

## **AGREEMENT FOR PROFESSIONAL SERVICES**

**THIS AGREEMENT FOR PROFESSIONAL SERVICES** ("Agreement") is made and entered into as of the date stated on City's signature page below 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 K & H LLC, a Colorado Limited Liability Company ("Agency") (collectively "Parties").

### **WITNESSETH:**

**WHEREAS**, City owns, operates, and maintains the Denver Municipal Airport System including the Denver International Airport ("DEN"); and

**WHEREAS**, City desires to obtain strategic marketing services in the areas of advertising, marketing, media services, promotions, creative services, customer experience and research including account management, marketing campaigns; and

**WHEREAS**, City has undertaken a competitive process to solicit and receive qualifications and proposals for such services; and

**WHEREAS**, Agency submitted qualifications and a proposal in response to City's solicitation; and

**WHEREAS**, City relying on Agency's qualifications and the representations in Agency's submitted proposal selected Agency for award of the solicitation; and

**WHEREAS**, Agency warrants it 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 the good and valuable consideration exchanged, the Parties hereto agree as follows:

### **ARTICLE I LINE OF AUTHORITY**

The Chief Executive Officer of the Department of Aviation (the "CEO"), 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 Senior Vice President of Global Communications and Marketing of the Department of Aviation ("SVP"). The SVP has designated a Project Manager ("PM") the Senior Director of Marketing and Branding for the Department of Aviation to coordinate services under this Agreement. Reports, memoranda, correspondence, and other submittals required hereunder shall be processed in accordance with the PM's directions.

### **ARTICLE II PRIVILEGES GRANTED**

**A. License.** Subject to the terms and conditions set forth herein, City grants Agency non-exclusive, limited, non-transferable license in City's intellectual property (including all trademarks and copyrighted materials owned by City used by its Department of Aviation) to perform strategic marketing services, including advertising, marketing, media services, promotions, and creative services. Notwithstanding any other terms and conditions stated herein,

Agency shall not reproduce, modify, or reverse any of City's intellectual property without City's prior approval and written authorization.

**B. Commitments to Third Parties.** All use of the License granted herein, purchases of media, production costs, and engagement of talent is subject to City's prior written approval. City reserves the right to cancel any such authorization, whereupon Agency will take all appropriate steps to effect such cancellation. If at any time Agency obtains a discount or rebate from any third party in connection with Agency's rendition of services to City, Agency will credit City or remit to City such discount or rebate. For all media purchased by Agency on City's behalf, City agrees Agency shall be held solely liable for payments only to the extent proceeds have cleared from City to Agency for such media purchase; otherwise, City agrees to be solely liable to media ("Sequential Liability"). Agency will use its best efforts to obtain agreement by media to Sequential Liability.

### ARTICLE III DUTIES AND RESPONSIBILITIES OF AGENCY

**A. Scope of Services.** Agency will provide professional services and provide deliverables for the City as designated by the CEO, SVP, and/or PM, from time to time and as described in the attached **Exhibit A** ("Scope of Work") in accordance with schedules and budgets set by City.

**B. Deliverables.**

1. *Marketing Plan.* City and Agency will develop an overarching brand-marketing plan for DEN containing a number of venture or initiative specific marketing or communication projects. Thereafter Agency, in accordance with **Exhibit A**, will be responsible for developing and implementing, subject to City approval, marketing plans and corresponding budgets for all DEN programs on an annual basis. The Marketing Plans must include detailed strategy and account planning, advertising, marketing, media, promotions, creative, and customer experience approaches, and responsive market research. Additionally, Marketing Plans must provide a three (3) year marketing forecast demonstrating the progression of the Plans efforts.

2. *Creative Briefs.* Agency, in accordance with **Exhibit A** and upon receiving input from City, shall develop creative briefs for identified projects in the Marketing Plan. These creative briefs shall describe the strategy, specific goals, and message being communicated by each project. Briefs must be updated as requested by City and/or annually.

3. *Monthly Reports.* Notwithstanding the requirements of **Exhibit B** and/or Article V contained herein, Agency, prior to the tenth (10<sup>th</sup>) day of each month during the Term of this Agreement, shall prepare and submit to City monthly reports. These monthly reports shall contain a list of active projects, timelines for active and contemplated projects, and a statement of budgeted expenditures versus actual expenditures.

