content and system design for graphic and visual effects. Pull permits as required.
13. Lead DIA Proof-of-Concept (in Denver) to evaluate daytime visibility
 - a. Validate or recommend alternative display technology.
 14. Review Playback Systems Architecture Design for DEN review.
 - a. Evaluate for necessary playback functionality and integration between hi-res billboards and sticks (part of initial WS design).
 15. Software Definitions and Interactive Components Design.
 - a. Confirm interactive features (reaction to train) and sensor type/placement.
 - b. Content Management System (CMS) Research and Design.
 - i. Collaborate with team to determine use case requirements.
 - ii. Determine feature set based on approved Content Strategy and Interactive Components.
 16. Systems Design.
 - a. Update Systems Architecture to support the approved concepts including facility impacts, systems design, and hardware specifications.
 - b. Update hardware procurement list based on performance and interactive.

Project Deliverables - DEN

- DEN is responsible for any deliverables beyond those listed above as PESCO deliverables, including but not limited to the following:
 - All animations / 3D renders.
 - Construction design drawings for signage and signage elements.
 - Providing final content requirements (advertising, DIA, etc.). Changes to these specifications may result in change orders and delays for redesign.
 - Timely review and approvals.
 - Electrical Power, as well as power, data and signal pathways to and between the sign location(s), to include hardware for wireless remote connectivity.
 - Content guidelines (based on traffic regulations or DIA risk management).
 - Overall design review and approval authority.
 - Provide content management standards and processes (how long it takes to update, content review and approval, intervals of display, what time set aside for DEN announcements versus advertising, provide DEN content regarding messaging specific to DEN).
 - Provide performance standards (environmental, uptime, CDOT guidelines and standards, maintenance and support procedures, escalation, media content standards).

- Provide advertising standards and limitations (including specific companies if applicable).
- Provide design services (through an on-call professional services contract) to construct site grading, utilities, and foundation for PESCO sign elements.
- Review, approve, and manage all PESCO deliverables tied to this task order.

Project Cost

The cost for the scope and deliverables is US \$1,600,000 with 50% of payment due upon contract execution and 50% due upon submission of the deliverables per the agreed upon schedule.

Service Design Work Process Schedule

The project will not exceed eight (8) working weeks upon execution unless agreed to by DEN, which will not be unreasonably withheld. Delays in DEN personnel availability and responses may delay the project deliverables and may incur additional costs. Any other changes in scope/deliverables may also be considered a Change Order.

Project Team

John C. Greenwood, Executive Director for PESCO's Digital City unit. Eric Covrig, Senior Solutions Manager – AV Solutions, Tara Duke, City of Denver Program Manager and Mike Leigh, Sr. Project Manager. Additional members from the PESCO Denver headquarters, Dallas production facility and members of the Panasonic international family will also be assigned to this team as needed including but not limited to: Keith Hanak, EVP, AV Solutions and Teddy Levine, Project Assistant.

Thank you!

Exhibit B

Panasonic

LED Service Plan and Content Management Services Denver International Airport



Prepared for:

John Karner
Director of Strategic Initiatives
Denver International Airport

Prepared by:

Bradley Moszkiewicz & Thomas Carroll
Panasonic Sensory Solutions Group

Panasonic Enterprise Solutions Company

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Table of Contents

- 1) **Summary**
- 2) **LED Screen Service**
- 3) **Content Management Services**
- 4) **Service Level Agreement**

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- 1) **Summary:** This proposal covers two areas of service; LED screen service – commonly referred to as “Break/fix & Maintenance” and Content Management Services (collectively, the “Services”). The Services shall be performed according to the Service Level Agreement.
- 2) **LED Screen Service**
 - a) Panasonic shall provide repair service for a minimum of ten (10) years following the date of substantial completion, substantial completion is defined as the first date in which the screen is used by owner for benefit.
 - b) The intent of this service agreement is for Panasonic to cover service on all items installed by Panasonic as part of the Denver Welcome Sign project located at Denver International Airport.
 - c) In the event of an outage or when a components fails to perform in the manner intended, Panasonic shall repair or replace component in order to return screen to its full working condition.
 - d) On-site labor shall be included during the service agreement for the prices stated below. Response times to outages will be detailed in Table 1. in Attachment 1
 - e) Parts that are removed from the screen shall be returned by the service provider to the designated Panasonic service facility.
 - f) Panasonic will repair any parts that are returned to designated Panasonic facility.
 - g) Panasonic shall replace failed parts that cannot be repaired.
 - h) Upon manufacturer receipt of a failed part, Panasonic shall return a repaired or replacement part to the Owner within twenty (20) business days from receipt of the failed part.
 - i) Upon completion of the project a mutually agreed to spare parts listing and inventory will be provided to the customer based on service availability levels called out in this SLA Panasonic and the client will find a mutually agreeable location to store the spare parts such that those parts can be quickly and easily be accessed in the event they are needed by authorized technicians in order to perform repair activities. A draft list of the spare parts to be provided is in **“Attachment 5 to this Exhibit B”**
 - j) Panasonic will assign a designated Service Representative who will be the primary point of contact for any and all service requests. Escalation points of contact will also be provided.
 - k) Owner is responsible for providing access for all equipment to include lifts, ladders, cranes or other equipment as needed.
 - l) Owner is to contact Panasonic’s designated service representative for any and call service requests. Panasonic will not be liable for invoices from vendors unless Panasonic explicitly authorizes the service to be performed.
 - m) If 3rd party entities perform unauthorized service work owner will pay a re-inspection fee in the amount of 10% of the “Annual Price” amount set forth in section 2 s) hereof for the year in which the service work occurs to continue having the signs covered under this agreement.
 - n) This service agreement covers LED system parts & components unless otherwise stated.

