

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT FOR PROFESSIONAL SERVICES (“Agreement”) is made and entered into as of the date stated on the City’s signature page below (the “**Effective Date**”) by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado acting on behalf of its Department of Aviation (the “**City**”), and **MARSH USA INC.**, a Delaware corporation authorized to do business in the State of Colorado (“**Consultant**”) (collectively the “**Parties**”).

WITNESSETH:

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

WHEREAS, the City desires to obtain professional consulting and brokerage services to provide technical assistance and support related to the design, structure and implementation of an Owner Controlled Insurance Policy for the construction projects at DEN, and such other work as may be requested by the Airport (the “**Services**”); and

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

WHEREAS, Consultant’s proposal was selected for award of the Services; and

WHEREAS, Consultant is qualified, willing, and able to perform the Services, as set forth in this Agreement in a timely, efficient, and economical manner; and

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

ARTICLE I. LINE OF AUTHORITY

The Chief Executive Officer of the Department of Aviation (the “**CEO**”), his/her designee or successor in function, authorizes and directs all work performed under this Agreement. Until otherwise notified in writing by the CEO, the CEO has delegated the authority granted herein to the DEN Finance division. The relevant Senior Vice President (the “**SVP**”), or his/her designee (the “**Director**”), will designate a Project Manager to coordinate professional services under this Agreement. Reports, memoranda, correspondence, and other submittals required of Consultant hereunder shall be processed in accordance with the Project Manager directions.

ARTICLE II. SCOPE OF WORK AND CONSULTANT RESPONSIBILITIES

A. Scope of Services. Consultant shall provide professional services and provide deliverables for the City as designated by the CEO, and/or her designee, from time to time and as described in the attached *Exhibit A* (“**Scope of Work**”) and in accordance with Task Orders, schedules and budgets set by the City. The City may, through a Task Order and without requiring

amendment to this Agreement, make minor changes, additions, or deletions to the Scope of Work without change to the Maximum Contract Amount.

B. Standard of Performance. Consultant shall faithfully perform the work required under this Agreement in accordance with the standard of care, skill, efficiency, knowledge, training, and judgment provided by highly competent professionals who perform work of a similar nature to the work described in this Agreement.

C. Time is of the Essence. Consultant acknowledges that time is of the essence in its performance of all work and obligations under this Agreement.

D. Subcontractors.

1. In order to retain, hire, and/or contract with an outside subcontractor for work under this Agreement, Consultant must obtain the prior written consent of the CEO or the CEO's designee. Consultant shall request the CEO's approval in writing and shall include a description of the nature and extent of the services to be provided, the name, address and professional experience of the proposed subcontractor, and any other information requested by the City.

2. The CEO shall have the right to reject any proposed outside subcontractor deemed by the CEO to be unqualified or unsuitable for any reason to perform the proposed services. The CEO shall have the right to limit the number of outside subcontractors and/or to limit the percentage of work to be performed by them.

3. Any final agreement or contract with an approved subcontractor must contain a valid and binding provision whereby the subcontractor waives any and all rights to make any claim of payment against the City or to file or claim any lien or encumbrance against any City property arising out of the performance or non-performance of this Agreement and/or the subcontract.

4. Consultant is subject to Denver Revised Municipal Code ("D.R.M.C.") § 20-112, wherein Consultant shall pay its subcontractors in a timely fashion. A payment is timely if it is mailed to the subcontractor no later than seven (7) days after receipt of any payment from the City. Any late payments are subject to a late payment penalty as provided in the Denver Prompt Payment Ordinance (D.R.M.C. §§ 20-107 through 20-118).

5. This Section, or any other provision of this Agreement, shall not create any contractual relationship between the City and any subcontractor. The City's approval of a subcontractor shall not create in that subcontractor a right to any subcontract. The City's approval of a subcontractor does not relieve Consultant of its responsibilities under this Agreement, including the work to be performed by the subcontractor.

E. Personnel Assignments.

1. Consultant or its subcontractor(s) shall assign all key personnel identified in this Agreement, including Task Order(s) to perform work under this Agreement ("Key

Personnel”). Key Personnel shall perform work under this Agreement, unless otherwise approved in writing by the SVP or his/her authorized representative.

2. It is the intent of the Parties that all Key Personnel perform their specialty for all such services required by this Agreement. Consultant and its subcontractor(s) shall retain Key Personnel for the entire Term of this Agreement to the extent practicable and to the extent that such services maximize the quality of work performed.

3. If, during the Term of this Agreement, the Project Manager determines that the performance of any Key Personnel or other personnel, whether of Consultant or its subcontractor(s), is not acceptable or that any Key Personnel is no longer needed for performance of any Task Order, the Project Manager shall notify Consultant and may give Consultant notice of the period of time which the Project Manager considers reasonable to correct such performance, or remove the Key Personnel, as applicable.

4. If Consultant fails to correct such performance, then the City may revoke its approval of the Key Personnel or other personnel in question and notify Consultant that such Key Personnel or other personnel will not be retained on this Project. Within ten (10) days of receiving this notice, Consultant shall use its best efforts to obtain adequate substitute personnel who must be approved in writing by the Project Manager. Consultant’s failure to obtain the Project Manager’s approval shall be grounds for Termination for Cause in accordance with Article IV, Section B.3.

ARTICLE III. OWNERSHIP AND DELIVERABLES

Upon payment to Consultant, all records, data, deliverables, and any other work product prepared by Consultant or any custom development work performed by Consultant for the purpose of performing this Agreement on or before the day of payment shall become the sole property of the City. Upon request by the City, or based on any schedule agreed to by Consultant and the City, Consultant shall provide the City with copies of the data/files that have been uploaded to any database maintained by or on behalf of Consultant or otherwise saved or maintained by Consultant as part of the services provided to the City under this Agreement. All such data/files shall be provided to the City electronically in a format agreed to by the Parties. Consultant also agrees to allow the City to review any of the procedures Consultant uses in performing any work or other obligations under this Agreement, and to make available for inspection any and all notes, documents, materials, and devices used in the preparation for or performance of any of the scope of work, for up to three (3) years after termination of this Agreement. Upon written request from the City, Consultant shall deliver any information requested pursuant to this Article within ten (10) business days in the event a schedule or otherwise agreed-upon timeframe does not exist.

ARTICLE IV. TERM AND TERMINATION

A. Term. The Term of this Agreement shall commence on the Effective Date and shall expire five (5) years from the Effective Date, unless terminated in accordance with the terms stated herein (the “**Expiration Date**”). If the Term expires prior to Consultant completing the work under this Agreement, subject to the prior written approval of the CEO or his/her authorized representative, this Agreement shall remain in full force and effect until the completion of any

services commenced prior to the Expiration Date. Consultant has no right to compensation for services performed after the Expiration Date without such express approval from the CEO or his/her authorized representative.

B. Suspension and Termination.

1. Suspension. The City may suspend performance of this Agreement at any time with or without cause. Upon receipt of notice from the Director, Consultant shall stop work as directed in the notice and, as directed in the notice, shall submit an invoice for any work performed but not yet billed. Any milestones or other deadlines shall be extended by the period of suspension unless otherwise agreed to by the City and Consultant. The Expiration Date shall not be extended as a result of a suspension.

2. Termination for Convenience. The City may terminate this Agreement at any time without cause upon written notice to Consultant from Director.

3. Termination for Cause. In the event Consultant fails to perform any provision of this Agreement, the City may either:

a. Terminate this Agreement for cause with ten (10) days prior written notice to Consultant; or

b. Provide Consultant with written notice of the breach and allow Consultant an Opportunity to Cure.

4. Opportunity to Cure. Upon receiving the City's notice of breach pursuant to Section B.3.b of this Article, Consultant shall have five (5) days to commence remedying its defective performance. If Consultant diligently cures its defective performance to the City's satisfaction within a reasonable time as determined by the City, then this Agreement shall not terminate and shall remain in full force and effect. If Consultant fails to cure the breach to the City's satisfaction, then the City may terminate this Agreement pursuant to Article IV, Section B.3.a.

