

## AGREEMENT FOR ON-CALL PROFESSIONAL SERVICES

**THIS AGREEMENT FOR ON-CALL PROFESSIONAL SERVICES** (“**Agreement**”) is made and entered into as of the date stated on City’s signature page below (the “**Effective Date**”) by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado acting on behalf of its Department of Aviation (“**City**”), and **MERCHANT AVIATION, LLC**, a New Jersey Limited Liability Company authorized to do business in Colorado (“**Consultant**”) (collectively “**Parties**”).

### WITNESSETH:

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

**WHEREAS**, City desires to obtain professional services to provide on-call planning services on an as needed basis; and

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

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

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

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

### ARTICLE I LINE OF AUTHORITY

The Chief Executive Officer of the Department of Aviation (the “**CEO**”) authorizes and directs all work performed under this Agreement. Until otherwise notified in writing by the CEO, the CEO has delegated to the “**Project Manager**” the authority to coordinate services under this Agreement. Reports, memoranda, correspondence, and other submittals required of Consultant hereunder shall be processed in accordance with the Project Manager’s directions. The initial Project Manager for this Agreement is **Jeannette Hilaire**.

### ARTICLE II DUTIES AND RESPONSIBILITIES OF CONSULTANT

**A. Scope of Services.** Consultant will provide professional services and provide deliverables for the City as designated by the Project Manager from time to time and as described in the attached **Exhibit A (Scope of Work)** including, but not limited to, planning studies, condition assessments, design, system modeling, permitting, construction document preparation, construction administration, testing & reporting, scheduling & cost estimating, or other related engineering services that may be required.

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

**C. Standard of Performance.** Consultant shall 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. Consultant hereby represents and warrants to City it will perform its services skillfully, carefully, diligently, and in a first-class manner. Consultant agrees and understands City, in its sole discretion, shall determine whether services are provided in a first-class manner. Consultant acknowledges that time is of the essence in its performance of all work and obligations under this Agreement.

**D. Key Personnel Assignments.**

1. All key professional personnel identified in **Exhibit B (Core Staff Labor Rate Schedule)**, will be assigned by Consultant or subconsultants to perform work under this Agreement. Only the key personnel identified in **Exhibit B** will perform work under this Agreement, unless otherwise approved in writing by the Project Manager. It is the intent of the Parties that all key professional personnel be engaged to perform their specialty for all such services required by this Agreement and that Consultant's and the subconsultant's key professional personnel be retained for the life of this Agreement to the extent practicable and to the extent that such services maximize the quality of work performed.

2. If, during the term of this Agreement, the Project Manager determines that the performance of approved key personnel is not acceptable, the Project Manager shall notify Consultant, and may give Consultant notice of the period of time which the Project Manager considers reasonable to correct such performance. If the Project Manager notifies Consultant that certain of its key personnel will not be retained on this project, Consultant will use its best efforts to obtain adequate substitute personnel within ten (10) days from the date of the notice. Such substitute personnel shall be approved in writing by the Project Manager. Failure to obtain the requisite approval shall be grounds for termination for cause in accordance with Article 3, Section B.

**E. Subcontractors.**

1. Although Consultant may retain, hire, and contract with outside subcontractors for work under this Agreement, no final agreement or contract with any such subcontractor shall be entered into without the prior written consent of the Project Manager. Requests for such approval must be made in writing and include a description of the nature and extent of the services to be provided, the name, address and professional experience of the proposed subcontractor, and any other information requested by City. Any final agreement or contract with an approved subcontractor must contain a valid and binding provision whereby the subcontractor waives any and all rights to make any claim of payment against City or to file or claim any lien or encumbrance against any City property arising out of the performance or non-performance of the contract.

2. Because Consultant's represented qualifications are consideration to City in entering into this Agreement, the CEO shall have the right to reject any proposed outside subcontractor for this work deemed by the CEO, in the CEO's sole discretion, to be unqualified or unsuitable for any reason to perform the proposed services, and the CEO

shall have the right to limit the number of outside subcontractors or to limit the percentage of work to be performed by them, all in the CEO's sole and absolute discretion.