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- o) This agreement includes an annual Maintenance visit to be performed by a full time Panasonic employee. The purpose of this visit is to inspect the screen and associated components and make any repairs that may have previously gone unnoticed. A written report of findings will be provided to the client after this inspection.
- p) Screen Cleanings – This is an optional service to be approached in the following manner: Due to the unique nature of the LED screens to be installed and maintained estimating the cost for a cleaning is difficult. An accurate price for cleaning will only be possible once the screen is installed and operational. Depending on site conditions cleaning would have a noticeable improvement on screen appearance after two to three years of operation. This could be shorter or longer depending on environmental conditions.
 - i) Cost Plus Model – After 12 months of screen operation the designated representatives of each organization may meet (in person or virtually) to discuss the need for screen cleaning at either the 24 or 36 month mark of operation. As part of this discussion Panasonic will provide a cost plus estimate of the pricing to clean the face of the screen. The plus portion of the estimate will be 20%. As part of this scope of service Panasonic will ensure the screen is cleaned in accordance with manufactures' specifics and will further guarantee that the work done does not void any aspect of this agreement.
 - (1) For Example, if the cost to Panasonic from a 3rd party is \$10,000, the cost to DIA would be \$12,000.
 - ii) In House Washing – If it is determined that utilizing in-house labor would be more cost effective, Panasonic will provide specific (written) procedures and guidance on how to properly wash outdoor LED screens. Panasonic will provide pricing to have a Panasonic technician on-site to supervise and verify procedures are being followed so as not to void any manufacturer's warranty. Pricing for this may range from \$2500 - \$5000 depending on how long the washing is projected to last based on the in house resources allocated to the effort.
 - iii) Screen Cleaning under this section are optional and do not restrict DIA from utilizing screen cleaning options of its choosing and its discretion.
- q) Owner agrees to enter into a ten (10) year agreement.
- r) Annual amounts will be billed monthly on the first day of the first month after the date of substantial completion and on the first day of each month thereafter and are subject to NET 30 payment terms without exception. Discounts available for advance payment in full.
- s) Pricing listed below for the scope of services in section 2:

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Yr.	Annual Price
1	\$82,678
2	\$84,926
3	\$87,235
4	\$89,607
5	\$92,044
6	\$94,547
7	\$97,117
8	\$99,758
9	\$102,471
10	\$105,257

Total	\$935,640
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- t) After 36 months of sign operation under this agreement, both parties will review the O&M agreement and the corresponding SLAs to determine if modifications in scope and price can be mutually agreed to for the purposes of reducing O&M costs to DIA. Both parties commit to enter into these negotiations in good faith but neither part is bound to modify the agreement in force. If modifications are not made the pricing structure above will remain in effect no matter the party it may or may not be in benefit to. The pricing structure set forth above is the maximum amount and shall not exceed the amounts set forth herein.
- i) The 36 month period will commence at substantial completion of the project which is defined as the date at which the sign is first able to be used to the benefit of the customer.
- 3) **Content Management Services:** Panasonic will manage and deploy message campaigns to an the DEN Welcome Sign based on the following standard parameters:
- a) Scope of Work - Panasonic will receive, format, upload, schedule, and verify media/art files to be used on the display.
- i) Receive - Panasonic will provide a site or file transfer method or the electronic transfer of media/art files from the client.
- ii) Format - Panasonic will change the size and format including size and compression to meet the requirements of the display. (This does not include creative services including layering, design or creation, however all of these services are available ala carte)
- iii) Upload -Panasonic will use credentials provided by the client to access the display control system to electronically upload the needed files.
- iv) Schedule – Client will provide an updated schedule as to the rotation and timing of current and additional media/art files. Panasonic will log into the display to make necessary changes to the run schedules.
- v) Verify – Panasonic will log into Panasonic provided web cameras to visually inspect the media/art loop and verify new additions play as intended.
- b) Timing and Availability

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- i) From request to fulfillment, Panasonic requires 2 business days to complete the cycle. Panasonic will be available 9AM – 5PM (Local time) Monday through Friday.

- c) Software Setup is included as part of this scope and includes the following:
 - i) Assumes all hardware in place and is accessible remotely
 - ii) Communication (emails, phone calls)
 - iii) Install software, if needed (for example, Broadsign)
 - iv) Configure screen mappings and settings
 - v) Load and schedule initial content
 - vi) Test coordinated with local person to view
 - vii) Setup player for testing including the creation of two campaigns that use DEN logo to be used during testing and to be provided to DEN for future use upon testing completion.
 - viii) Panasonic will coordinate with wireless provider to install and configure the cellular LTE modems used as part of the system.
 - ix) Panasonic will be responsible for the recurring charges associated with the monthly cellular data plans

- d) Additional Fees
 - i) After normal business hours, weekends or holidays (2 hour minimum @ \$125.00 per hour)
 - ii) A la cart services such as design creation, programming (quote as required)
 - iii) Travel costs if no local person available or player is not accessible remotely (\$1250.00)
 - iv) Large resolution (greater than 1920x1080 pixels)
 - (1) Per project basis
 - (2) Setup fees
 - (3) Possible After Effects template needed
 - (4) Travel costs

 - e) Panasonic will perform the above Content Management Services at a rate and the scope of content Services listed in **“Attachment 4”**. The fees listed in Attachment 4 include initial *software setup.
 - (1) Requires a 10 year commitment to run concurrently with the 10 year LED Screen service.
 - (2) An annual escalator of 2.5% will be applied each year starting 1 year after the commencement of this service agreement.