**C. Standard of Performance.** Agency 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. Agency hereby represents and warrants to City it will perform its services skillfully, carefully, diligently, and in a first-class manner. Agency agrees and understands City, in its sole discretion, shall determine whether services are provided in a first-

class manner. Agency acknowledges 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 required to perform services under the Scope of Work, **Exhibit A**, will be assigned by Agency or subconsultants to perform work under this Agreement. Only the approved key personnel will perform work under this Agreement, unless otherwise approved in writing by the PM. It is the intent of the Parties all key professional personnel be engaged to perform their specialty for all such services required by this Agreement and that Agency'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. In the event any key personnel cannot be retained for the life of this Agreement, Agency shall provide City with fourteen (14) days written notice of the key personnel leaving with a proposal identifying Agency suggested replacement.

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

**E. Subcontractors.**

1. Although Agency 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 CEO. The CEO shall have the right to delegate responsibility to approve such agreements. 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 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 Agency'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. Agency is subject to D.R.M.C. § 20-112 wherein Agency 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. Confidentiality and Safeguard of Property.** The Parties respectively agree to keep in confidence, and not to disclose or use for its own respective benefit or for the benefit of any third party (except as may be required for the performance of services under this Agreement or as may be required by law), any information, documents, or materials reasonably considered confidential regarding each other's products, business, customers, City's, suppliers, or methods of operation, including but not limited to City research provided to Agency and/or research conducted by Agency on behalf of City; provided, however, such obligation of confidentiality will not extend to anything in the public domain or in the possession of either party prior to disclosure. The Parties will take reasonable precautions to safeguard the property of the other entrusted to it, but in the absence of negligence or willful disregard, neither Party will be responsible for any loss or damage.

**G. Ownership and Deliverables.** Upon payment to Agency, all records, data, deliverables, creative assets, and any other work product prepared by the Agency or any custom development work performed by the Agency on or before the day of payment shall become the sole property of the City. Agency, upon request by the City, or based on any schedule agreed to by Agency and the City, Agency shall provide City with copies of the data/files that have been uploaded to any database maintained by or on behalf of Agency or otherwise saved or maintained by Agency 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 Agency and the City. Agency also agrees to allow the City to review any of the procedures the Agency 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 years after termination of this agreement. Upon written request from the City, the Agency shall deliver any information requested pursuant to this Article III, Section F 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 Effective Date, and shall terminate on the fifth (5th) anniversary from the Effective Date, unless sooner terminated in accordance with the terms stated herein ("Expiration Date"). Should for any reason the Term expire prior to the completion by Agency, 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.

**B. Termination.**

1. City has the right to terminate this Agreement without cause on thirty (30) days prior written notice to Agency and with cause on ten (10) days prior written notice to Agency. In the event of termination by City for cause, Agency shall be allowed five (5) days to commence remedying its defective performance, and in the event Agency 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 Agency the right to perform services under this Agreement beyond the time when such services become unsatisfactory to the CEO.

2. If Agency is discharged before all the services contemplated hereunder have been completed, or if Agency's services are for any reason terminated, stopped or discontinued because of the inability of Agency to provide services in accordance with the terms of this Agreement, Agency 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, Agency 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, Agency 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. Agency shall not be entitled to loss of anticipated profits or any other consequential damages because of any such termination for convenience, and in no event shall the total sums paid exceed the Maximum Contract Liability.

## ARTICLE V 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 Agency under the terms of this Agreement for any amount in excess of the sum of fifteen million three hundred ten thousand eight hundred dollars (\$15,310,800) ("Maximum Contract Liability"). Agency will be performing the services on a project/deliverable request basis up to the Maximum Contract Amount. Agency's fee is based on the time required by its professionals to deliver the requested project and/or deliverables. Individual hourly rates are set forth in **Exhibit B** and vary according to the experience and skill required.

**B.** The obligations of City under this Agreement shall extend only to monies encumbered for the purposes of this Agreement. Agency 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 Funds 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 section 3.A. of this Agreement, Agency's fees and expenses shall be paid in accordance with this Agreement. Unless otherwise agreed to in writing, Agency 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. Agency 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 Agency receives prior written approval of the PM, and be related to and in furtherance of the purposes of the Agency's engagement.

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

(1) An executive summary and status reports that describe the progress of the requested projects/deliverables 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. Itemized time sheets by project shall be maintained by Agency 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 project/deliverable, time spent to complete the project/deliverable, the hourly rate, and allowable reimbursable expenses.

(4) Agency 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 Agency, 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. Agency's 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 Agency's total fees for any of the projects/deliverables 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 Agency in any other services if in the CEO or her designee's judgment, such fees are reasonable and appropriate.