5. Compensation for Services Performed Prior to Suspension or Termination Notice. If this Agreement is suspended or terminated, the City shall pay Consultant the reasonable cost of only those services performed to the satisfaction of the CEO or his/her authorized representative prior to the notice of suspension or termination. Consultant shall submit a final invoice for these costs within thirty (30) days of the date of the notice. Consultant has no right to compensation for services performed after the notice unless directed to perform those services by the City as part of the of termination process or as provided in Section 6 below..

6. Reimbursement for Cost of Orderly Termination. In the event of Termination for Convenience of this Agreement pursuant to Article IV, Section B.2., Consultant may request reimbursement from the City of the reasonable costs of orderly termination associated with the Termination for Convenience as part of its submittal of costs pursuant to Section B.5. In no event shall the total sums paid by the City pursuant to this Agreement, including Sections B.5 and B.6, exceed the Maximum Contract Amount.

C. No Claims. Upon termination of this Agreement, Consultant shall have no claim of any kind against the City by reason of such termination or by reason of any act incidental thereto. Consultant shall not be entitled to loss of anticipated profits or any other consequential damages as a result of termination.

ARTICLE V. COMPENSATION AND PAYMENT

A. **Maximum Contract Amount**. Notwithstanding any other provision of this Agreement, the City shall not be liable under any theory for payment for services rendered and expenses incurred by Consultant under the terms of this Agreement for any amount in excess of the sum of **Eleven Million Eight Hundred Eighty-Six Thousand Two Hundred Sixty Dollars and Zero Cents (\$11,886,260.00)** (“**Maximum Contract Amount**”). Consultant shall perform the services on either an hourly rate basis or a lump sum basis up to the Maximum Contract Amount.

B. **Limited Obligation of City**. The obligations of the City under this Agreement shall extend only to monies encumbered for the purposes of this Agreement. Consultant acknowledges and understands the City does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City. The City is not under any obligation to make any future encumbrances or appropriations for this Agreement nor is the City under any obligation to amend this Agreement to increase the Maximum Contract Amount above.

C. **Payment Source**. For payments required under this Agreement, the City shall make payments to Consultant solely from funds of the City and County of Denver Airport System Fund and from no other fund or source. The City has no obligation to make payments from any other source.

D. **Basis for Consultant’s Fee**. Consultant’s fee is based on the time required by its professionals to complete the services under this Agreement. Individual hourly rates are set forth in *Exhibit A* and vary according to the experience and skill required.

E. **Payment Schedule**. Subject to the Maximum Contract Amount, for payments required under this Agreement, the City shall pay Consultant’s fees and expenses in accordance with this Agreement. Unless otherwise agreed to in writing, Consultant shall invoice the City on a regular basis in arrears and the City shall pay each invoice in accordance with Denver’s Prompt Payment Ordinance, D.R.M.C. § 20-107, et seq., subject to the Maximum Contract Amount.

F. **Invoices**. On or before the fifteenth (15th) day of each month, Consultant shall submit to the City a monthly progress invoice containing reimbursable costs and receipts from the previous month for professional services rendered under this Agreement to be audited and approved by the City (“**Invoice**”). Each Invoice shall provide the basis for payments to Consultant under this Agreement. In submitting an Invoice, Consultant shall comply with all requirements of this Agreement and:

1. Include an executive summary and status report(s) that describe the progress of the services and summarize the work performed during the period covered by the Invoice;
2. Include a statement of recorded hours that are billed at an hourly rate;
3. Include the relevant purchase order (“**PO**”) number related to the Invoice;
4. Ensure that amounts shown on the Invoices comply with and clearly reference the relevant services, indicate the hourly rate and multiplier where applicable, and identify the allowable reimbursable expenses;
5. For only those reimbursable costs incurred in the previous month, submit itemized business expense logs and, where billing is based upon receipts, include copies of receipts for all allowable reimbursable expenses;
6. Include the signature of an authorized officer of Consultant, along with such officer's certification they have examined the Invoice and found it to be correct; and
7. Submit each Invoice via email to ContractAdminInvoices@flydenver.com.
8. Late Fees. Consultant understands and agrees interest and late fees shall be payable by the City only to the extent authorized and provided for in the City’s Prompt Payment Ordinance.
9. Travel Expenses. Travel and any other expenses are not reimbursable unless such expenses are related to and in furtherance of the purposes of Consultant’s engagement, are in accordance with this Agreement, and Consultant receives prior written approval of the SVP or his/her authorized representative.

G. Timesheets. Consultant shall maintain all timesheets kept or created in relation to the services performed under this Agreement. The City may examine such timesheets upon the City’s request.

H. Disputed Invoices. The City reserves the right to reject and not pay any Invoice or part thereof, including any final invoice resulting from a Termination of this Agreement, where the SVP or his/her authorized representative determines the amount invoiced exceeds the amount owed based upon the work satisfactorily performed. The City shall pay any undisputed items contained in an Invoice. Disputes concerning payments under this provision shall be resolved in accordance with procedures set forth in Article IX.

I. Carry Over. If Consultant's total fees for any of the services provided under this Agreement are less than the amount budgeted for, the amount remaining in the budget may be used for additional and related services rendered by Consultant if the CEO or his/her authorized representative determines such fees are reasonable and appropriate and provides written approval of the expenditure.

ARTICLE VI. MWBE, WAGES AND PROMPT PAYMENT

A. Minority/Women Business Enterprises. This project has been reviewed by the Division of Small Business Opportunity (“**DSBO**”) and it has been determined that it is not subject to Article III, Divisions 1 and 3 of Chapter 28, Denver Revised Municipal Code (“**D.R.M.C.**”), designated as §§ 28-31 to 28-40 and 28-51 to 28-90 (the “**MWBE Ordinance**”) and any Rules or Regulations promulgated pursuant thereto, and therefore will not have an MWBE goal assigned. While the work performed under this Agreement is not subject to the MWBE Ordinance, the Director of DSBO encourages all participants in City projects to seek independent partnerships with SBEs, MBEs, WBEs, and other business enterprises in supply chain activities, prime/subcontractor partnerships, and joint ventures for all contracts and purchase orders. The City reserves the right to reevaluate the work under this Agreement and apply the requirements of the MWBE Ordinance to this contract if DSBO determines that the MWBE Ordinance is applicable.

B. Prevailing Wage. To the extent required by law, Consultant shall comply with, and agrees to be bound by, all requirements, conditions and City determinations regarding the Payment of Prevailing Wages Ordinance, §§20-76 through 20-79, D.R.M.C. including, but not limited to, the requirement that every covered worker working on a City owned or leased building or on City-owned land shall be paid no less than the prevailing wages and fringe benefits in effect on the Effective Date of this Agreement.

1. Prevailing wage and fringe rates will adjust on, and only on, the anniversary of the Effective Date of this Agreement. Unless expressly provided for in this Agreement, Consultant will receive no additional compensation for increases in prevailing wages or fringe benefits.

2. Consultant shall provide the Auditor with a list of all subcontractors providing any services under the Agreement.

3. Consultant shall provide the Auditor with electronically-certified payroll records for all covered workers employed under this Agreement.

4. Consultant shall prominently post at the work site the current prevailing wage and fringe benefit rates. The posting must inform workers that any complaints regarding the payment of prevailing wages or fringe benefits may be submitted to the Denver Auditor by calling 720-913-5000 or emailing auditor@denvergov.org.

5. If Consultant fails to pay workers as required by the Prevailing Wage Ordinance, Consultant will not be paid until documentation of payment satisfactory to the Auditor has been provided. The City may, by written notice, suspend or terminate work if Consultant fails to pay required wages and fringe benefits.