4) **Service Level Agreement**

- a) **Purpose** - This SLA sets out certain service levels (the “Service Levels”) that are applicable to the PEÑA BOULEVARD WELCOME SIGN (the “DEN Welcome Sign”)

- b) **Definitions** - For the purposes of this SLA, the following definitions shall apply:

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- i) "Availability" means the ratio (expressed as a percentage) of time during the Operation Hours that the display is not in a Display Failure condition to the total number of Operating Hours during the Tracking Period.
- ii) "Availability Target" refers to the minimum Availability levels PANASONIC ENTERPRISE SOLUTIONS COMPANY will provide to Client. The targets and timelines for different Availability measures are set out in Section 5.
- iii) "Business Day" means Monday to Friday, excluding City and County of Denver recognized holidays.
- iv) "Business Hours" for PANASONIC ENTERPRISE SOLUTIONS COMPANY means the hours between 8:30 a.m. and 5:00 p.m. MST on Business Days.
- v) "Service Desk" means the support contact information provided by PANASONIC ENTERPRISE SOLUTIONS COMPANY to assist Client employees.
- vi) "Client" means City and County of Denver (DEN) appropriate stakeholder and/or their designee.
- vii) "Desktop" means computer workstations and laptops.
- viii) "Display Area" means either of two display sections comprising the DEN Welcome Sign, one being the Primary LED Displays and the second being the composite viewing area comprised of the LED Sticks.
- ix) "Display Failure" – Any reported condition where more than 10% of a Display Area (defined as 10% of the area of the Primary LED Displays, or 10% of the pixels in the LED Sticks) of the DEN Welcome Sign is dark or otherwise fails to operate properly.
- x) "Hardware" means the physical equipment of computing and computing-directed activities or the physical components of a computer system.
- xi) "Incident" means an event which is not part of the standard operation of a service and which causes or may cause disruption to or a reduction in the quality of services and Client productivity
- xii) "Incident Acknowledgment" means the acknowledgement by the Service Desk of receipt of an Incident Notification, communicated via telephone or email to the Client representative that issued the Incident Notification and the issuance of a time-stamped ticket by PANASONIC

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ENTERPRISE SOLUTIONS COMPANY within PANASONIC ENTERPRISE SOLUTIONS COMPANY's Incident management system in respect of the Incident.

- xiii) "Incident Notification" means an Incident notification delivered by an authorized Client individual to the PANASONIC ENTERPRISE SOLUTIONS COMPANY's Service Desk (either by phone or by email).
- xiv) "Incident Management" means the steps taken by first- or second-level support personnel to Resolve Incidents.
- xv) "Infrastructure" means systems, network devices and configurations.
- xvi) "Force Majeure" as defined in the Master Agreement.
- xvii) "Maintenance Windows" refers to the periods between 1:00 a.m. to 4:00 a.m. MST Saturdays when all or part of the Infrastructure may be unavailable due to maintenance or Change activities. These periods are not considered "downtime." From time to time, PANASONIC ENTERPRISE SOLUTIONS COMPANY may apply wholesale upgrades and/or Changes outside of the Maintenance Windows as agreed to by Client ahead of time. If this type of service is required, PANASONIC ENTERPRISE SOLUTIONS COMPANY shall provide Client with at least three Business Days' prior written notice.
- xviii) "Operating Hours" – Daily from 4AM–1AM the following day (7,665 hours per year).
- xix) "Patch" means a piece of software designed to fix Incidents or update a computer program or its supporting data. Patches may be used to fix security vulnerabilities and other bugs, or improve usability or performance.
- xx) "Problem" means the unknown root cause of one or more existing or potential Incidents. Problems may sometimes be identified because of multiple Incidents that exhibit common symptoms. Problems can also be identified from a single significant Incident, indicative of a single error, for which the cause is unknown. Occasionally Problems will be identified well before any related Incidents occur.
- xxi) "Problem Management" refers to the process whereby PANASONIC ENTERPRISE SOLUTIONS COMPANY will Resolve Problems.
- xxii) "Production" means the applications and systems, as well as supporting systems infrastructure, that the end-users and customers of an organization access and use on an operational basis to execute their business processes and transactions.

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- xxiii) “Production Support” means supporting the systems in Production state.
 - xxiv) “Resolve” (“Resolved” or “Resolution”) means that PANASONIC ENTERPRISE SOLUTIONS COMPANY has produced a satisfactory solution to an Incident or Problem and that the Incident or Problem will not reoccur within a reasonable period of time.
 - xxv) “Resolve Target” refers to the maximum amount of time PANASONIC ENTERPRISE SOLUTIONS COMPANY may take to resolve an Incident.
 - xxvi) “Response” refers to the process whereby an Incident ticket is generated by the Service Desk or by automated notification and assigned to a resource capable of Resolving the Incident who will then contact the appropriate resource at Client.
 - xxvii) “Service Level Credit” means the amount that Client shall be entitled to receive due to a Service Level Failure.
 - xxviii) “Service Level Failure” means an incident which not resolved within the outlined service level goals within this agreement or when Availability falls below the Availability Target outlined in this agreement. .
 - xxix) “Software” means the Desktop and server software programs or software residing in the system.
 - xxx) “Tracking Period” – 12 month period that starts the beginning of the next month after the agreed upon Final Completion milestone and proceeds for 12 months. This period will then repeat annually as the defined Tracking Period.
 - xxxi) “Upgrade” shall mean a Software version modification that increases system functionality
- c) Scope** – The Managed Services listed below are subject to service levels further defined within this agreement.
- i) Hosted Content Management and Advertising Services – Advertising and DEN content will be provided by other parties in a digital format that is mutually agreeable by both parties. PANASONIC ENTERPRISE SOLUTIONS COMPANY will have to take provided digital content and incorporate it into the digital content management system that displays content on the DEN Welcome Sign per mutually agreed to terms and playback schedules.
 - ii) PANASONIC ENTERPRISE SOLUTIONS COMPANY will procure, configure, test, and operate a secure a transport solution (e.g. VPN over LTE Wireless) to connect content management system to the DEN Welcome Sign. This includes initial installation costs and any associated monthly recurring charges with third party provider.