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

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

### **ARTICLE III TERM AND TERMINATION**

**A. Term.** The Term of this Agreement shall commence on June 1, 2019, and shall terminate May 31, 2022, unless sooner terminated in accordance with the terms stated herein (“**Expiration Date**”). Should for any reason the Term expire prior to the completion by Consultant, in the CEO's sole discretion, this Agreement shall remain in full force and effect to permit completion of any services commenced prior to the Expiration Date.

The Term of this Agreement may be extended for two periods of one (1) year each, on the same terms and conditions, by written notice from the CEO to the Consultant. However, no extension of the Term shall increase the Maximum Contract Liability stated below; such amount may be changed only by a duly executed written amendment to this Agreement.

**B. Termination.**

1. City has the right to terminate this Agreement without cause on thirty (30) days prior written notice to Consultant, and with cause on ten (10) days prior written notice to Consultant. In the event of termination by City for cause, Consultant shall be allowed five (5) days to commence remedying its defective performance, and in the event Consultant diligently cures its defective performance to City's satisfaction, within a reasonable time as determined solely by City, then this Agreement shall not terminate. However, nothing herein shall be construed as giving Consultant the right to perform services under this Agreement beyond the time when such services become unsatisfactory to the CEO.

2. If Consultant is discharged before all the services contemplated hereunder have been completed, or if Consultant's services are for any reason terminated, stopped or discontinued because of the inability of Consultant to provide services in accordance with the terms of this Agreement, Consultant shall be paid only for those services deemed by the CEO satisfactorily performed prior to the time of termination.

3. Upon termination of this Agreement by City, Consultant shall have no claim of any kind whatsoever against City by reason of such termination or by reason of any act incidental thereto, except as follows: if the termination is for the convenience of City, Consultant shall be entitled to reimbursement for the reasonable cost of the work to the date of termination, and reasonable costs of orderly termination, provided request for such reimbursement is made no later than six (6) months from the effective date of termination. Consultant shall not be entitled to loss of anticipated profits or any other consequential damages as a result of any such termination for convenience, and in no event shall the total sums paid exceed the Maximum Contract Liability.

#### **ARTICLE IV COMPENSATION AND PAYMENT**

**A. Maximum Contract Liability.** Notwithstanding any other provision of this Agreement, in no event shall City be liable for payment for services rendered and expenses incurred by Consultant under the terms of this Agreement for any amount in excess of the sum of **Seven Hundred Fifty Thousand Dollars (\$750,000.00)** ("**Maximum Contract Liability**"). Consultant will be performing the services on a time and material basis up to the Maximum Contract Amount. Consultant's fee is based on the time required by its professionals to complete the services. Individual hourly rates are set forth in **Exhibit B** and vary according to the experience and skill required. These rates shall apply to all Task Orders.

**B.** The obligations of City under this Agreement shall extend only to monies encumbered for the purposes of this Agreement. Consultant acknowledges and understands City does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of City.

**C.** Payment under this Agreement shall be paid from City and County of Denver Airport System Fund and from no other fund or source. City has no obligation to make payments from any other source. City is not under any obligation to make any future encumbrances or appropriations for this Agreement nor is City under any obligation to amend this Agreement to increase the Maximum Contract Liability above.

**D. Payment Schedule.** Subject to the Maximum Contract Amount set forth in this Agreement, Consultant's fees and expenses shall be paid in accordance with this Agreement. Unless otherwise agreed to in writing, Consultant will invoice the City on a regular basis in arrears, and the City will pay each invoice in accordance with Denver's Prompt Pay Ordinance, Denver Revised Municipal Code ("D.R.M.C.") § 20-107, *et seq.*, subject to the Maximum Contract Liability set forth above. Consultant understands and agrees interest and late fees shall be payable by City only to the extent authorized and provided for in City's Prompt Payment Ordinance. Travel and any other expenses are not reimbursable unless Consultant receives prior written approval of the Project Manager, and be related to and in furtherance of the purposes of the Consultant's engagement.