C. City Minimum Wage. To the extent required by law, Consultant shall comply with and agrees to be bound by all requirements, conditions, and the City determinations regarding the City’s Minimum Wage Ordinance, §§20-82 through 20-84 D.R.M.C., including, but not limited to, the requirement that every covered worker shall be paid no less than the City Minimum Wage in accordance with the City’s Minimum Wage Ordinance. By executing this Agreement, Consultant expressly acknowledges that Consultant is aware of the requirements of the City’s

Minimum Wage Ordinance and that any failure by Consultant, or any other individual or entity acting subject to this Agreement, to strictly comply with the foregoing D.R.M.C. Sections shall result in the penalties and other remedies authorized therein.

D. Prompt Pay. The City will make monthly progress payments to the Consultant for all services performed under this Agreement based upon the Consultant's monthly invoices. Such invoices shall be in a form acceptable to the City and shall include detail of the time worked by the Consultant's own personnel, billings from subcontractors, and all other information necessary to assess the Consultant's progress. Invoices shall be accompanied by documentation of expenses for which reimbursement is sought, and all other supporting documentation required by the City. The City's Prompt Payment Ordinance, §§ 20-107 to 20-118, D.R.M.C., applies to invoicing and payment under this Agreement.

1. Final Payment to the Consultant shall not be made until after the Project is accepted, and all certificates of completion, record drawings and reproducible copies are delivered to the City, and the Agreement is otherwise fully performed by the Consultant. The City may, at the discretion of the Director, withhold reasonable amounts from billing and the entirety of the final payment until all such requirements are performed to the satisfaction of the Director. However, no deductions shall be made from the Consultant's compensation because of penalty, liquidated damages or other sums withheld from payments to contractor(s)/consultants.

2. For contracts of one million dollars (\$1,000,000.00) and over, the Consultant is required to comply with the Contractor Prompt Payment provisions under § 28-72, D.R.M.C., with regard to payments by the Consultant to MWBE subcontractors. The Consultant shall make payments by no later than thirty-five (35) days from receipt by the Consultant of the subcontractor's invoice.

ARTICLE VII. INSURANCE REQUIREMENTS

A. Consultant shall obtain and keep in force all of the minimum insurance coverage forms and amounts set forth in *Exhibit B* ("**Insurance Requirements**") during the entire Term of this Agreement, including any extensions of the Agreement or other extended period stipulations stated in *Exhibit B*. All certificates of insurance and any required endorsements must be received and approved by DEN Risk Management before any airport access or work commences.

B. Unless specifically excepted in writing by DEN Risk Management, if Consultant shall be using subcontractors to provide any part of the services under this Agreement, Consultant shall do one of the following:

1. Include all subcontractors performing services hereunder as insureds under its required insurance and specifically list on all submitted certificates of insurance required under *Exhibit B*; or

2. Ensure that each subcontractor provides its own insurance coverage in accordance with the requirements set forth in this Agreement.

C. The City in no way warrants or represents the minimum limits contained herein are sufficient to protect Consultant from liabilities arising out of the performance of the terms and conditions of this Agreement by Consultant, its agents, representatives, employees, or subcontractors. Consultant shall assess its own risks and maintain higher limits and/or broader coverage as it deems appropriate and/or prudent. Consultant is not relieved of any liability or other obligations assumed or undertaken pursuant to this Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types.

D. In no event shall the City be liable for any of the following: (i) business interruption or other consequential damages sustained by Consultant; (ii) damage, theft, or destruction of Consultant's inventory, or property of any kind; or (iii) damage, theft, or destruction of an automobile, whether or not insured.

E. The Parties understand and agree that the City, its elected and appointed officials, employees, agents and volunteers are relying on, and do not waive or intend to waive by any provisions of this Agreement, the monetary limitations and 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, its elected and appointed officials, employees, agents and volunteers.

ARTICLE VIII. DEFENSE AND INDEMNIFICATION

A. Consultant hereby 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 Consultant or its subcontractors either passive or active, irrespective of fault, including City’s concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

B. Consultant’s duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Consultant’s duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City’s negligence or willful misconduct was the sole cause of claimant’s damages.

C. Consultant will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation, including but not limited to time expended by the City Attorney Staff, whose costs shall be computed at the rate of two hundred dollars and no cents (\$200.00) per hour of City Attorney time. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City’s exclusive remedy.

D. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Consultant under the terms of this indemnification obligation. The Consultant shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

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

ARTICLE IX. DISPUTES

All disputes arising under or related to this Agreement shall be resolved by administrative hearing under the procedures described in D.R.M.C. § 5-17 and all related rules and procedures. The determination resulting from said administrative hearing shall be final, subject only to Consultant's right to appeal the determination under Colorado Rule of Civil Procedure, Rule 106.

ARTICLE X. GENERAL TERMS AND CONDITIONS

A. Status of Consultant. Parties agree that the status of Consultant shall be an independent Consultant retained on a contractual basis to perform professional or technical services for limited periods of time as described in §9.1.1(E)(x) of the Charter of the City and County of Denver (the "City Charter"). It is not intended, nor shall it be construed, that Consultant or its personnel are employees or officers of the City under D.R.M.C. Chapter 18 for any purpose whatsoever.

B. Assignment. Consultant shall not assign, pledge or transfer its duties, obligations, and rights under this Agreement, in whole or in part, without first obtaining the written consent of the CEO or his/her authorized representative. Any attempt by Consultant to assign or transfer its rights hereunder without such prior written consent shall, at the option of the CEO or his/her authorized representative, automatically terminate this Agreement and all rights of Consultant hereunder.

C. Compliance with all Laws and Regulations. Consultant and its subcontractor(s) shall perform all work under this Agreement in compliance with all existing and future applicable laws, rules, regulations and codes of the United States and the State of Colorado and with the City Charter, ordinances and rules and regulations of the City.

D. Compliance with Patent, Trademark and Copyright Laws.

1. Consultant agrees that all work performed under this Agreement shall comply with all applicable patent, trademark and copyright laws, rules, regulations and codes of the United States, as they may be amended from time to time. Consultant will not utilize any protected patent, trademark or copyright in performance of its work unless it has obtained proper permission, all releases, and other necessary documents. If Consultant prepares any documents which specify any material, equipment, process or procedure which is protected, Consultant shall disclose such patents, trademarks and copyrights in such documents.

2. Pursuant to Article VIII, Consultant shall indemnify and defend the City from any and all claims, damages, suits, costs, expenses, liabilities, actions or proceedings resulting from, or arising out of, directly or indirectly, the performance of work under this Agreement which infringes upon any patent, trademark or copyright protected by law.

E. Notices.

1. Notices of Termination. Notices concerning termination of this Agreement, notices of alleged or actual violations of the terms of this Agreement, shall be made as follows:

by Consultant to:

Chief Executive Officer
Denver International Airport
Airport Office Building
8500 Peña Boulevard, 9th Floor
Denver, Colorado 80249-6340

And by the City to:

MARSH USA INC.
1225 17th Street, Suite 1300
Denver, CO 80202

2. Delivery of Formal Notices. Formal notices of the termination of this Agreement shall be delivered personally during normal business hours to the appropriate office above or by prepaid U.S. certified mail, return receipt requested or by electronic delivery directed to the person identified above and copied to the Project Manager through the electronic or software system used at the City's direction for other official communications and document transmittals. Mailed notices shall be deemed effective upon deposit with the U.S. Postal Service and electronically transmitted notices by pressing "send" or the equivalent on the email or other transmittal method sufficient to irretrievably transmit the document. Either party may from time to time designate substitute addresses or persons where and to whom such notices are to be mailed, delivered or emailed, but such substitutions shall not be effective until actual receipt of written or electronic notification thereof through the electronic or software system is used for work-related communications and transmittals at the City's direction.