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- iii) PANASONIC ENTERPRISE SOLUTIONS COMPANY will operate and maintain both the content management system and playback electronics, as well as all electronics at the DEN Welcome Sign under the terms of this SLA. PANASONIC ENTERPRISE SOLUTIONS COMPANY will perform any routine maintenance on electronics and software to include patching to ensure optimal performance.

d) General Procedures

i) Incident Management

- (1) PANASONIC ENTERPRISE SOLUTIONS COMPANY's will deliver efficient response and consistent processing of support requests per the structure defined below:

- (a) Client will initiate the support process by contacting PANASONIC ENTERPRISE SOLUTIONS COMPANY's single point of contact Service Desk via the supplied phone number and email address in "Attachment 3"
- (b) PANASONIC ENTERPRISE SOLUTIONS COMPANY will deliver 7x24 monitoring of Infrastructure to ensure availability, IT resources and efficient response to incidents or outages.
- (c) Alerts generated by PANASONIC ENTERPRISE SOLUTIONS COMPANY's Network Management Systems will be escalated to appropriately skilled Technicians or System Engineers for investigation and resolution.
- (d) For Critical Priority incidents, Client is kept informed of progress via email or phone, typically both unless otherwise agreed upon. Updates are provided at each hour until the problem is solved for incidents that are to be remedied remotely, for incidents requiring an on-site technician visit to the LED screen, updates will be provided every 4 hours after technician arrival on-site until the issue is resolved
- (e) PANASONIC ENTERPRISE SOLUTIONS COMPANY maintains ownership of the issue and continues to remain accountable to the customer for updates and resolution even when the third party is engaged.
- (f) Both PANASONIC ENTERPRISE SOLUTIONS COMPANY and Client will maintain up to date contact name, title, phone numbers, and email addresses as well as escalation points for communication between parties regarding incidents and day to day operation of the system.

- (2) Notification Procedures

- (a) User Initiated Incident

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- (i) Incident Notification – Client notifies PANASONIC ENTERPRISE SOLUTIONS COMPANY via email with the details of the Incident and a reasonable effort will be made to include a picture or short video showing the issue.
 - (ii) Initial Contact – PANASONIC ENTERPRISE SOLUTIONS COMPANY will contact the person who opened the issue. Contact can be made via email or telephone (with discretion based on the priority and nature of the issue).
 - (iii) In-Progress Contact – Once an Incident is being investigated, PANASONIC ENTERPRISE SOLUTIONS COMPANY will contact the person who opened the issue via the procedures in section 4.d)i.(1).
 - (iv) Resolution Contact – Once an Incident has been resolved, PANASONIC ENTERPRISE SOLUTIONS COMPANY will contact the person who opened the issue to ensure issue is resolved. Once resolution is established, the person who opened the issue will be notified of the resolution.
 - (v) Escalation Contact – If an incident exceeds the Resolution Target and is escalated to the next priority level, PANASONIC ENTERPRISE SOLUTIONS COMPANY will notify the person who opened the issue of this escalation.
- (b) Non-Client Initiated Incident
- (i) Initial Problem recognition – Once an incident is being investigated, PANASONIC ENTERPRISE SOLUTIONS COMPANY will contact the designated Client Stakeholder.
 - (ii) In-Progress investigation – PANASONIC ENTERPRISE SOLUTIONS COMPANY will contact the designated Client Stakeholder and keep them apprised of investigation and repair efforts throughout the incident.
 - (iii) Resolution notification – PANASONIC ENTERPRISE SOLUTIONS COMPANY will communicate that the repair action is complete and advise what the root cause of the incident was to the designated Client Stakeholder once the system is returned to operation.
 - (iv) Escalation notification – If an incident exceeds the Resolution Target and is escalated to the next priority level, PANASONIC ENTERPRISE SOLUTIONS COMPANY will notify the person who opened the issue and the Client Stakeholder of this escalation.
- e) **Service Availability Target** – PANASONIC ENTERPRISE SOLUTIONS COMPANY will aim to achieve a target of 99.5% of system availability (calculated on a monthly basis) and maintain required equipment sparing levels and internal procedures as such to achieve this level.
- i) When calculating Availability, the following times will not be included:
 - (1) Maintenance Windows;
 - (2) Down time caused by the non-availability of any services, networks or network equipment not owned or controlled by PANASONIC ENTERPRISE SOLUTIONS COMPANY, including

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switches and routers controlled by telecommunications companies or wireless service providers unless such services, networks, switches, or routers are controlled through companies under contract or subcontracted by PANASONIC ENTERPRISE SOLUTIONS COMPANY;

- (3) Down time caused by failure of third-party software, including, without limitation, e-commerce software, payment gateways, chat, statistics or free scripts;
- (4) Down time caused by the acts or omissions of Client or its personnel;
- (5) Down time caused by any negligence, willful misconduct, or use of the Services in breach of the terms and conditions of this SLA by any user of the applications and/or systems;
- (6) False outages reported as a result of errors in data logging.
- (7) Downtime caused by excluded "*Force Majeure*" incidents.