**E. Invoices.** Payments shall be based upon monthly progress invoices and receipts submitted by Consultant, audited and approved by City and this Section, as follows:

1. An executive summary and status reports that describe the progress of the services and summarize the work performed during the period covered by the invoice.
2. A statement of hours spent where billing is based upon hourly rates. Time sheets shall be maintained by Consultant and shall be available for examination by City, at City's request.
3. The amounts shown on the invoices shall comply with and clearly reference the relevant services, the hourly rate and multiplier where applicable, and allowable reimbursable expenses.
4. Consultant shall submit itemized business expense logs or copies of receipts for all allowable reimbursable expenses, where billing is based upon such items.
5. The signature of an officer of Consultant, along with such officer's certification they have examined the invoice and found it to be correct, shall be included on all invoices.

City reserves the right to reject and not pay any invoice or part thereof where the CEO determines the amount invoiced exceeds the amount owed based upon the work performed. City, however, shall pay any undisputed items contained in an invoice. Disputes concerning payments under this provision shall be resolved by administrative hearing pursuant to the procedures of D.R.M.C. § 5-17.

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

## **ARTICLE V INSURANCE, INDEMNIFICATION, AND DISPUTE RESOLUTION**

### **A. Insurance.**

1. Consultant shall obtain and keep in force during the entire term of this Agreement, including any warranty periods, all of the minimum insurance coverage forms and amounts set forth in **Exhibit C (Certificate of Insurance)**, which is incorporated into this Agreement by this reference. The Consultant shall submit to the City fully completed and executed certificates of insurance, on ACORD form or equivalent approved by the City, which specifies the issuing company or companies, policy numbers and policy periods for each required form of coverage. The certificates for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf, and must be submitted to the City at the time the Consultant signs this Agreement.

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

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

4. Unless specifically excepted in writing by City's Risk Management Administrator, Consultant shall include all subcontracts performing services hereunder as insureds under each required policy or shall furnish a separate certificate (on the form certificate provided), with authorization letter(s) for each subcontractor; alternatively a subcontractor may provide its own insurance coverage as required by and in accordance with the requirements of this section of the Agreement. All coverages for subcontractors shall be subject to all of the requirements set forth in the form certificate and Consultant shall insure that each subcontractor complies with all of the coverage requirements.

5. City in no way warrants and/or represents the minimum limits contained herein are sufficient to protect Consultant from liabilities arising out of the performance of the terms and conditions of this Agreement by Consultant, its agents, representatives, or employees. Consultant shall assess its own risks and as it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. Consultant is not relieved of any liability or other obligations assumed or pursuant to this Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. In no event shall City be liable for any: (i) business interruption or other consequential damages sustained by Consultant; (ii) damage, theft, or destruction of Consultant's inventory, Improvements, or property of any kind; or (iii) damage, theft, or destruction of an automobile, whether or not insured.

6. The Parties hereto understand and agree that City and County of Denver, its officers, officials and employees, are relying on, and do not waive or intend to waive by any provisions of this Agreement, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 to 120, Colorado Revised Statute ("C.R.S."), or otherwise available to City and County of Denver, its officers, officials and employees.

## **B. Defense and Indemnification.**

1. To the fullest extent permitted by law, the Contractor agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or related to the work performed under this Agreement that are attributable to the negligence or fault of the Contractor or the Contractor's agents, representatives, subcontractors, or suppliers ("Claims"). This indemnity shall be interpreted in the broadest possible manner consistent with the applicable law to indemnify the City.

2. Contractor's duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether suit has been filed and even if Contractor is not named as a Defendant.

3. Contractor will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on

behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.

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

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

**C. DISPUTE RESOLUTION.** Disputes arising under or related to this Agreement or the work which is the subject of this Agreement shall be resolved by administrative hearing which shall be conducted in accordance with the procedures set forth in D.R.M.C. §5-17. The parties agree that the determination resulting from said administrative hearing shall be final, subject only to Consultant's right to appeal the determination under Colorado Rule of Civil Procedure, Rule 106.