3. Other Correspondence. Other notices and day-to-day correspondence between the Parties may be done via email directed to the Project Manager or through the electronic or software system used for work-related communications and transmittals at the City's direction.

F. Rights and Remedies Not Waived. In no event shall any payment by the City hereunder constitute or be construed to be a waiver by the City of any breach of covenant or default which may then exist on the part of Consultant. The City making any such payment when any

breach or default exists shall not impair or prejudice any right or remedy available to the City with respect to such breach or default. The City's assent, expressed or implied, to any breach of any one or more covenants, provisions or conditions of this Agreement shall not be deemed or taken to be a waiver of any other breach.

G. No Third-Party Beneficiaries. The Parties agree that 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 Consultant, and nothing contained in this Agreement shall give or allow any such claim or right of action by any third party. It is the express intention of the Parties that any person or entity other than the City or Consultant receiving services or benefits under this Agreement shall be deemed an incidental beneficiary and shall not have any interest or rights under this Agreement.

H. Governing Law. This Agreement is made under and shall be governed by the laws of the State of Colorado. Each and every term, provision and condition herein is subject to the provisions of Colorado law, the City Charter, and the ordinances and regulations enacted pursuant thereto, as may be amended from time to time.

I. Bond Ordinances. This Agreement is in all respects subject and subordinate to any and all the City bond ordinances applicable to the Denver Municipal Airport System and to any other bond ordinances which amend, supplement, or replace such bond ordinances.

J. Venue. Venue for any action arising hereunder shall be in the City and County of Denver, Colorado.

K. Cooperation with Other Contractors.

1. The City may award other contracts for additional work, and Consultant shall fully cooperate with such other contractors. The City, in its sole discretion, may direct Consultant to coordinate its work under this Agreement with one or more such contractors.

2. Consultant shall have no claim against the City for additional payment due to delays or other conditions created by the operation of other contractors. The City will decide the respective rights of the various contractors in order to secure the completion of the work.

L. Inurement. The rights and obligations of the Parties herein set forth shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns permitted under this Agreement.

M. Force Majeure. The Parties shall not be liable for any failure to perform any of its obligations hereunder due to or caused by, in whole or in part, fire, strikes, lockouts, unusual delay by common carriers, unavoidable casualties, war, riots, acts of terrorism, acts of civil or military authority, acts of God, judicial action, or any other causes beyond the control of the Parties. The Parties shall have the duty to take reasonable actions to mitigate or prevent further delays or losses resulting from such causes.

N. Coordination and Liaison. Consultant agrees that during the term of this Agreement it shall fully coordinate all services that it has been directed to proceed upon and shall make every reasonable effort to fully coordinate all such services as directed by the SVP or his/her authorized representative, along with any City agency, or any person or firm under contract with the City doing work which affects Consultant's work.

O. No Authority to Bind City to Contracts. Consultant has no authority to bind the City on any contractual matters. Final approval of all contractual matters which obligate the City must be by the City as required by the City Charter and ordinances.

P. Information Furnished by the City. The City will furnish to Consultant information concerning matters that may be necessary or useful in connection with the work to be performed by Consultant under this Agreement. The Parties shall make good faith efforts to ensure the accuracy of information provided to the other Party; however, Consultant understands and acknowledges that the information provided by the City to Consultant may contain unintended inaccuracies. Consultant shall be responsible for the verification of the information provided to Consultant.

Q. Taxes and Costs. Consultant shall promptly pay, when due, all taxes, bills, debts and obligations it incurs performing work under this Agreement and shall allow no lien, mortgage, judgment or execution to be filed against land, facilities or improvements owned by the City.

R. Environmental Requirements. Consultant, in conducting its activities under this Agreement, shall comply with all existing and future applicable local, state and federal environmental rules, regulations, statutes, laws and orders (collectively "**Environmental Requirements**"), including but not limited to Environmental Requirements regarding the storage, use and disposal of Hazardous or Special Materials and Wastes, Clean Water Act legislation, Centralized Waste Treatment Regulations, and DEN Rules and Regulations.

1. 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, pesticide, 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 and regulations promulgated pursuant to such statutes or any other applicable federal or state statute.

2. Consultant shall acquire all necessary federal, state and local environmental permits and comply with all applicable federal, state and local environmental permit requirements.

3. Consultant agrees to ensure that its activities under this Agreement are conducted in a manner that minimizes environmental impact through appropriate preventive measures. Consultant agrees to evaluate methods to reduce the generation and disposal of waste materials.

4. In the case of a release, spill or leak as a result of Consultant's activities under this Agreement, Consultant shall immediately control and remediate the contaminated media to applicable federal, state and local standards. Consultant shall reimburse the City for any penalties and all costs and expenses, including without limitation attorney's fees, incurred by the City as a result of the release or disposal by Consultant of any pollutant or hazardous material.

ARTICLE XI. RECORD RETENTION AND OTHER STANDARD CITY PROVISIONS

A. Diversity and Inclusiveness. The City encourages the use of qualified small businesses doing business within the metropolitan area that are owned and controlled by economically or socially disadvantaged individuals. Consultant is encouraged, with respect to the goods or services to be provided under this Agreement, to use a process that includes small businesses when considering and selecting any subcontractors or suppliers.

B. Non-Discrimination Policy. In connection with the performance of services under this Agreement, Consultant shall not refuse to hire, discharge, promote, demote, or to discriminate in matters of compensation against any person otherwise qualified solely because of race, creed, color, religion, national origin, gender, age, military status, sexual orientation, gender variance, marital status, and/or physical and mental disability. Consultant further agrees to insert this provision in all subcontracts hereunder.

C. Advertising and Public Disclosures. Consultant shall not include any reference to this Agreement or to work performed hereunder in any of its advertising or public relations materials without first obtaining the written approval of the SVP or his/her authorized representative. Any oral presentation or written materials related to DEN shall include only presentation materials, work product, and technical data which have been accepted by the City, and designs and renderings, if any, which have been accepted by the City. Consultant shall notify the SVP in advance of the date and time of any such presentations. Nothing herein, however, shall preclude Consultant's transmittal of any information to officials of the City, including without limitation, the Mayor, the CEO, any member or members of Denver City Council, and the Auditor.

D. Colorado Open Records Act.

1. Consultant acknowledges that the City is subject to the provisions of the Colorado Open Records Act (“**CORA**”), C.R.S. §§ 24-72-201 et seq., and Consultant agrees that it will fully cooperate with the City in the event of a request or lawsuit arising under such act for the disclosure of any materials or information which Consultant asserts is confidential or otherwise exempt from disclosure. Any other provision of this Agreement notwithstanding, all materials, records, and information provided by Consultant to the City shall be considered confidential by the City only to the extent provided in CORA, and Consultant agrees that any disclosure of information by the City consistent with the provisions of CORA shall result in no liability of the City.

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 Consultant of such request in order to give Consultant the opportunity to object to the disclosure of

any material Consultant may consider confidential, proprietary, or otherwise exempt from disclosure. In the event Consultant objects to disclosure, the City, in its sole and absolute discretion, may file an application to the Denver District Court for a determination of whether disclosure is required or exempted. In the event a lawsuit to compel disclosure is filed, the City may tender all such material to the court for judicial determination of the issue of disclosure. In both situations, Consultant agrees it will either waive any claim of privilege or confidentiality or intervene in such legal process to protect materials Consultant does not wish disclosed. Consultant agrees to defend, indemnify, and hold harmless the City, its officers, agents, and employees from any claim, damages, expense, loss, or costs arising out of Consultant's objection to disclosure, including prompt reimbursement to the City of all reasonable attorney's fees, costs, and damages the City may incur directly or may be ordered to pay by such court, including but not limited to time expended by the City Attorney Staff, whose costs shall be computed at the rate of two hundred dollars and no cents (\$200.00) per hour of City Attorney time.