f) Digital Signage Content Management and Distribution – PANASONIC ENTERPRISE SOLUTIONS COMPANY will actively monitor and manage ALL content on the PEÑA BOULEVARD WELCOME SIGN. PANASONIC ENTERPRISE SOLUTIONS COMPANY will collect, inspect, deploy, schedule and verify all media assets pursuant to Section 3). This includes stakeholder messaging (e.g. DEN branding), advertising, and public service announcements. PANASONIC ENTERPRISE SOLUTIONS COMPANY will manage digital signage content 24x7 from its NOC and support the following SLA levels:

- (1) Message Management (99.5% placement accuracy) – PANASONIC ENTERPRISE SOLUTIONS COMPANY will provide message management consistent with digital signage system availability. For functioning digital signage, PANASONIC ENTERPRISE SOLUTIONS COMPANY will support 99.5% message accuracy as defined by the programming terms as mutually agreed. Message accuracy is defined by the total number of messages impressions displayed on any digital asset over the course of a calendar year. For the sake of clarity the following example is provided: a 15-second message that runs four (4) times an hour for 30 days would create 2,880 message impressions (4x24x30).
- (2) Advertising Management (99.5% placement accuracy) – PANASONIC ENTERPRISE SOLUTIONS COMPANY will manage advertising placement and revenue generation. For functioning digital signage, PANASONIC ENTERPRISE SOLUTIONS COMPANY will support 99.5% advertising placement accuracy as defined by the programming terms as mutually agreed.
- (3) Alert Management (99.9% placement accuracy) – Amber and severe weather alerts will be inserted as needed, and the on-duty Operations Director will be notified of each event to ensure prompt and accurate dissemination. PANASONIC ENTERPRISE SOLUTIONS COMPANY will support 99.9% emergency notification accuracy.

g) Service Level Credits – Credits received by Client shall be received first, through a credit towards future invoices for the Client's LED Service and/or Content Management Service. If the Service

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Level Credit exceeds, the total amount invoiced to the Client upon contract term expiration, PANASONIC ENTERPRISE SOLUTIONS shall then make payment to Client the balance of the Service Level Credit outstanding. Service Level Credits will be calculated based on LED Display Availability and Incident Response, the details and calculations of both are stipulated below.

i) Availability

- (1) Method of Calculation – Availability during each month will be calculated using the following formula:

$$\text{Availability} = ((\text{Scheduled Uptime} - \text{Unscheduled Downtime}) / \text{Scheduled Uptime}) \times 100$$

- (2) Unscheduled Downtime will be defined as greater than 10% of any individual LED display not properly displaying content as intended.
- (a) The LED displays are individually defined as: The Inbound LED Screen, Each Face of The DEN Welcome sign and “The Sticks”. The sticks will be viewed collectively as a single LED display.
- (b) Downtime will be measured from the time elapsed between notification of an Incident by either User Initiated Incident or Non-Client Initiated Incident notification process as set forth in this SLA to when the Incident is Resolved. The Unscheduled Outage Minutes will not include elapsed time due to PANASONIC ENTERPRISE SOLUTIONS COMPANY waiting for Client response(s).
- (3) “Scheduled Uptime” = Total Minutes in a Month – Scheduled Maintenance Window
- (4) Availability – Goal and Details: PANASONIC ENTERPRISE SOLUTIONS COMPANY will work with Client and 3rd parties to achieve a goal of 99.5% uptime.
- (a) Faults in uptime are based on unplanned events within PANASONIC ENTERPRISE SOLUTIONS COMPANY’s control, including system or application failures (including but not limited to failed hardware, over-heating, logically or physically severed network connections, and application, middleware and operating system failures). Items not covered are detailed in the exceptions section of the document.
- (i) Panasonic acknowledges that it is within it’s responsibility to test any patches, software upgrades or system modifications in a test environment to ensure the possibility of any interruption of service due to the items listed above is mitigated as much as reasonably possible.

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- (b) If uptime ever falls below the 99.5% minimum, Client will receive Service Level Credit in the form of a % of revenue received from the most recent prior month in which uptime was at or above Service Level.
- (5) Goals:
- (a) Client will receive credit towards .5% of revenue received from the most recent prior month in which uptime was at or above Service Level Goals per additional hour of downtime, to a maximum of 50% of the gross advertising revenues collected for that prior month.
 - (b) Availability, downtime and compensation amounts are based on monthly totals in minutes where as 99.5% uptime equates to 3h, 39 minutes of downtime/unavailability per month.
 - (c) Example calculation: Total downtime/unavailability for month of July was 10 hours and 38 minutes. This is 6 hours over the 99.5% uptime target of 3h and 39 minutes and equates to a Service Level Credit to Client in the amount of 3% of revenue received in the most recent month in which uptime was at or above Availability Goals.
- ii) Response Targets
- (1) Method of Calculation – Response times will be measured on an Incident-by-Incident basis and calculated as the period of time elapsed between the incident request and time stamped on the applicable Incident recorded in PANASONIC ENTERPRISE SOLUTIONS COMPANY's Incident Management System. Response times are defined in Table 1. of Attachment 1.
 - (2) In the event of a Failure to respond according to Table 1. In Attachment 1, Client will receive Service Level Credit in the amount of .5% of revenue received from the most recent prior month in which uptime was at or above Service Level Goals for each additional hour by which the Service Level Requirement is missed for a specific Incident to a maximum of 50% of the total gross advertising revenues for that prior month.
 - (3) Example calculation: For month of July, PANASONIC had 2 incidents that exceeded the Service Level requirement by an hour each. $2 \times .5\% = 1\%$ and equates to Service Level Credit of 1% of revenue received from the most recent prior month in which uptime was at or above Service Level Goals.
- iii) Service Level Reporting – PANASONIC ENTERPRISE SOLUTIONS COMPANY will provide monthly reports detailing Availability, Incidents, Message placement, and Capacity Trending per mutually agreed to formatting and detail.