## **ARTICLE VI GENERAL TERMS AND CONDITIONS**

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

**B. Assignment.** Consultant shall not assign, pledge or transfer its duties, obligations, and rights under this Agreement, in whole or in part, without first obtaining the written consent of the Project Manager. Any attempt by Consultant to assign or transfer its rights hereunder without such prior written consent shall, at the option of the Project Manager, automatically terminate this Agreement and all rights of Consultant hereunder. Such consent may be granted or denied at the sole and absolute discretion of the Project Manager.

**C. Compliance with all Laws and Regulations.** All of the work performed under this Agreement by Consultant shall comply with all applicable laws, rules, regulations and codes of the United States and the State of Colorado and with the charter, ordinances and rules and regulations of City and County of Denver.

### **D. Compliance with Patent, Trademark and Copyright Laws.**

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

2. Consultant further agrees to release, indemnify and save harmless City, its officers, agents and employees, pursuant to Article V, Section B, "Defense and Indemnification," from any and all claims, damages, suits, costs, expenses, liabilities, actions or proceedings of any kind or nature whatsoever, of or by anyone whomsoever, in any way resulting from, or arising out of, directly or indirectly, the performance of work under this Agreement which infringes upon any patent, trademark or copyright protected by law.

**E. Notices.** Notwithstanding the above, notices concerning termination of this Agreement, notices of alleged or actual violations of the terms of this Agreement, and other notices of similar importance shall be made as follows:

by Consultant to:

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

And by City to:

Merchant Aviation, LLC  
104 Ormont Rd  
Chatham, New Jersey 07928

Said notices shall be delivered personally during normal business hours to the appropriate office above or by prepaid U.S. certified mail, return receipt requested. Mailed notices shall be deemed effective upon deposit with the U.S. Postal Service. Either party may from time to time designate substitute addresses or persons where and to whom such notices are to be mailed or delivered, but such substitutions shall not be effective until actual receipt of written notification thereof.

**F. Rights and Remedies Not Waived.** In no event shall any payment by City hereunder constitute or be construed to be a waiver by City of any breach of covenant or default which may then exist on the part of Consultant, and the making of any such payment when any such breach or default shall exist shall not impair or prejudice any right or remedy available to City with respect to such breach or default; and no assent, expressed or implied, to any breach of any one or more covenants, provisions or conditions of this Agreement shall be deemed or taken to be a waiver of any other breach.

**G. No Third Party Beneficiaries.** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement shall be strictly reserved to City and Consultant, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on this Agreement. It is the express intention of City and Consultant that any person other than City or Consultant receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.



**H. Governing Law; Bond Ordinances; Venue.**

1. This Agreement is made under and shall be governed by the laws of the State of Colorado. Each and every term, provision or condition herein is subject to the provisions of Colorado law, the Charter of City and County of Denver, and the ordinances and regulations enacted pursuant thereto.

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

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

**ARTICLE VII STANDARD CITY PROVISIONS**

**A. Diversity and Inclusiveness.**

1. The City encourages the use of qualified small business concerns doing business within the metropolitan area that are owned and controlled by, economically or socially disadvantaged individuals.

2. The Consultant is encouraged, with respect to the goods or services to be provided under this Contract, to use a process that includes small business concerns, when considering and selecting any subcontractors or suppliers.

**B. DSBO Goals.** Consultant is subject to City's ordinance, DRMC Chapter 28, Article III (MBE/WBE Ordinance) which prohibits discrimination in the awarding of contracts and subcontracts and directs the DSBO Director to establish goals for MBE and WBE participation in the preconstruction and construction of City-owned facilities. **The goal for this Agreement is 6%.** Project goals must be met with certified MBE and WBE participants or by demonstrating good faith efforts under the MBE/WBE Ordinance. The Consultant must comply with the terms and conditions of the MBE/WBE Ordinance in soliciting and contracting with its sub-contractors and sub-contractors in administering the performance of the work hereunder. It shall be an ongoing, affirmative obligation of the Consultant to maintain, at a minimum, compliance with the originally achieved level of MBE/WBE participation upon which this Agreement was awarded (6%), for the duration of this Agreement, unless City initiates a material alteration to the Scope of Work.