E. Examination of Records and Audits.

1. Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and records related to Consultant's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. Consultant shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require Consultant to make disclosures in violation of state or federal privacy laws. Consultant shall at all times comply with D.R.M.C. §20-276.

2. Additionally, Consultant agrees until the expiration of three (3) years after the final payment under the Agreement, any duly authorized representative of the City, including the CEO or his or her representative, shall have the right to examine any pertinent books, documents, papers and records of Consultant related to Consultant's performance of this Contract, including communications or correspondence related to Consultant's performance, without regard to whether the work was paid for in whole or in part with federal funds or was otherwise related to a federal grant program.

3. In the event the City receives federal funds to be used toward the services performed under this Agreement, the Federal Aviation Administration ("FAA"), the Comptroller General of the United States and any other duly authorized representatives shall have access to any books, documents, papers and records of Consultant which are directly pertinent to a specific grant program for the purpose of making audit, examination, excerpts and transcriptions. Consultant further agrees that such records will contain

information concerning the hours and specific services performed along with the applicable federal project number.

F. Use, Possession or Sale of Alcohol or Drugs. Consultant shall cooperate and comply with the provisions of Denver Executive Order 94 and Attachment A thereto concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City barring Consultant from City facilities or participating in City operations.

G. City Smoking Policy. Consultant and its officers, agents and employees shall cooperate and comply with the provisions of Denver Executive Order No. 99 and the Colorado Indoor Clean Air Act, prohibiting smoking in all City buildings and facilities.

H. Conflict of Interest.

1. Consultant and its subsidiaries, affiliates, subcontractors, principals, or employees shall not engage in any transaction, work, activity or conduct which would result in a conflict of interest. A conflict of interest occurs when, for example, because of the relationship between two individuals, organizations or one organization (including its subsidiaries or related organizations) performing or proposing for multiple scopes of work for the City, there is or could be in the future a lack of impartiality, impaired objectivity, an unfair advantage over one or more firms competing for the work, or a financial or other interest in other scope of work. .

2. Consultant represents that, in its Response or Proposal, as applicable, it disclosed any and all current or potential conflicts of interest of which it is aware, including transactions, work, activities, or conduct that might affect the judgment, actions, or work of Consultant or which might give Consultant an unfair advantage in this or a future procurement. If the Parties identified a conflict of interest and agreed to a plan to mitigate such conflict, Consultant agrees it will comply with that mitigation plan.

3. The City, in its sole discretion, shall determine the existence of a conflict of interest and may terminate this Agreement if such a conflict exists, after it has given Consultant written notice which describes such conflict. If, during the course of the Agreement, the City determines that a potential conflict of interest exists or may exist, Consultant shall have thirty (30) days after the notice is received in which to eliminate or cure the conflict of interest in a manner which is acceptable to the City.

4. Consultant has a continuing duty to disclose, in writing, any actual or potential conflicts of interest including work the Consultant is performing or anticipates performing for other entities on the same or interrelated project or tasks. Consultant must disclose, in writing, any corporate transactions involving other companies that Consultant knows or should know also are performing or anticipate performing work at DEN on the same or interrelated projects or tasks. In the event that Consultant fails to disclose in writing actual or potential conflicts, the CEO in his/her sole discretion, may terminate the Task Order, if applicable, or City may terminate the Agreement for cause or for its convenience.

I. Prohibition Against Employment of Illegal Aliens to Perform Work Under this Agreement.

1. The Agreement is subject to § 8-17.5, C.R.S., and D.R.M.C. § 20-90 and Consultant is liable for any violations as provided in said statute and ordinance.

2. Consultant certifies that:

a. At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.

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

3. Consultant also agrees and represents that:

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

b. It shall not enter into a contract with a subcontractor or subconsultant that fails to certify to Consultant that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

c. It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the E-Verify Program.

d. It is prohibited from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement and it has complied with all federal requirements regarding the use of the E-Verify program, including, by way of example, requirements related to employee notification and preservation of employee rights.

e. If it obtains actual knowledge that a subcontractor or subconsultant performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subcontractor and the City within three (3) days. Consultant will also then terminate such subcontractor or subconsultant if within three (3) days after such notice the subcontractor or subconsultant does not stop employing or contracting with the illegal alien, unless during such three-day period the subcontractor or subcontractor provides information to establish that the subcontractor or subconsultant has not knowingly employed or contracted with an illegal alien.

f. It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under

authority of § 8-17.5-102(5), C.R.S. or the City Auditor under authority of D.R.M.C. § 20-90.3.

ARTICLE XII. SENSITIVE SECURITY INFORMATION

Consultant acknowledges that, in the course of performing its work under this Agreement, Consultant may be given access to Sensitive Security Information (“SSI”), as material is described in the Code of Federal Regulations, 49 C.F.R. Part 1520. Consultant specifically agrees to comply with all requirements of the applicable federal regulations, including but not limited to, 49 C.F.R. Parts 15 and 1520. Consultant understands any questions it may have regarding its obligations with respect to SSI must be referred to the DEN’s Security Office.

ARTICLE XIII. DEN SECURITY

A. Consultant, its officers, authorized officials, employees, agents, subcontractors, and those under its control, shall comply with safety, operational, or security measures required of Consultant or the City by the FAA or TSA. If Consultant, its officers, authorized officials, employees, agents, subcontractors or those under its control, fail or refuse to comply with said measures and such non-compliance results in a monetary penalty being assessed against the City, then, in addition to any other remedies available to the City, Consultant shall fully reimburse the City any fines or penalties levied against the City, and any attorney fees or related costs paid by the City as a result of any such violation. Consultant must pay this amount within fifteen (15) days from the date of the invoice or written notice. Any fines and fees assessed by the FAA or TSA against the City due to the actions of Consultant and/or its agents will be deducted directly from the invoice for that billing period.

B. Consultant is responsible for compliance with Airport Security regulations and 49 C.F.R. Parts 1542 (Airport Security) and 14 C.F.R. Parts 139 (Airport Certification and Operations). Any and all violations pertaining to Parts 1542 and 139 resulting in a fine will be passed on to and borne by Consultant. The fee/fine will be deducted from the invoice at time of billing.

ARTICLE XIV. FEDERAL RIGHTS

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 Denver Municipal Airport System. As applicable, Consultant shall comply with the Standard Federal Assurances identified in Appendix 1.

ARTICLE XV. CONTRACT DOCUMENTS; ORDER OF PRECEDENCE

A. Attachments. This Agreement consists of Article I through XVI which precede the signature page, and the following attachments which are incorporated herein and made a part hereof by reference:

Appendix 1: Standard Federal Assurances
Exhibit A: Scope of Work
Exhibit B: Insurance Requirements

B. Order of Precedence. In the event of an irreconcilable conflict between a provision of Article I through XVI and any of the listed attachments or between provisions of any attachments, such that it is impossible to give effect to both, the order of precedence to determine which document shall control to resolve such conflict, is as follows, in descending order:

Appendix 1
Article I through XVI hereof
Exhibit A
Exhibit B

ARTICLE XVI. CITY EXECUTION OF AGREEMENT

A. City Execution. This Agreement is expressly subject to, and shall become effective upon, the execution of all signatories of the City and, if required, the approval of Denver City Council. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same.

B. Electronic Signatures and Electronic Records. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City and/or Consultant 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: PLANE-202054510-00
Contractor Name: MARSH USA INC

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

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

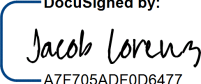
By:

By:

By:

Contract Control Number:
Contractor Name:

PLANE-202054510-00
MARSH USA INC

By:  _____
A7F705ADF0D6477...

Name: Jacob Lorenz
(please print)

Title: vice 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 / Lease / Agreement to which this Appendix is attached.

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.*).

