

## **FIFTH AMENDMENT TO AGREEMENT**

**THIS FIFTH AMENDMENT TO AGREEMENT** is made and entered into this as of the date stated on the City signature page below by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (“**City**”), and **HARRIS MILLER MILLER & HANSON, INC.**, a Massachusetts corporation authorized to do business in Colorado (“**Consultant**”).

### **WITNESSETH**

**WHEREAS**, the parties entered into a written agreement dated November 16, 2010, which was amended by a First Amendment to Agreement dated February 21, 2013, a Second Amendment dated November 19, 2014, and a Third Amendment dated February 5, 2018, and a Fourth Amendment dated December 1, 2020 (Jaggaer No. 202055428) (the “**Existing Agreement**”), under which the Consultant agreed to provide professional technical services related to the noise monitoring system and operations for Denver International Airport (“**DEN**”), and for other consulting services related to noise studies and planning for **DEN**; and

**WHEREAS**, the parties desire to amend the Existing Agreement as provided herein; and

**WHEREAS**, though this is a Fifth Amendment, this Fifth Amendment to Agreement must have the number designation “CE 13002-06” rather than “-05” due to an uncorrectable error in the City’s former contract control system called “Alfresco,” and the parties understand and accept that this Fifth Amendment may have the amendment designation “-06” in Jaggaer, the City’s current contract control system;

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

1. Paragraph 5 of the Existing Agreement, entitled “Term,” is amended and restated as follows:

**5. TERM.** The Term of this Agreement shall commence January 1, 2011, and shall terminate December 31, 2026.

2. Paragraph 3 of the Existing Agreement, entitled “Maximum Contract Liability,” is amended and restated as follows:

**3. MAXIMUM CONTRACT LIABILITY:** Any other provision of this Agreement notwithstanding, in no event shall the City be liable for payment for services rendered and expenses incurred by the Consultant under the terms of this Agreement for any amount in excess of the sum of One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000.00).

3. Any **Exhibit B** attached to the Existing Agreement or its other amendments is hereby replaced by the **Exhibit B-5** attached to this Amendment; such attachment is incorporated into the Existing Agreement by this reference.

4. Any **Exhibit C** attached to the Existing Agreement or its other amendments is hereby replaced by the **Exhibit C** attached to this Amendment; such attachment is incorporated into the Existing Agreement by this reference.

5. Except as otherwise provided herein, all of the terms, provisions, and conditions of the Existing Agreement shall remain in full force and effect as though set out in full herein, and are hereby ratified and reaffirmed.

6. This Fifth Amendment shall not be or become effective or binding on the City until approved and fully executed by all signatories of the City and County of Denver and a fully executed Agreement has been delivered to Consultant.

**[END OF AMENDMENT; SIGNATURE PAGES AND EXHIBITS FOLLOW]**

**Contract Control Number:** PLANE-202367426-[[ This Amendment Number ]]  
**Contractor Name:** HARRIS MILLER MILLER & HANSON 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-202367426-[[ This Amendment Number ]]  
HARRIS MILLER MILLER & HANSON INC

By:

DocuSigned by:

*Diana Wasiuk*

5F3D258EC450480...

Name:

Diana wasiuk

(please print)

Title:

President / CEO

(please print)

ATTEST: [if required]

By:

Name:

(please print)

Title:

(please print)

**Harris Miller Miller & Hanson Inc.**

700 District Avenue, Suite 800  
 Burlington, Massachusetts 01803  
 781.229.0707  
 www.hmmh.com

**EXHIBIT B-5****Commercial Rates FY23**

Category	Employee Name	Rate
<b>Consultant I</b>		
00305	Hayden T. Jubera	140.00
00338	Vincent Ma	140.00
00365	Priscilla D. Brownlow	140.00
00379	Emily T. Lopez	140.00
00390	Logan C. Katsoufis	140.00
00395	Aofei Li	140.00
00401	Matthew V. Agostino	115.00
<b>Consultant II</b>		
00352	Christopher P. Emma	135.00
00362	Arnav R. Pamidighantam	135.00
<b>Consultant III</b>		
00360	Henry Echeverria	125.00
00369	Avery J. Pecci	125.00
00370	Paul J. Krusell	125.00
00376	Kevin J. Parker	125.00
00386	Claire A. Dossey	125.00
00388	Naini Keita	125.00
00392	Trent N. Tougas	125.00
00396	Jessica G. Wingen	125.00
00397	Bryan T. Rand	125.00
00403	Emma Anne Shaw	115.00
<b>Principal Consultant I</b>		
00020	Christopher W. Menge	295.00
00326	Joseph J. Czech	295.00
00375	Scott R. Polzin	295.00
00380	Donald K. Nance	295.00
<b>Principal Consultant II</b>		
00114	Robert C. Mentzer Jr.	230.00
00176	David A. Crandall	230.00
00270	Philip M. DeVita	230.00
00282	Rhea A. Hanrahan	230.00
00328	Brandon L. Robinette	230.00
00350	Timothy P. Middleton	230.00
00356	Sarah C. Yenson	230.00
00374	Alice J. Richard	230.00
00394	Nastasja von Conta	230.00
00398	Robert John Finck Jr.	230.00
00400	Missi M. Shumer	230.00
00402	Dayna M. Bowen	230.00