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

### **A. Insurance.**

1. Agency shall obtain and keep in force during the entire term of this Agreement, all of the insurance policies described in City's form of insurance certificate, which is attached to this Agreement as **Exhibit C** and incorporated herein. Such insurance coverage includes workers' compensation and employer liability, commercial general liability, business automobile liability, and professional liability. Upon execution of this Agreement, Agency shall submit to City a fully completed and executed original of the attached insurance certificate form, which specifies the issuing company or companies, policy numbers and policy periods for each required coverage. In addition to the completed and executed certificate, Agency shall submit a copy of a letter from each company issuing a policy identified on the certificate, confirming the authority of the broker or agent to bind the issuing company, and a valid receipt of payment of premium.

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. Agency 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, Agency shall include all subcontracts performing services hereunder as insureds under each required policy or shall furnish a separate certificate (on the form certificate provided), with authorization letter(s) for each subcontractor, or each subcontractor shall provide its own insurance coverage as required by and in accordance with the requirements of this section of the Agreement. All coverages for subcontractors shall be subject to all of the requirements set forth in the form certificate and Agency 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 Agency from liabilities arising out of the performance of the terms and conditions of this Agreement by Agency, its agents, representatives, or employees. Agency shall assess its own risks and as it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. Agency is not relieved of any liability or other obligations assumed or pursuant to this Agreement because 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 Agency; (ii) damage, theft, or destruction of Agency'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, C.R.S., or otherwise available to City and County of Denver, its officers, officials and employees.

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

1. Agency 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 Agency or its subcontractors either passive or active, irrespective of fault, including City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

2. Agency's duty to 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. Agency's duty to indemnify City shall arise even if City is the only party sued by claimant

and/or claimant alleges that City's negligence or willful misconduct was the sole cause of claimant's damages.

3. In addition to the duty to indemnify and hold harmless, Agency will have the duty to defend City, its agents, employees, and officers from all liabilities, claims, expenses, losses, costs, fines, and damages (including but not limited to attorney's fees and court costs) and causes of action of every kind and character. The duty to defend under this paragraph is independent and separate from the duty to indemnify, and the duty to defend exists regardless of any ultimate liability of Agency, City, and any indemnified party. The duty to defend arises immediately upon written presentation of a claim to Agency.

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

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

**C. DISPUTE RESOLUTION.** Agency's disputes of decisions, determinations, or other actions by City arising out of this Agreement shall be resolved by administrative hearing following the procedures outlined in Denver Revised Municipal Code Section 5-17, as amended. The Parties understand, acknowledge, and agree all jurisdictional prerequisites under Section 5-17 shall apply in full force to disputes hereunder. The Parties agree the determination resulting from said administrative hearing shall be final, subject only to Agency's right to appeal the determination under Colorado Rule of Civil Procedure, Rule 106.

## ARTICLE VII GENERAL TERMS AND CONDITIONS

**A. Status of Agency.** It is agreed and understood by and between the Parties hereto the status of Agency 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 City's Charter, and it is not intended, nor shall it be construed, Agency or its personnel are employees or officers of City under D.R.M.C. Chapter 18 for any purpose whatsoever.

**B. Assignment.** Agency 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. Any attempt by Agency to assign or transfer its rights hereunder without such prior written consent shall, at the option of the CEO, automatically terminate this Agreement and all rights of Agency hereunder. Such consent may be granted or denied at the sole and absolute discretion of the CEO.

**C. Compliance with all Laws and Regulations.** All of the work performed under this Agreement by Agency 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. Agency agrees all work performed under this Agreement shall comply with all applicable patent, trademark and copyright laws, rules, regulations and codes of the United States. Agency 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 Agency prepares any documents which specify any material, equipment, process or procedure which is protected, Agency shall disclose such patents, trademarks and copyrights in the construction drawings or specifications.

2. Agency further agrees to release, indemnify and save harmless City, its officers, agents and employees, pursuant to Article VI, Section I, "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 Agency to:

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

And by City to:

Karsh Hagan  
685 South Broadway  
Denver, CO 80209

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 Agency, 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 Agency, 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 Agency that any person other than City or Agency 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 VIII STANDARD CITY PROVISIONS**

**A. Diversity and Inclusiveness.**

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

**B. Small Business Enterprises.** Agency 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 0%. Project goals must be met with certified MBE and WBE participants or by demonstrating good faith efforts under the MBE/WBE Ordinance. The Agency 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 Agency to maintain, at a minimum, compliance with the originally achieved level of MBE/WBE participation upon which this Agreement was awarded 0%, 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, Agency 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. Agency further agrees to insert the foregoing provision in all subcontracts hereunder