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- h) Change Management Process** – The Parties shall discuss and approve any Changes to the Services set forth in this agreement in accordance with the following change management process. All Changes that fall outside of the scope of the Statement of Work that is tied to this SLA shall be requested in accordance with steps outlined below.
- i) Step One: Initiation
 - (1) Either Client or PANASONIC ENTERPRISE SOLUTIONS COMPANY must bring details of any change requested of the Production system to the other party.
 - ii) Step Two: Planning
 - (1) Client and PANASONIC ENTERPRISE SOLUTIONS COMPANY members will discuss the change. The change will be logged as a Request for Change (“RFC”) in writing, then classified (emergency, major, minor, or standard). The impacts and risks will be identified and assessed and, upon gaining approval from the Client, the work will be planned, costs and effort estimated and documented in a Change Request Form, and scheduled for release. For emergency and major Changes, a project manager will be assigned to coordinate activities and keep stakeholders notified of progress.
 - iii) Step Three: Delivery – Testing
 - (1) The Change will be developed and tested following standard processes in development and test environments (if available).
 - iv) Step Four: Delivery – Deployment
 - (1) As soon as the Change has passed user acceptance testing (as documented in the Change Request Form), the release manager will coordinate the release of the Change to Production. Stakeholders will be notified of the details and delivery date of the Change.
 - v) Step Five: Operate
 - (1) Post-release review and closure of the Change request. If for some reason the change does not deploy successfully to the production environment, PANASONIC ENTERPRISE SOLUTIONS COMPANY will “roll back” to a prior working production state and work through next steps with the Client to seek resolution on the Change Request.
 - vi) If the Client rejects a proposed Change Request at any point from PANASONIC ENTERPRISE SOLUTIONS COMPANY, then PANASONIC ENTERPRISE SOLUTIONS COMPANY and the Client will meet to negotiate until both parties agree to either:
 - (1) Discard the change request, or
 - (2) Revise the Change Request to mutually agreed upon terms

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"Attachment 1"

Table 1.

Response & Resolution Targets

PANASONIC ENTERPRISE SOLUTIONS COMPANY will deliver services according to the targets defined in the following table:

Priority Level	Response Time	Resolve Target	Client Notification
Critical – This is defined as greater than 25% of the screen not correctly displaying the intended image.	7x24 15 Minutes	7x24 Resolution 2 hours if able to be resolved through remote means, same day if an on-site visit is required. or with continuous effort until Resolved	7x24 Immediate – Client Stakeholder
Urgent – Defined as greater than 10% but less than 25% of the screen not correctly displaying the intended image.	7x24 15 Minutes	Business Hours Resolution 1 day or with continuous effort within Business Hours until Resolved	Business Hours Immediate – Client Stakeholder
Important – Defined as greater than 2% of the screen but less than 10% of the screen not correctly displaying the intended image.	During Business Hours 60 Minutes	Business Hours Resolution 2 Business Days or with continuous effort within Business Hours until Resolved	Business Hours Immediate – Client Stakeholder
Informational/Monitor	During Business Hours 120 Minutes	Business Hours Resolution 2 weeks or with continuous effort within Business Hours until Resolved	Business Hours Client Stakeholder

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"Attachment 2"

Service Description	CLIENT	PANASONIC ENTERPRISE SOLUTIONS COMPANY
IT Service Management	<ul style="list-style-type: none"> Designate a business owner who will collaborate with PANASONIC ENTERPRISE SOLUTIONS COMPANY throughout the term of this SOW. Participate in scheduled meetings Communicate changes to business requirements through scheduled meetings. 	<ul style="list-style-type: none"> Designate an Engagement Manager who will assume responsibility for all aspects of this engagement to ensure success of the partnership. Designate an Operations Manager who will assume responsibility for Operational performance. Schedule and lead Monthly operational meetings. Provide advisory services for evolution of IT environment and alignment to business requirements.
Content Management	<ul style="list-style-type: none"> Communicate regulatory compliance obligations to PANASONIC ENTERPRISE SOLUTIONS COMPANY with reasonable notice. Communicate services deliverables and service levels to end users. Take appropriate measures to maintain security of desktop assets and physical access to office network. 	<ul style="list-style-type: none"> Comply with regulatory items. Provide adequate resources to maintain the service levels defined by the Service Level Agreement. Maintain Security Compliance of Data Center and Content Management Services. Provide a single point of contact for incident logging and process to initiate escalations. Provide regular monthly reports based on service levels described in this SOW. Provide monthly and ad hoc reports as and when requested in regards to revenue reporting and system availability.
Systems Monitoring & Support	<ul style="list-style-type: none"> Communicate requirements to PANASONIC ENTERPRISE SOLUTIONS COMPANY. 	<ul style="list-style-type: none"> PANASONIC ENTERPRISE SOLUTIONS COMPANY will use tools and alarms, with routine reviews to ensure proper operation of systems and equipment in accordance with ITIL best practices.
System Reporting	<ul style="list-style-type: none"> Communicate requirements to PANASONIC ENTERPRISE SOLUTIONS COMPANY. 	<ul style="list-style-type: none"> PANASONIC ENTERPRISE SOLUTIONS COMPANY will provide availability, incident, message placement, and capacity reports to Client per request.
Server Management	<ul style="list-style-type: none"> Communicate requirements to PANASONIC ENTERPRISE SOLUTIONS COMPANY. 	<ul style="list-style-type: none"> Maintain resource usage statistics. Perform disk, CPU, network and memory threshold monitoring. Review statistics and identify resource issues. Prepare graphs as required for identified server resource usage issues. Recommend upgrade solutions Minor performance tuning.