Clauses for Transfer of Real Property Acquired or Improved Under the Activity, Facility, or Program

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the Sponsor pursuant to the provisions of the Airport Improvement Program grant assurances.

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add “as a covenant running with the land”] that:
1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and

APPENDIX

Federal Aviation Administration Required Contract Provisions

ALL CONTRACTS – NON-AIP FUNDED

services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Nondiscrimination covenants, Sponsor will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*

C. With respect to a deed, in the event of breach of any of the above Nondiscrimination covenants, the Sponsor will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of Sponsor and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

Title VI Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by Sponsor pursuant to the provisions of the Airport Improvement Program grant assurances.

A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, “as a covenant running with the land”) that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.

B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above nondiscrimination covenants, Sponsor will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*

C. With respect to deeds, in the event of breach of any of the above nondiscrimination covenants, Sponsor will there upon revert to and vest in and become the absolute property of Sponsor and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

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

APPENDIX

Federal Aviation Administration Required Contract Provisions

ALL CONTRACTS – NON-AIP FUNDED

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

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.

EXHIBIT A

SCOPE OF WORK

1. OVERVIEW

Serve as the Program Administrator for a Rolling Owner Controlled Insurance Program (ROCIP) to provide insurance coverage, safety and loss control, and administrative support for approximately \$300M-\$500M in construction projects. Responsible for designing, marketing, negotiating, and implementing insurance coverages and providing administrative, safety and loss control, claims management, and stewardship/performance reporting services for Denver International Airport (DEN) ROCIP IV (Program).

2. REQUIREMENTS

The specific areas of responsibility include, but may not be limited to, the following:

- Program Development and Implementation
- Program Administration
- Insurance Brokerage Services
- Claims Management
- Safety and Loss Control
- Risk Management Information System Services
- Stewardship Reporting and Benchmarking

2.1 Program Development and Implementation

- 2.1.1 Perform a site review and gather information necessary to create a comprehensive underwriting submission to present to qualified insurance markets; work with DEN Risk Management to confirm agreement on final specifications and overall presentation of DEN and the Program.
- 2.1.2 Design, market, and negotiate coverages, deductibles, premiums, carrier services and collateral requirements for a five-year Program.
- 2.1.3 Present all proposals received including detailed comparison and overall recommendation.
- 2.1.4 Coordinate with DEN Risk Management for interested underwriters to visit the site and meet key Program stakeholders.
- 2.1.5 Establish Key Performance Indicators (KPIs) for the Program with DEN.
- 2.1.6 Review bid and construction documents for language concerning the Program and make recommendations as appropriate; coordinate with the City Attorney's Office and DEN Risk Management concerning insurance contract terms and conditions to be included in the contracts of architects and engineers, construction managers/lead contractors, and subcontractors of every tier; review and recommend bid and construction document language pertaining to vendors and suppliers as needed.
- 2.1.7 Review and tailor DEN ROCIP Program Manuals (Insurance Manual, Safety Manual and Claims Guide) and other policies and procedures currently in place on other active ROCIP programs to new Program. Be prepared to create and provide versions in Spanish, if required.
- 2.1.8 Have qualified senior-level personnel available to respond to questions, attend meetings, and provide status reports on the insurance placement negotiations until such time as the Program is fully implemented.
- 2.1.9 Assign experienced staff to serve as account managers (at least one primary and one backup), program administrators (at least one primary and one backup) and loss control.
- 2.1.10 Ensure the Program complies with all relevant laws and regulations; staff and administer the ROCIP in compliance with the laws of the State of Colorado.

2.2 Program Administration

- 2.2.1 Make sufficient and qualified personnel available to DEN in order to respond to questions, concerns, or needs about any Program-related matter within twenty-four (24) business hours of a request by DEN or any contractor.
- 2.2.2 Participate in any process improvement or other special meetings or projects that are intended to benefit the overall Program.
- 2.2.3 Participate in project and contractor eligibility reviews and determinations.
- 2.2.4 Explain the Program to contractors and aid in preparing forms, completing the insurance cost information worksheet and using the contractor online system. Attend pre-bid conferences, ROCIP orientation sessions, and pre-construction meetings to explain the program and answer questions, when requested.
- 2.2.5 Review contractor enrollment documents including insurance cost information worksheets to verify contractors have removed insurance costs from the bids and change orders as appropriate.
- 2.2.6 Participate in the development and delivery of formal ROCIP Orientation Sessions on a monthly basis; recorded sessions will be permissible.
- 2.2.7 Maintain DEN ROCIP Program Manuals (Insurance Manual, Safety Manual and Claims Guide).
- 2.2.8 Coordinate with and enroll eligible contractors; issue Program Manuals, binders, certificates of insurance and policies to all insured parties as required.
- 2.2.9 Issue certificates of insurance as required to third parties.
- 2.2.10 Verify compliance with insurance requirements not provided by the Program that are required to be provided by contractors.
- 2.2.11 Collect payroll, labor hours and other required reports from contractors and submit to underwriters as required.
- 2.2.12 Ensure that enrolled contractors and Program insurer(s) accurately complete payroll audits.
- 2.2.13 Ensure that all required workers' compensation reports are submitted to appropriate agencies.
- 2.2.14 Ensure all enrolled contractors accurately perform all required closeout activities including, but not limited to, confirmation of final payroll, labor hours, construction value and date of closeout; verify reported final construction value and date of closeout with DEN prior to reporting any closeout values to insurer(s).

2.3 Insurance Brokerage Services

- 2.3.1 Administer, review, and track all placements, binders, policies and endorsements to avoid lapses of coverage and verify conformance with negotiated and bound coverage; assure that all coverages are placed with financially stable insurers.
- 2.3.2 Obtain insurance quotations and place coverage for additional construction-related insurance coverages not included under the Program such as owner's protective professional liability, pollution liability and any other coverages as requested; this does not include insurance placements unrelated to the Program projects or those policies that are part of DEN's non-ROCIIP insurance program; separate fee would be negotiated for bound coverage.
- 2.3.3 Promptly provide DEN with electronic versions of all binders, policies and endorsements.
- 2.3.4 Amend or change policies in response to exposure changes or market conditions over the course of the Program to benefit DEN.
- 2.3.5 Oversee and coordinate all services provided by Program underwriters, claims, loss control, and any other insurance service providers.
- 2.3.6 Attend quarterly Program Stewardship and other ad hoc DEN Risk Management meetings regarding the Program, as requested.
- 2.3.7 Produce and verify the accuracy of invoices, audits, and premium or fee adjustments; advance premium as required and forward monthly invoices to DEN for payment; work with DEN to

jointly develop a method or procedure to handle premium and claim payment over the course of the Program and ensure Program insurers are aware of payment processing timelines for a governmental entity to safeguard against any related notice of cancellation for non-payment of premium.

- 2.3.8 Review Program insurance premium audits and final premium for accuracy; perform annual audits for coverages, enrollment, exposure data, form verification, claims reporting, compliance with laws, safety and loss control policies, and drug and alcohol abuse testing, quality of status reports delineating all Program costs, and verification of insurance invoices and Program premium adjustments.
- 2.3.9 Inform DEN immediately of any proposed changes to the service team and provide the qualifications of the prospective individuals for review, such changes shall be made subject to agreement with DEN and DEN shall be allowed to request a staff change for good reason.
- 2.3.10 Assist in reduction of the letter of credit or return of collateral even after Program completion or broker services agreement expiration.
- 2.3.11 Maintain confidentiality of all information provided pursuant to the agreement and return any written, computer-generated or other tangible documentation or proprietary information to DEN upon request or at the termination of the agreement. Reproduction or use of confidential information except as authorized in writing by DEN, shall not be permitted. Documents generated, provided or prepared on behalf of DEN are the property of DEN and must be turned over to DEN upon request in the form(s) requested (i.e., electronically, paper, or otherwise).