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

**D. Prevailing Wage.** Consultant shall comply with City's Prevailing Wage Ordinance, D.R.M.C. § 20-76 *et seq.*, as such Ordinance may apply to Consultant's activities under this

Agreement. The Consultant is prohibited from hiring any subcontractor that is currently debarred by City in accordance with D.R.M.C § 20-77.

**E. Advertising and Public Disclosures.** Consultant shall not include any reference to this Agreement or to work performed hereunder in any of its advertising or public relations materials without first obtaining the written approval of the Project Manager. Any oral presentation or written materials related to DEN shall include only presentation materials, work product, and technical data which have been accepted by City, and designs and renderings, if any, which have been accepted by City. The Project Manager shall be notified in advance of the date and time of any such presentations. Nothing herein, however, shall preclude Consultant's use of this Agreement and its component parts in GSA Forms 254 or 255 presentations, or the transmittal of any information to officials of City, including without limitation, the Mayor, the CEO, any member or members of City Council, and the Auditor.

**F. Colorado Open Records Act.** Consultant acknowledges that City is subject to the provisions of the Colorado Open Records Act, Colorado Revised Statutes § 24-72-201 *et seq.*, and Consultant agrees that it will fully cooperate with City in the event of a request or legal process arising under such act for the disclosure of any materials or information which Consultant asserts is confidential and exempt from disclosure. Any other provision of this Agreement notwithstanding, including exhibits, attachments and other documents incorporated into this Agreement by reference, all materials, records and information provided by Consultant to City shall be considered confidential by City only to the extent provided in the Colorado Open Records Act, and Consultant agrees that any disclosure of information by City consistent with the provisions of the Colorado Open Records Act shall result in no liability of City.

In the event of a request to City for disclosure of such information, time, and circumstances permitting, City will make a good faith effort to advise Consultant of such request in order to give Consultant the opportunity to object to the disclosure of any material Consultant may consider confidential, proprietary, or otherwise exempt from disclosure. In the event Consultant objects to disclosure, City, in its sole and absolute discretion, may file an application to the Denver District Court for a determination of whether disclosure is required or exempted. In the event a lawsuit to compel disclosure is filed prior to City's application, City will tender all such material to the court for judicial determination of the issue of disclosure. In both situations, Consultant agrees it will either waive any claim of privilege or confidentiality or intervene in such legal process to protect materials Consultant does not wish disclosed. Consultant agrees to defend, indemnify, and hold harmless City, its officers, agents, and employees from any claim, damages, expense, loss, or costs arising out of Consultant's objection to disclosure, including prompt reimbursement to City of all reasonable attorney fees, costs, and damages City may incur directly or may be ordered to pay by such court.

**G. Examination of Records.**

1. In connection with any services performed hereunder on items of work toward which federal funds may be received the City, the Federal Aviation Administration ("FAA"), the Comptroller General of the United States and any other duly authorized representatives shall have access to any books, documents, papers and records of Consultant which are directly pertinent to a specific grant program for the purpose of making audit, examination, excerpts and transcriptions. Consultant further agrees that

such records will contain information concerning the hours and specific services performed along with the applicable federal project number.

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

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

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

**J. Conflict Of Interest.** Consultant agrees that it and its subsidiaries, affiliates, subcontractors, principals, or employees will not engage in any transaction, activity or conduct which would result in a conflict of interest. Consultant represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities, or conduct that would affect the judgment, actions or work of Consultant by placing Consultant's own interests, or the interest of any party with whom Consultant has a contractual arrangement, in conflict with those of City. City, in its sole discretion, shall determine the existence of a conflict of interest and may terminate this Agreement if such a conflict exists, after it has given Consultant written notice which describes such conflict.

Consultant shall have thirty (30) days after the notice is received in which to eliminate or cure the conflict of interest in a manner which is acceptable to City.