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System Backup & Recovery	<ul style="list-style-type: none"> Work with PANASONIC ENTERPRISE SOLUTIONS COMPANY to define and implement backup selection lists, data types, and restore requirements. 	<ul style="list-style-type: none"> Define and implement backup and recovery strategy, including secure off-site storage of all hosted data. Determine backup capacity requirements and schedules. Restore virtual machines and/or other data in the event of business disruption.
Software Management	<ul style="list-style-type: none"> Work with PANASONIC ENTERPRISE SOLUTIONS COMPANY to define support and upgrade process requirements. 	<ul style="list-style-type: none"> Define and implement software support and upgrade procedures. Coordinate all firmware and software upgrade activities with the Client prior to placing changes in production environment.
Change Management	<ul style="list-style-type: none"> Participate in change management process. Approve implementation plans and schedules. Participate in testing where required. Communicate requirements to PANASONIC ENTERPRISE SOLUTIONS. 	<ul style="list-style-type: none"> Design implementation strategies. Perform upgrades including OS and firmware upgrade/patches. Prepare detailed implementation, testing and roll back plans for upgrades. Provide schedules for all upgrades and coordinate approvals ahead of time.
Network Services	<ul style="list-style-type: none"> Communicate requirements to PANASONIC ENTERPRISE SOLUTIONS COMPANY. 	<ul style="list-style-type: none"> Design and implement remote connectivity between PANASONIC operations and control center and the sign. Maintain resource usage statistics. Review statistics and identify resource usage issues. Prepare graphs as required for identified network resource usage issues. Recommend solutions for identified issues. Prepare detailed implementation, testing and roll back plans for upgrades. Provide schedules for all upgrades and coordinate approvals ahead of time.
Capacity Planning	<ul style="list-style-type: none"> Provide growth expectations and information required to project usage changes. Identify constraints and budgetary issues. Approve final capacity plans. 	<ul style="list-style-type: none"> Ensure adequate system resources to meet business requirements by: Implementing automated system resource usage measurement tools. Collect and report usage metrics on a monthly basis for input into capacity plans. Work with IT Stakeholders to obtain future business and application projections. Provide high level implementation schedules to meet identified business targets.
Cyber Security / Firewall Management	<ul style="list-style-type: none"> Communicate requirements to PANASONIC ENTERPRISE SOLUTIONS COMPANY 	<p>Ensure adequate system security measures are in place and managed to protect the system and Client data by:</p>

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	<ul style="list-style-type: none">• Participate in security design and testing.	Enable/maintain security features on firewalls and network equipment. Monitor system for unauthorized access. Apply all patches to system equipment/components on a timely basis.
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“Attachment 3”**Points of Contact and Escalation****Panasonic Points of Contact:**

- 1) LED Screen Service Issues:
 - a) Primary Panasonic POC – Dominic Pellegrino, (201) 590-5492 – Dominic.pelligrino@us.panasonic.com
 - b) Escalation POC – Thomas Carroll, (817) 307-7122 – Thomas.carroll@us.panasonic.com
- 2) Content Management:
 - a) Primary POC – Alexander Nunes - (201) 392-6639 - Alexander.Nunes@us.panasonic.com
 - b) Escalation POC – Michael DeMaio - Michael.DeMaio@us.panasonic.com
- 3) Executive Level Escalation for all recurring services: Bradley Moszkiewicz VP of Recurring Services- brad.moszkiewicz@us.panasonic.com – (201) 392 – 4122.
- 4) 24/7Contact Information for after-hours support:
 - a) Email – dia.service@us.panasonic.com – if not proposed address is not available, a mutually agreeable individualized address will be provided by Panasonic.
 - b) 1(800) call center number to be provided 30 days prior to project completion.

DEN Points of Contact:

- 1) LED Screen Service (“Break/Fix” Items):
 - a) Facility (Power, Snow Removal, Grounds Maintenance, Structure):
 - i) Primary DEN POC – Mark Adams, Senior Director of Development, (303) 342-2762 mark.adams@flydenver.com
 - ii) Escalation POC – Mark Baker, SVP Airport Infrastructure Management – (303) 342-2855 mark.baker@flydenver.com
 - b) [Operation and Maintenance / Technical](#) Issues:
 - i) Primary DEN POC –DEN Service Desk, (303) 342-2014 service.desk@flydenver.com
 - ii) Escalation POC – Kelan Pape, DEN Technologies, (303) 342-2014 kelan.pape@flydenver.com
- 2) Content Management:

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- a) Primary POC – Pam Dechant, Director of Concessions (303) 342-2557
Pamela.Dechant@flydenver.com
- b) Escalation POC – Neil Maxfield, SVP of Concessions, (303) 342-2574 neil.maxfield@flydenver.com
- 3) DEN Executive Office Escalation: John Karner Director of Strategic Initiatives, 303-342-2486
john.karner@flydenver.com

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“Attachment 4”**1) Phase 1 (6-9 months)**