**D. Prevailing Wage.** Agency shall comply with City's Prevailing Wage Ordinance, D.R.M.C. § 20-76 et seq., as such Ordinance may apply to Agency's activities under this Agreement. The Agency 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.** Agency 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 PM. Any oral presentation or written materials related to DEN shall include only presentation materials, work product, and technical data, which have been approved by City. The CEO shall be notified in advance of the date and time of any such presentations. Nothing herein, however, shall preclude Agency's use of this contract and its component parts in GSA form 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.** Agency acknowledges that City is subject to the provisions of the Colorado Open Records Act, Colorado Revised Statutes § 24-72-201 et seq., and Agency 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 Agency 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 Agency to City shall be considered confidential by City only to the extent provided in the Open Records Act, and Agency agrees that any disclosure of information by City consistent with the provisions of the 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 Agency of such request in order to give Agency the opportunity to object to the disclosure of any material Agency may consider confidential, proprietary, or otherwise exempt from disclosure. In the event Agency 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, Agency agrees it will either waive any claim of privilege or confidentiality or intervene in such legal process to protect materials Agency does not wish disclosed. Agency agrees to defend, indemnify, and hold harmless City, its officers, agents, and employees from any claim, damages, expense, loss, or costs arising out of Agency'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 Agency which are directly pertinent to a specific grant program for the purpose of making

audit, examination, excerpts and transcriptions. Agency further agrees that such records will contain information concerning the hours and specific services performed along with the applicable federal project number.

2. Agency 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 Agency 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.** Agency 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 Agency from City facilities or participating in City operations.

**I. City Smoking Policy.** Agency 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.

**J. Conflict Of Interest.** Agency 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. Agency 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 Agency by placing Agency's own interests, or the interest of any party with whom Agency 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 Agency written notice, which describes such conflict.

Agency 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, Colorado Revised Statutes and Den. Rev. Municipal Code 20-90 and the Agency is liable for any violations as provided in said statute and ordinance.

2. The Agency 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 Agency 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 Agency 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 days. The Agency will also then terminate such subcontractor or subconsultant if within three days after such notice the subcontractor or subconsultant does not stop employing or contracting with the illegal alien, unless during such three-day period the subcontractor or subconsultant provides information to establish the subcontractor or subconsultant has not knowingly employed or contracted with an illegal alien.
- (f) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of §8-17.5-102(5), C.R.S. or City Auditor under authority of D.R.M.C. §20-90.3.

## **ARTICLE IX STANDARD FEDERAL PROVISIONS**

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

**B. DEN Security.** Agency, its officers, authorized officials, employees, agents, subcontractors, and those under its control, will comply with safety, operational, or security measures required of Agency or City by the FAA or TSA. If Agency, 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, Agency 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 Agency 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.

**D. General Civil Rights.** Agency 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 Agency and sub-tier 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.

**E. Federal Fair Labor Standards Act.** This Agreement incorporates by reference the provisions of 29 C.F.R. 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. Agency agrees to incorporate by reference the provisions of FLSA in all contracts and subcontracts resulting from this Agreement. Agency has full responsibility to monitor compliance to the referenced regulation. Agency must address any claims or disputes arising from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

**F. Occupational Safety and Health Act.** This Agreement incorporates by reference the requirements of 29 C.F.R. Part 1910 with the same force and effect as if given in full text. Agency must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. Agency retains full responsibility to monitor its compliance and any subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (29 C.F.R. Part 1910). Agency 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.

**G.** Agency covenants it will include the provisions of this section in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Federal Acts, Regulations and directives issued pursuant thereto. Agency covenants it will take action with respect to any subcontract or procurement as City or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Agency becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, Agency may request City to enter into any litigation to protect the interests of City. In addition, Agency may request the United States to enter into the litigation to protect the interests of the United States.

#### **ARTICLE X 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 and E: Standard Federal Assurances

Exhibit A: Scope of Work

Exhibit B: Rates

Exhibit C: Certificate of Insurance

In the event of an irreconcilable conflict between provisions of Articles I through XI 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 and E  
Articles I through XI hereof  
Exhibit A  
Exhibit B  
Exhibit C

#### **ARTICLE XI 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 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.** Agency 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: PLANE-201631111-00

Contractor Name: K&H, LLC

By: Pasquale Pochy Marranzino

Name: Pasquale Pochy Marranzino  
(please print)

Title: CO-CEO  
(please print)

ATTEST: [if required]

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

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

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





**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 \_\_\_\_\_



**EXHIBIT A**

## **General Scope of Work (SOW)**

### **I. Executive Summary**

This SOW includes the detailed scope of services that Agency will perform for City as its general Agency of record. Agency may provide services related to City's strategic marketing needs in the areas of advertising, marketing, media services, promotions, creative services, customer experience, and research including account management and marketing campaigns.