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

1. The Agreement is subject to Article 17.5 of Title 8, C.R.S., and D.R.M.C. §20-90, and the Consultant is liable for any violations as provided in said statute and ordinance.
2. The Consultant certifies that:
  - (a) At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.
  - (b) It will participate in the E-Verify Program, as defined in § 8 17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.
3. The Consultant also agrees and represents that:
  - (a) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

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

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

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

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

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

**L. Funding Source.** Payment under this Agreement shall be paid from Payment under this Agreement shall be paid from the Airport System Fund of the City and County of Denver and from no other fund or source.

**M. Payment of City Minimum Wage.** The Consultant shall comply with, and agrees to be bound by, all requirements, conditions, and City determinations regarding the City's Minimum Wage Ordinance, Sections 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 foregoing D.R.M.C. Sections. By executing this Agreement, the Consultant expressly acknowledges that the Consultant is aware of the requirements of the City's Minimum Wage Ordinance and that any failure by the 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.

## ARTICLE VIII STANDARD FEDERAL PROVISIONS

**A. Sensitive Security Information.** Consultant acknowledges that, in the course of performing its work under this Agreement, Consultant may be given access to Sensitive Security Information ("SSI"), as material is described in federal regulations, 49 Code of Federal Regulations ("C.F.R.") Part 1520. Consultant specifically agrees to comply with all requirements of the applicable federal regulations specifically, 49 C.F.R. Parts 15 and 1520. Consultant understands any questions it may have regarding its obligations with respect to SSI must be referred to DEN's Security Office.

**B. DEN Security.** Consultant, its officers, authorized officials, employees, agents, subcontractors, and those under its control, will comply with safety, operational, or security measures required of Consultant or City by the FAA or Transportation Security Administration (“TSA”). If Consultant, its officers, authorized officials, employees, agents, subcontractors or those under its control, fail or refuse to comply with said measures and such non-compliance results in a monetary penalty being assessed against City, then, in addition to any other remedies available to City, Consultant covenants to fully reimburse City any fines or penalties levied against City, and any attorney fees or related costs paid by City as a result of any such violation. This amount must be paid by Consultant within fifteen (15) days from the date of the invoice or written notice.

**C. Federal Rights.** This Agreement is subject and subordinate to the terms, reservations, restrictions and conditions of any existing or future agreements between City and the United States, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to City for DEN purposes and the expenditure of federal funds for the extension, expansion or development of the Denver Municipal Airport System.

#### **ARTICLE IX CONTRACT DOCUMENTS; ORDER OF PRECEDENCE**

This Agreement consists of Articles I through X which precede the signature page, and the following attachments which are incorporated herein and made a part hereof by reference:

- Appendix A: Standard Federal Assurances
- Exhibit A: Scope of Work
- Exhibit B: Rates
- Exhibit C: Certificate of Insurance

In the event of an irreconcilable conflict between the provisions of Articles I through X and any of the listed attachments or between provisions of any attachments, such that it is impossible to give effect to both, the order of precedence to determine which document shall control to resolve such conflict, is as follows, in descending order:

- Appendix A
- Articles I through X hereof
- Exhibit A
- Exhibit B
- Exhibit C

## ARTICLE X CITY EXECUTION OF AGREEMENT

**A. City Execution.** This Agreement is expressly subject to, and shall not become effective or binding on City, until it is fully executed by all signatories of City and County of Denver. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same, and it may be signed electronically by either party in the manner specified by City.

**B. Electronic Signatures and Electronic Records.** Consultant consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

**[SIGNATURE PAGES FOLLOW]**

**Contract Control Number:**

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

SEAL

**CITY AND COUNTY OF DENVER**

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



Contract Control Number: PLANE-201839468-00

Contractor Name: Merchant Aviation LLC

By: 

Name: KIRAN MERCHANT  
(please print)

Title: CEO  
(please print)

ATTEST: [if required]

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)





## APPENDIX A

### 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 the Contract.

#### 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 A

### 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 A

### Federal Aviation Administration Required Contract Provisions

#### ALL CONTRACTS – NON-AIP FUNDED

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

#### FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

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

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

## **APPENDIX A**

### **Federal Aviation Administration Required Contract Provisions**

#### **ALL CONTRACTS – NON-AIP FUNDED**

##### **OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970**

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

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**Denver International Airport  
Planning and Design**

**EXHIBIT A**  
**On-call DEN Airport Planning  
Scope of Work**

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Denver International Airport (DEN) is seeking qualifications from companies to provide professional consulting services in the general subject areas identified below.