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**Project Support I**

00185	Kristine J. Collins	142.00
00341	Britany L. Luchini	105.00
00346	Nicolette M. Saraceni	142.00
00383	Erin R. Greenfield	142.00

**Project Support II**

00368	Patrick J. Generose	105.00
00399	Dylan S. Wright	105.00

**Senior Consultant I**

00236	Michael J. Hamilton	185.00
00262	Eric Cox	185.00
00351	Doreen R. Stockdale	185.00
00372	Sara R. Kaplan	185.00
00373	Mihir Rimjha	185.00

**Senior Consultant II**

00294	Justin E. Divens	175.00
00384	Jason R. Stoddard	175.00
00391	Daniel T. Botto	175.00

**Senior Consultant III**

00078	Katherine M.S. Larson	170.00
00306	Scott A. McIntosh	170.00
00334	Mariano Sarrate	170.00
00335	Julia M. Nagy	170.00
00337	Dillon S. Tannler	170.00
00348	Tara E. Cruz	170.00
00389	Heather K. Wylie	170.00

**Sr. Project Support**

00133	Andrew P. Finsel	200.00
00371	Oscar Rene Izaguirre	200.00
00377	Michael A. Chandonnet	200.00
00378	Jason A. Rega	200.00
00385	Brian D. Grant	200.00

**Supervisory Consultant I**

00160	Eugene M. Reindel	330.00
00252	Diana B. Wasiuk	330.00

**Supervisory Consultant II**

00291	Kurt M. Hellauer	300.00
00329	Katherine B. Preston	300.00
00331	Scott R. Noel	300.00

Rates are by category; individuals promoted to new categories will be billed at their new category rate.

## **EXHIBIT C**

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

#### **A. Certificate Holder and Submission Instructions**

Contractor must provide a Certificate of Insurance as follows:

Certificate Holder: CITY AND COUNTY OF DENVER  
Denver International Airport  
8500 Peña Boulevard  
Denver CO 80249  
Attn/Submit to: contractadmininvoices@flydenver.com

- ACORD Form (or equivalent) certificate is required.
- Contractor must be evidenced as a Named Insured party.
- Electronic submission only, hard copy documents will not be accepted.
- Reference on the certificate must include the City-assigned Contract Number, if applicable.

The City may at any time modify submission requirements, including the use of third-party software and/or services, which may include an additional fee to the Contractor.

#### **B. Defined Terms**

1. “Agreement” as used in this exhibit refers to the contractual agreement to which this exhibit is attached, irrespective of any other title or name it may otherwise have.
2. “Contractor” as used in this exhibit refers to the party contracting with the City and County of Denver pursuant to the attached Agreement.

#### **C. Coverages and Limits**

##### **1. Commercial General Liability**

Contractor 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, \$2,000,000 products and completed operations aggregate; if policy contains a general aggregate, a minimum limit of \$2,000,000 annual policy aggregate must be maintained.

- a. Coverage shall include Contractual Liability covering liability assumed under this Agreement (including defense costs assumed under contract) within the scope of coverages provided.
- b. Coverage shall include Mobile Equipment Liability, if used to perform services under this Agreement.
- c. If a “per location” policy aggregate is required, “location” shall mean the entire airport premises.

##### **2. Business Automobile Liability**

Contractor 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 Contractor does not have blanket coverage on all owned and operated vehicles and will require unescorted airside driving privileges, then a schedule of insured vehicles (including year, make, model and VIN number) must be submitted with the Certificate of Insurance.

- c. If transporting waste, hazardous material, or regulated substances, Contractor shall carry a Broadened Pollution Endorsement and an MCS 90 endorsement on its policy.
  - d. If Contractor does not own any fleet vehicles and Contractor's owners, officers, directors, and/or employees use their personal vehicles to perform services under this Agreement, Contractor shall ensure that Personal Automobile Liability including a Business Use Endorsement is maintained by the vehicle owner, and if appropriate, Non-Owned Auto Liability by the Contractor. This provision does not apply to persons solely commuting to and from the airport.
  - e. If Contractor will be completing all services to DEN under this Agreement remotely and not be driving to locations under direction of the City to perform services this requirement is waived.
- 3. **Workers' Compensation and Employer's Liability Insurance**  
Contractor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits no less than \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.
  - a. Colorado Workers' Compensation Act allows for certain, limited exemptions from Worker's Compensation insurance coverage requirements. It is the sole responsibility of the Contractor to determine their eligibility for providing this coverage, executing all required documentation with the State of Colorado, and obtaining all necessary approvals. Verification document(s) evidencing exemption status must be submitted with the Certificate of Insurance.
- 4. **Property Insurance**  
Contractor is solely responsible for any loss or damage to its real or business personal property located on DEN premises including, but not limited to, materials, tools, equipment, vehicles, furnishings, structures and personal property of its employees and subcontractors unless caused by the sole, gross negligence of the City. If Contractor carries property insurance on its property located on DEN premises, a waiver of subrogation as outlined in Section F will be required from its insurer.
- 5. **Professional Liability (Errors and Omissions) Insurance**  
Contractor shall maintain a minimum limit of \$1,000,000 each claim and annual policy aggregate, providing coverage for all applicable professional services outlined in this Agreement.
- 6. **Unmanned Aerial Vehicle (UAV) Liability:**  
If Contractor desires to use drones in any aspect of its work or presence on DEN premises, the following requirements must be met prior to commencing any drone operations:
  - a. Express written permission must be granted by DEN.
  - b. Express written permission must be granted by the Federal Aviation Administration (FAA).
  - c. Drone equipment must be properly registered with the FAA.
  - d. Drone operator(s) must be properly licensed by the FAA.
  - e. Contractor must maintain UAV Liability including flight coverage, personal and advertising injury liability, and hired/non-owned UAV liability for its commercial drone operations with a limit no less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.
- 7. **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 Name, Title of Agreement and/or Contract Number and description shall be noted on the Certificate of Insurance, if applicable.