2.4 Claims Management

- 2.4.1 Develop, issue, distribute and update claims handling procedures (reporting, processing, adjusting and allocating) and maintain DEN ROCIP IV Claims Guide in collaboration with DEN Risk Management.
- 2.4.2 Coordinate effective onsite and offsite approved medical care providers.
- 2.4.3 Present claims to insurers.
- 2.4.4 Notify DEN Risk Management of all new claims and changes in estimated reserves.
- 2.4.5 Provide or ensure that Program insurer(s) provide workers' compensation claim management services to include designated nearby medical care providers, case management, crisis management, rehabilitation and other services.
- 2.4.6 Provide third-party recovery and subrogation management to the extent losses occur within any self-insured retention or program deductible.
- 2.4.7 Assist DEN with reviewing contractor submitted losses under applicable deductible amounts to determine coverage applicability.
- 2.4.8 Provide direction on enlisting legal counsel, cost containment, structured settlements or other methods to reduce claim costs.
- 2.4.9 Facilitate prompt payment or settlement of claims through Program insurer(s).
- 2.4.10 Report workers' compensation loss data to rating bureaus in a timely manner.
- 2.4.11 In accordance with claims procedures, initiate adjusting services or involvement of legal counsel as required by claim circumstances.
- 2.4.12 Participate in quarterly Stewardship Meetings to discuss status of all open claims, claim trends, aggregate cost to date, exposure changes and safety and loss control recommendations.
- 2.4.13 Participate in ad hoc claims meetings, as requested.
- 2.4.14 Manage all claims related to the Program from notice of loss to final closure, including potential claim activity under completed operations coverage under the State of Colorado Statute of Repose, even though claim activity may occur after project completion, expiration of the Program and/or broker services contract expiration.

2.5 Safety and Loss Control

- 2.5.1 Work with DEN Safety and project management stakeholders to develop a safety and loss control program for the Program.
- 2.5.2 Provide an on-site safety professional, with a minimum five-years on-site OCIP/ROCIIP experience, to conduct twice each month: site inspections, issue inspection reports, monitor recommendations and conduct specialized contractor training, as needed, based on identified exposures or losses throughout the Program. These required activities and site visits are in addition to any safety and loss control services to be provided by a Program insurer.
- 2.5.3 Work with DEN Safety to develop safety and loss control language for all construction bid and contract documents. This may include, but is not limited to:
 - Authority to stop activities deemed imminently hazardous
 - Recommendations on selection of contractors based on safety performance.
 - Safety programs and/or safety recognition and awards programs.
- 2.5.4 Maintain DEN ROCIP IV Safety Manual.
- 2.5.5 Create and provide Program specific training and educational material for use by contractors, if requested. Be prepared to provide versions in Spanish, if required.
- 2.5.6 Review and provide comments on all Lead Contractor site-specific safety plans to ensure they meet or exceed the minimum requirements of the master safety plan including all appropriate laws and regulations and, as requested, subcontractor site-specific safety plans.
- 2.5.7 Review and provide comments on all Lead Contractor Safety Representative resumes and, as requested, subcontractor Contractor Safety Representative resumes.
- 2.5.8 Provide risk control services including exposure identification, evaluation, analysis and recommendations for appropriate controls.
- 2.5.9 Monitor loss information to identify developing loss trends and recommend corrective action.
- 2.5.10 Identify the need for, develop and conduct safety training programs for contractor personnel. Examples include, but are not limited to, confined space entry, crane operation, personal protective equipment use, etc.
- 2.5.11 Attend safety meetings to coordinate the safety effort for the various projects enrolled in the Program, as requested by DEN Safety or Lead Contractors.
- 2.5.12 If Program administrator or insurer(s) limit number of loss control service hours for the Program, DEN and the assigned loss control representatives will coordinate during Program implementation to agree on priorities and allocations related to the obligations in this section.
- 2.5.13 Review and comment on insurer loss control activities and oversee their safety activities to ensure contracted services are being provided.

2.6 Risk Management Information Management Systems

- 2.6.1 Provide an online contractor portal for contractors to utilize to register, enroll, submit required documentation and information and access Program manuals and other documents and communication; provide training to DEN and contractors in its use.
- 2.6.2 Provide DEN staff a maximum of 10 user licenses or access; including comprehensive report generation capabilities.
- 2.6.3 System must be able to register all contractors working on a Program approved project, regardless of their eligibility to enroll in the insurance component of the program and capture a specific contractor status of: eligible, enrolled, ineligible, exempt and excluded.
- 2.6.4 Lead Contractors and Parent Contractors must be able to view all tiers of subcontractors associated with them.
- 2.6.5 Maintain an online information system that includes, but is not limited to, the following information and has the capability of generating reports of such information:

- Contractors company name, multiple contacts (name, title, phone, email), Program insurance program status (See Section 2.6.x), disadvantaged business status, if applicable
 - Contractors by DEN Contract/Project, type of work, estimated payroll, estimated construction value, estimated project start and end dates, project status, and tiers of relationships
 - DEN Contract/project title, associated DEN Project number(s), construction value, start and completion dates
 - List of issued policy types, policy numbers and policy periods by contractor and by DEN Contract/project
 - Underwriting data by experience modification, estimated construction value and payroll data, labor classifications, rates and lower tier contractor cost
 - Monthly payroll and labor hours by DEN Contract/Project
 - Exception reporting that identifies contractors who are delinquent in submitting required underwriting data, payroll, labor hours, insurance documents and closeout information.
 - Financial information, including development and trending of claims, reserve analysis, retrospective rating analysis as appropriate, records of transactions and other information as appropriate.
- 2.6.6 System capability to copy contractor information to multiple approved projects to streamline data entry.
- 2.6.7 All Program related information captured or generated by a system used to administer the Program is the property of DEN and shall be transferred to DEN upon request in a method and modality as directed by DEN.
- 2.6.8 Interfaces with DEN systems to create automated information transfer, such as DEN Contract Names and Numbers and estimates/updates of construction values and project start and end dates are not required but highly desired.
- 2.7 Stewardship Reporting and Benchmarking
- 2.7.1 Weekly Administrative Reports
- Enrollment status reports by Program and by DEN Contract/Project.
- 2.7.2 Monthly Administrative Reports
- Enrollment status reports by Program and by DEN Contract/Project.
 - Compliance delinquency reports (insurance, payroll), by Program, by DEN Contract/Project, by Lead Contractor, by deficient contractor
 - Reported payroll and labor hours by Program and by DEN Contract/Project.
 - Pre-employment drug screening fees, by Program, by DEN Contract/Project, by approved medical service provider.
 - Claims fees, if charged by the insurer(s), by Program and by DEN Contract/Project
- 2.7.3 Monthly Claims Reports
- Loss Report for Workers' Compensation claims by Program and by DEN Contract/Project including, but not limited to, date of injury, name of injured worker, employer, Lead Contractor, description, DEN Contract No., DEN Project No., body part, loss location, paid and reserved amounts, reporting lag time.
- 2.7.4 Quarterly Stewardship Reports
- Review of agreed upon KPIs in dashboard format including ability to drill down to underlying specific information and including benchmarking against other DEN OCIP/ROCIP programs and relevant construction and other industry; benchmarking against large airport OCIP/ROCIP programs, not required but highly desired.