**Strategic and Tactical Planning Studies and Documentation**

To include but not be limited to:

- Development of goals and objectives and related performance metrics
- Collection of data (including surveys and downloads from existing sources)
- Preparation of forecasts of aviation demand and related derivative projections
- Assessments of processing rates and comparisons of facility demands and capacities
- Determination of future facility requirements, concepts and layouts
- Formulation and evaluation of development alternatives including changes in policies and procedures and business and safety risk assessments.
- Preparation of Master Plan, Airport Layout Plan drawing sets and narratives and other facility layout plans
- Estimation and assessment of costs, financial feasibility (including benefit cost analyses) and financial implementation planning.
- Development and assessment of compatible land use plans, on- and off-airport property
- Reports, drawings, presentations and documentation of work products

Types of facilities studied may include:

- Runways, taxiways, aprons, deicing pads
- Terminals and concourses.
- Roadways and transit systems
- Public and employee parking
- Rental cars
- Airport and airline maintenance
- Cargo
- Other support and ancillary tenant concessions and facilities

### **Assistance in Other Airport Planning Work**

Support for work by Airport staff or other consultants and contractors including, but not limited to:

- Facility design reviews
- Airspace and ATC procedures/modeling
- Marking and signing of airfield and aircraft gate and parking areas
- Aircraft gate use assessments and development of plans
- Geographic Information System and data uploads to FAA AGIS system
- Simulation modeling of airfield, terminal and roadway activities
- Airport zoning

### **Coordination and Outreach**

Organize, attend and provide materials and presentations at meetings or other outreach as may be requested to:

- Federal Aviation Administration and other Federal agencies
- Colorado Department of Transportation and other state agencies
- Denver Regional Council of Governments and other regional agencies
- Major airport stakeholders such as airlines and existing and prospective tenants
- Local County and municipal governments
- The general public and elected officials

Selected consultant will be responsible to comply with DEN's standards, policies, procedures and Project Plan(s).