**E. Additional Insured**

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

**F. Waiver of Subrogation**

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

If Contractor will be completing all services to the City under this Agreement remotely and not be traveling to locations under direction of the City to perform services, this requirement is waived specific to Workers' Compensation coverage.

**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 required coverage before the expiration date thereof.

1. Such notice shall reference the DEN assigned contract number related to this Agreement.
2. Such notice shall be sent thirty (30) calendar days prior to such cancellation or non-renewal or reduction in required coverage unless due to non-payment of premiums for which notice shall be sent ten (10) calendar days prior.
3. If such written notice is unavailable from the insurer or afforded as outlined above, Contractor shall provide written notice of cancellation, non-renewal and any reduction in required coverage to the Certificate Holder within three (3) business days of receiving such notice by its insurer(s) and include documentation of the formal notice received from its insurer(s) as verification. Contractor shall replace cancelled or nonrenewed policies with no lapse in coverage and provide an updated Certificate of Insurance to DEN.
4. In the event any general aggregate or other aggregate limits are reduced below the required minimum per occurrence limits, Contractor will procure, at its own expense, coverage at the requirement minimum per occurrence limits. If Contractor cannot replenish coverage within ten (10) calendar days, it must notify the City immediately.

**H. Cooperation**

Contractor agrees to fully cooperate in connection with any investigation or inquiry and accept any formally tendered claim related to this Agreement, whether received from the City or its representative. Contractor's failure to fully cooperate may, as determined in the City's sole discretion, provide cause for default under the Agreement. The City understands acceptance of a tendered claim does not constitute acceptance of liability.

**I. Additional Provisions**

1. Deductibles or any type of retention are the sole responsibility of the Contractor.
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. Coverage required may not contain an exclusion related to operations on airport premises.
4. A severability of interests or separation of insureds provision (no insured vs. insured exclusion) is included under all policies where Additional Insured status is required.
5. A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City under all policies where Additional Insured status is required.
6. If the Contractor procures or maintains insurance policies with coverages or limits beyond those stated herein, such greater policies will apply to their full effect and not be reduced or limited by the minimum requirements stated herein.

7. All policies shall be written on an occurrence form. If an occurrence form is unavailable or not industry norm for a given policy type, claims-made coverage will 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 reporting period placed for three years (eight years for construction-related agreements) beginning at the time work under this Agreement is completed or the Agreement is terminated, whichever is later.
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 an authorized representative and must be submitted to the City at the time Contractor 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 shall not act as a waiver of Contractor's breach of this Agreement or of any of the City's rights or remedies under this Agreement. All coverage requirements shall be enforced unless waived or otherwise modified in writing by DEN Risk Management. Contractor is solely responsible for ensuring all formal policy endorsements are issued by their insurers to support the requirements.
11. The City shall have the right to verify, at any time, all coverage, information, or representations, and the insured and its insurance representatives shall promptly and fully cooperate in any such audit the City may elect to undertake including provision of copies of insurance policies upon request. In the case of such audit, the City may be subject to a non-disclosure agreement and/or redactions of policy information unrelated to verification of required coverage.
12. No material changes, modifications, or interlineations to required insurance coverage shall be allowed without the review and written approval of DEN Risk Management.
13. Contractor shall be responsible for ensuring the City is provided updated Certificate(s) of Insurance prior to each policy renewal.
14. Contractor's failure to maintain required insurance shall be the basis for immediate suspension and cause for termination of this Agreement, at the City's sole discretion and without penalty to the City.

**J. Part 230 and the DEN Airport Rules and Regulations**

If the minimum insurance requirements set forth herein differ from the equivalent types of insurance requirements in Part 230 of the DEN Airport Rules and Regulations, the greater and broader insurance requirements shall supersede those lesser requirements, unless expressly excepted in writing by DEN Risk Management. Part 230 applies to Contractor and its subcontractors of any tier.