- Financial report including Program cost, construction value minimum vs. approved vs. completed analysis, loss fund activity/performance analysis, and contractor insurance bid deductions to monitor Program savings.
 - Contractor performance score card, not required but highly desired
- 2.7.5 Annual Program Performance Reports
- List of approved projects with status
 - Safety and financial performance of the Program and each active/closed project
 - Loss fund activity
- 2.7.6 Closeout Reports
- Verification of final payroll, labor hours, construction value, project start and end dates; loss experience and information, and estimated savings by DEN Contract/project including subcontractor subset information

**Compensation
(5-Year Term)**

	GL/WC	GL/Excess Only
OCIP administration, including: <ul style="list-style-type: none"> • Feasibility assessment • Contract administration • Claims advocacy • Loss control (400 hours) • Program close-out, including claims 	\$325,000	\$250,000
OCIP design, marketing, and placement: <ul style="list-style-type: none"> • Up to \$250 million CV • \$250M-500M CV • \$500M+ CV 	5% capped commission on Umbrella/Excess placements \$1.20 per \$1,000 of CV \$0.95 per \$1000 of CV	5% capped commission on Umbrella/Excess placements \$0.92 per \$1,000 of CV \$0.73 per \$1,000 of CV
Project-specific placement (PL, EL, BR)	8% capped commission	8% capped commission
Data Navigator (optional enhanced claims and analytics platform)	To be negotiated as needed with the City & County of Denver	

EXHIBIT B

**CITY AND COUNTY OF DENVER
INSURANCE REQUIREMENTS FOR DEPARTMENT OF AVIATION
PROFESSIONAL SERVICES AGREEMENT**

A. Certificate Holder

The certificate shall be issued to: CITY AND COUNTY OF DENVER
Denver International Airport
8500 Peña Boulevard, Suite 8810
Denver CO 80249
Attn: Risk Management

B. Acceptable Certificate of Insurance Form and Submission Instructions

Please read these requirements carefully to ensure proper documentation and receipt of your certificate(s) of insurance.

- ACORD FORM (or equivalent) must be emailed in pdf format to: contractadmininvoices@flydenver.com
- HARD COPIES of certificates and/or copies of insurance policies will not be accepted.
- ACORD FORM (or equivalent) must reference the DEN assigned Contract Number.

C. Coverages and Limits

1. Commercial General Liability:

Consultant shall maintain insurance coverage including bodily injury, property damage, personal injury, advertising injury, independent contractors, and products and completed operations in minimum limits of \$1,000,000 each occurrence and \$5,000,000 general policy annual aggregate. Coverage shall include contractual liability covering liability assumed under this Agreement (including defense costs assumed under contract) within the scope of coverages provided.

2. Business Automobile Liability:

Consultant shall maintain a minimum limit of \$1,000,000 combined single limit each occurrence for bodily injury and property damage for all owned, leased, hired and/or non-owned vehicles used in performing services under this Agreement.

- a. If operating vehicles unescorted airside at DEN, a \$10,000,000 combined single limit each occurrence for bodily injury and property damage is required.
- b. If Consultant does not have blanket coverage on all owned and operated vehicles, then a schedule of insured vehicles (including year, make, model and VIN number) must be submitted with the Certificate of Insurance.
- c. The policy must not contain an exclusion related to operations on airport premises.
- d. If transporting waste, hazardous material, or regulated substances, Consultant shall carry a Broadened Pollution Endorsement and an MCS 90 endorsement on its policy.
- e. If Consultant is an individual or represents that Consultant does not own any motor vehicles and/or Consultant's owners, officers, directors, and employees use their personal vehicles for business purposes, Personal Automobile Liability insurance coverage will be accepted provided it includes a business use endorsement.
- f. If Consultant will be completing all services to DEN under this Agreement remotely, this requirement will be waived.

3. **Workers' Compensation and Employer's Liability Insurance:**

Consultant shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits no less than \$1,000,000 per occurrence for each bodily injury claim, \$1,000,000 per occurrence for each bodily injury caused by disease claim, and \$1,000,000 aggregate for all bodily injuries caused by disease claims.

- a. If Consultant is a sole proprietor, Workers' Compensation and Employer's Liability is exempt under the Colorado Workers' Compensation Act.

4. **Professional Liability (Errors and Omissions) Insurance:**

Consultant shall maintain a minimum limit of \$5,000,000 each claim and annual aggregate, providing coverage for all applicable professional services outlined in this Agreement and shall maintain coverage for a period of three (3) years following the expiration of this Agreement.

5. **Excess/Umbrella Liability:**

Combination of primary and excess coverage may be used to achieve minimum required coverage limits. Excess/Umbrella policy(ies) must follow form of the primary policies with which they are related to provide the minimum limits and be verified as such on any submitted Certificate of Insurance.

D. Reference to Project and/or Contract

The City Project and/or Contract Number and project description shall be noted on the Certificate of Insurance.

E. Additional Insured

For all coverages required under this Agreement (excluding Workers' Compensation and Professional Liability), Consultant's insurer(s) shall include the City and County of Denver, its elected and appointed officials, agents, employees and volunteers as Additional Insureds by policy endorsement.

F. Waiver of Subrogation

For all coverages required under this Agreement, Consultant's insurer(s) shall waive subrogation rights against the City and County of Denver, its elected and appointed officials, agents, employees and volunteers by policy endorsement.

G. Notice of Material Change, Cancellation or Nonrenewal

Each certificate and related policy shall contain a valid provision requiring notification to the Certificate Holder in the event any of the required policies be canceled or non-renewed or reduction in coverage before the expiration date thereof.

1. Such notice shall reference the DEN assigned contract number related to this Agreement.
2. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal or reduction in coverage unless due to non-payment of premiums for which notice shall be sent ten (10) days prior.
3. If such written notice is unavailable from the insurer or afforded as outlined above, Consultant shall provide written notice of cancellation, non-renewal and any reduction in coverage to the Certificate Holder within seven (7) business days of receiving such notice by its insurer(s) and include documentation of the formal notice received from its insurer's as verification.

H. Additional Provisions

1. Deductibles, Self-Insured Retentions, or any other type of retention are the sole responsibility of the Consultant.
2. Defense costs shall be in addition to the limits of liability. If this provision is unavailable that limitation must be evidenced on the Certificate of Insurance.
3. A severability of interests or separation of insureds provision (no insured vs. insured exclusion) is included.
4. A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City, excluding Professional Liability and Workers' Compensation policies, if required.

5. The insurance requirements under this Agreement shall be the greater of (i) the minimum limits and coverage specified hereunder or (ii) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Lessee. It is agreed that the insurance requirements set forth herein shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums set forth in this Agreement.
6. All policies shall be written on an occurrence form. If an occurrence form is unavailable, claims-made coverage may be accepted by the City provided the retroactive date is on or before the Agreement Effective Date or the first date when any goods or services were provided to the City, whichever is earlier, and continuous coverage will be maintained or an extended discovery period of three years beginning at the time work under this Agreement is completed or the Agreement is terminated, whichever is later.
7. Consultant shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required minimum per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required minimum per occurrence limit, the Consultant will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage remains in force.
8. Certificates of Insurance must specify the issuing companies, policy numbers and policy periods for each required form of coverage. The certificates for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf and must be submitted to the City at the time Consultant signed this Agreement.
9. The insurance shall be underwritten by an insurer licensed or authorized to do business in the State of Colorado and rated by A.M. Best Company as A- VIII or better.
10. Certificate of Insurance and Related Endorsements: The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Consultant's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's acceptance of any submitted insurance certificate is subject to the approval of DEN Risk Management. All coverage requirements specified in the certificate shall be enforced unless waived or otherwise modified in writing by DEN Risk Management. Consultant is solely responsible for ensuring all formal policy endorsements are issued by their insurers to support the requirements herein.
11. The City shall have the right to verify or confirm, at any time, all coverage, information or representations, and the insured and its undersigned agent shall promptly and fully cooperate in any such audit the City may elect to undertake.
12. No material changes, modifications or interlineations to insurance coverage shall be allowed without the review and approval of DEN Risk Management.
13. Consultant shall be responsible for ensuring DEN is provided updated Certificate(s) of Insurance ten (10) days prior to each policy renewal.
14. Consultant's failure to maintain the insurance required by this Agreement shall be the basis for immediate termination of this Agreement at DEN's sole discretion and without penalty to the City.