## Exhibit B

### DEN On-Call Planning Labor Rates for 2019 (Merchant Aviation Team)

Company	Name	Position	Base Hourly Rate	Multiplier	Billing Rate
Merchant Aviation/ADPi	Kiran Merchant	Principal-in-Charge	\$ 105.00	2.965	\$ 311.33
Merchant Aviation/ADPi	Bryon Rakoff	Project Manager-Sr. Planner	\$ 85.00	2.965	\$ 252.03
Merchant Aviation/ADPi	Joel Couillandeu	Deputy PM - Sr. Planner	\$ 83.00	2.965	\$ 246.10
Merchant Aviation/ADPi	Paul Fernandez	Sr. Terminal Planner	\$ 90.00	2.965	\$ 266.85
Merchant Aviation/ADPi	Ahmed Soua	Airport Planner	\$ 80.00	2.965	\$ 237.20
Merchant Aviation/ADPi	F. Quemeneur	Terminal Architect	\$ 80.00	2.965	\$ 237.20
Merchant Aviation/ADPi	Bill DeGraaff	Sr. Airside Planner	\$ 75.00	2.965	\$ 222.38
Merchant Aviation/ADPi	Raghav Prakash	Airport Planner	\$ 40.00	2.965	\$ 118.60
Merchant Aviation/ADPi	Kho Ho	Airside Planner	\$ 55.00	2.965	\$ 163.08
Merchant Aviation/ADPi	Vincent Albar	Airport Planner	\$ 55.00	2.965	\$ 163.08
Merchant Aviation/ADPi	Jean Morin	Terminal Planner	\$ 55.00	2.965	\$ 163.08
Merchant Aviation/ADPi	Daniel Castagnet	BHS Design Expert	\$ 85.00	2.965	\$ 252.03
Merchant Aviation/ADPi	Quresh Tyenji	Junior Terminal Planner	\$ 35.00	2.965	\$ 103.78
Merchant Aviation/ADPi	Michel Ricaud	Operations Expert	\$ 103.00	2.965	\$ 305.40
TransSolutions	Gloria Bender	Principal	\$ 80.00	2.8258	\$ 226.06
TransSolutions	Kok Leong Ng	Simulation Analyst	\$ 45.00	2.8258	\$ 127.16
Hg Consult, Inc.	Jerry Mugg	Principal, Traffic Engineer	\$ 75.00	2.8712	\$ 215.34
Hg Consult, Inc.	Mike Alexander	Traffic Engineer	\$ 52.00	2.8712	\$ 149.30
Hg Consult, Inc.	Brenda Durbahn	Environmental Planner	\$ 56.00	2.8712	\$ 160.79
Hg Consult, Inc.	Jen Johnson	Transportation Planner	\$ 45.00	2.8712	\$ 129.20
Hg Consult, Inc.	Dave Kocour	Environmental Planner	\$ 66.00	2.8712	\$ 189.50
Lea+Elliott, Inc.	David M. Casselman	APM/Transit Principal	\$ 105.00	3.31	\$ 347.55
Lea+Elliott, Inc.	Melinda S. Ring	APM/Transit Project Manager	\$ 72.00	3.31	\$ 238.32

\*Once the specific tasks and scope of work is defined, we may propose alternative/additional staff members.

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

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Certificate Holder Information:

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

If you are awarded the contract, your ACORD forms must be submitted electronically to: [contractadmininvoices@flydenver.com](mailto:contractadmininvoices@flydenver.com).  
HARD COPIES will not be accepted.  
All ACORD forms must have the project number in the Description of Operations section.

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**CONTRACT NAME & NUMBER TO WHICH THIS INSURANCE APPLIES: 201839468 – DEN Airport Planning On Call**

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**I. PRIMARY COVERAGE**

**Colorado Workers' Compensation and Employer Liability**

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

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

**Commercial General Liability**

**Minimum Limits of Liability (In Thousands):**

Each Occurrence:	\$1,000
General Aggregate Limit:	\$2,000
Products-Completed Operations Aggregate Limit:	\$2,000
Personal & Advertising Injury:	\$1,000

The policy must provide the following:

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

**Business Automobile Liability**

**Minimum Limits of Liability (In Thousands):**

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

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



## II. ADDITIONAL COVERAGE

### Excess/Umbrella Liability

#### Minimum Limits of Liability (In Thousands):

Umbrella Liability Controlled Area	Each Occurrence and aggregate	\$9,000
Umbrella Liability Non-Controlled Area	Each Occurrence and aggregate	\$1,000

The policy must provide the following:

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

### Professional Liability (Errors and Omissions)

#### Minimum Limits of Liability (In Thousands)

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

The policy must provide the following:

1. Policies written on a claims-made basis must remain in force for three years extended reporting period in accordance with CRS 13-80-104.
2. If the coverage is written on a claims-made basis the Insured warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Contract.

## III. ADDITIONAL CONDITIONS

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

1. For Commercial General Liability, Auto Liability and Excess Liability/Umbrella (if required), Contractor and subcontractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.
2. All coverage provided herein shall be primary and any insurance maintained by the City shall be considered excess.
3. For all coverages required under this Agreement, Contractor's insurer shall waive subrogation rights against the City.
4. The City shall have the right to verify or confirm, at any time, all coverage, information or representations contained herein, and the insured and its undersigned agent shall promptly and fully cooperate in any such audit the City may elect to undertake.
5. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better.
6. For claims-made coverage, the retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier.
7. No changes, modifications or interlineations on this document shall be allowed without the review and approval of the Risk Administrator prior to contract execution.

### NOTICE OF CANCELLATION

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