- a) **Slot:** Length of time a single advertisement (ad) is displayed. In this case 1 slot = 8 seconds.
- b) **Loop:** The number of 8 second slots (ads) maintained and sold consists of loop. The longer the loop, the more time it takes to maintain. Suggestions:
 - i) 2 minute loop would have 15 8-second slots, 1 ad would play 30x per hour
 - ii) 4 minute loop would have 30 8-second slots, 1 ad would play 15x per hour
 - iii) 6 minute loop would have 45 8-second slots, 1 ad would play 10x per hour
- c) **Inventory:** Number of slots sold and remaining. Will be maintained by DIA and/or agency.
- d) **Sign Sections:** 1 Main LED board with two sets of sticks on either side.
 - i) Section B South – 900x300 Main LED, 274 sticks on left, 171 sticks on right
 - ii) Section B North – 900x300 Main LED, 171 sticks on left, 274 sticks on right
 - iii) Section C South – 900x300 Main LED, 298 sticks on left, 126 sticks on right
 - iv) Section C North – sticks only.
- e) **Set of graphics:** Consists of 1 graphic for the main LED board with 2 color graphics for sticks on either side. These graphics will always sync. Main LED board will be still. Sticks may be still or have motion. If motion, then must be 8 seconds in length, anything more will be cut off.
- f) **Campaign:** Set of graphics that will run for a period time in a specific number of sold slots for 1 sign section. Graphics and schedule are provided by the client or agency.
- g) **Posting (Activation):** Receiving and scheduling one campaign. Need 2 days lead time to setup. Includes up to 12 “rapid” campaign postings per year in which lead time for setup is reduced to one day. Examples:
 - i) Schedule DIA Welcome Message in 1 slot on Section B North, 7/1/2017 through 8/30/2017
 - ii) Schedule NIKE in 2 slots for one day only on Section C South, 9/1/2017

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- h) **Takeover campaign:** Equivalent of 2 postings. A set of graphics that will run for a specific time period on a specific day. Example:
 - i) Schedule DIA Welcome Message to run 12pm-1pm on Section B South on 9/1/2017

2) Phase 2 (9-15 months)

- a) **Synced campaign:** One campaign that will run at the same time on more than 1 section. Example:
 - i) Schedule DIA Welcome in 1 slot on Section B North and South, 7/1/2017 through 8/30/2017
- b) **Dynamic campaign:** Multiple sets of graphics can be used in one campaign.
- c) **HTML5 campaign:** Can use an HTML5 page in place of still graphic to display up to date information.
- d) **Cascading:** Campaign graphics start on one section and cascade to another section.
- e) **Additional:** To be determined based on technology and client needs.

3) Pricing Matrix:

Posts Per Month	Price
1 to 25 posts per month	\$3,000.00
26 to 50 posts per month	\$5,500.00
51 to 75 posts per month	\$7,500.00
76 to 100 posts per month-	\$9,000.00

- a) Posts can be purchased ala carte for \$125.00 each per post

4) Additional Fees

- a) After normal business hours, weekends or holidays (2-hour minimum @ \$125.00 per hour)
- b) A la cart services such as design creation, programming (quote as required).
 - i) The rate for such services will be \$150/hr, the total cost for any campaigns or request will be dependent on the complexity of the request.
 - (1) Any work of this type will only be performed if pre-approved by DEN Senior Vice President of Communications, Customer Service & Marketing or equivalent, such pre-approval will only be granted after a defined scope of work and quote has been developed and provided for review.

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“Attachment 5”

Spare Parts list – to be provided.

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**Denver International Airport Welcome Sign
Panasonic Build Proposal, 2016**

A/E Build		Current Scope (FINAL)
General Construction		
Aluminum Poles (908 @ 18' each)		\$ 984,156
LED sticks (5113 @ 1.5m, 56 @ 1.0m, 148 @ 0.5m)		\$ 2,405,216
Primary Displays (3 @ 900 x 300 pix, 10mm, 48' x 16')		\$ 590,774
Primary Display Install		\$ 197,476
LED pole/stick Install		\$ 201,476
Electrical		\$ 160,321
Low Voltage cabling		\$ 39,230
	Subtotal	\$ 4,578,649
Indirect Costs		
Permits/Insurance/Bonds		\$ 18,660
Overhead/QA/Testing /Management		\$ 188,973
	Subtotal	\$ 207,633
DEN TOTAL ROM ESTIMATE		\$ 4,786,282
DEN DISCOUNTED SALES PRICE (PER PARTNERSHIP AGREEMENT)		\$ 4,500,000

Panasonic is providing 3 each Monument Displays that have sufficient brightness and resolution to provide the ability to inform and educate airport traffic using graphics, text and video images and these passengers move along Pena Blvd in route to the airport. These displays are installed and have the architectural look and feel consistent with the airport property. The messaging system provides the ability to format the messages into a programming loop that will run repeatedly up to 24 hours per day. The sign can be interrupted from the program schedule to provide emergency messaging and special instructions. The content management system provides for various levels of approvals and reviews prior to displaying content. In addition to the monument signs over 5000 double sided strip sign will be built to provide artistic or architectural accent to the monument signs as directed by DEN management. These signs are capable of display low resolution content and accent lighting. In completion, the Welcome Sign will be truly a one-of-a-kind sign.

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.

Technology Errors & Omissions

Minimum Limits of Liability (In Thousands)

Per Occurrence	\$1,000
Aggregate	\$1,000

The policy must provide the following:

1. Liability arising from theft, dissemination and / or use of confidential information (a defined term including but not limited to bank account, credit card account, personal information such as name, address, social security numbers, etc. information) stored or transmitted in electronic form.
2. Liability arising from the introduction of a computer virus into, or otherwise causing damage to, a customer's or third person's computer, computer system, network or similar computer related property and the data, software, and programs thereon.
3. Policies written on a claims made basis must remain in full force and effect in accordance with CRS 13-80-104. The Insured warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning at the time work under the Contract is completed.
4. Coverage for advertising injury, personal injury (including invasion of privacy) and intellectual property offenses related to internet.

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 under blanket endorsement.
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.