### **II. Agency Services**

The following sections outline in detail the services that Agency will provide to support these initiatives:

#### **A. Account Management Services**

1. Manage overall relationship with City, as well as its relationships/interactions with media and other agencies of record or sub-contractor agencies.
2. Provide strategic insight and direction that pertains to marketing communications in the aviation, travel/tourism industry, and related topics.
3. Act as primary contact for City's team, channeling questions and requests.
4. Develop creative briefs, upon receipt of input from City, for each project that describe the strategy, specific goals, and message of each project.
5. Manage all ongoing projects, including timelines, budgets, and invoices. Maintain monthly budget reporting to City on Budget vs. Expenditures.
6. Participate and present at Concessions Joint Marketing Fund Advisory Committee meetings, and other subcommittees related to concessions marketing, and communicate/correspond with this group specifically regarding all efforts as needed.
7. Have the ability to contract with international marketing firms and sub-contract for various services as needed to implement approved marketing, advertising and media plans. Subcontracts may include the design, production, and implementation of services related to the marketing plan.
8. Study and analyze the markets and audiences for the City, as well as the key competitors' strategies, programs, and spending and provide in-depth analysis via presentation and written report.
9. Secure industry research and assess research findings from sources such as ASQ, Net Promoter, Parking, and any other related research, to determine brand marketing communications effectiveness, opportunities, and needs.
10. Conduct marketing surveys on a quarterly basis in addition to any other market research needs such as, concept and creative testing, advertising awareness and opinion studies, focus groups, passenger intercept surveys, etc.

11. Ongoing contributions to marketing plans, as well as major presentations to DEN senior leadership.
12. Take all reasonable precautions to guard against any loss to the City through the failure of suppliers or sub-contractors to execute properly their commitments.
13. Prepare and submit entries for related industry awards.
14. Other programs/projects as assigned.

## B. Marketing Campaigns

1. The Agency will develop an overarching brand marketing plan but will also be expected to integrate a number of other project or initiative-specific marketing or communication projects to ensure they are all cohesive and brand aligned, meeting the needs of other divisions as necessary.
2. With each campaign, Agency will work closely with City's other partners to ensure that all campaigns are consistent across all media.
3. Create, prepare, and submit for City approval, marketing plans and ideas, marketing communications materials and advertising and campaign concepts, rough layouts, rough storyboards, draft scripts and plans for the production and execution thereof.
4. Ensure alignment with stakeholders on marketing efforts.
5. Ensure all marketing, advertising, promotional elements, etc. align with DEN brand guidelines and policies and Concessions Joint Marketing Fund guidelines for this program only.
6. Develop, provide and implement marketing plans and corresponding budgets for all DEN programs (i.e. Brand, Concessions, Parking, etc.) on an annual basis. This includes strategy and account planning, advertising, marketing, media, promotions, creative, customer experience and market research for the length of the contract.
  - a) Forecast a 3-year marketing plan to demonstrate progression of efforts.
7. Proofread all copy created by Agency, including copy approved by the City, and insure that all such materials deemed approved have been reviewed and approved through City's internal review process.
8. Provide creative consulting, sharing with City the Agency's best practices expertise for brand advocacy and creative continuity.
9. Execute and implement marketing plans and advertising in finished form, monitoring progress and results and recommending adjustments as needed.
10. Contract with various production companies and other necessary vendors to execute marketing plan.

11. Traffic and disperse all necessary materials to media suppliers/agencies, printers, and all other third parties needed to accomplish City-approved marketing/advertising plan, programs, and campaigns.

#### C. Creative Services

1. Design and create local, national / international creative assets for an advertising plan and other marketing efforts, that may include but are not limited to:

- a) Broadcast
- b) Digital (including apps, directories, etc.)
- c) Print
- d) Out-of-Home
- e) Social Media

2. In-Airport and non-traditional

#### D. Media Services

1. Planning responsibilities include:

- a) Media plan recommendations and development, refinements and amendments, as needed throughout the course of the fiscal year.
- b) Target audience development/refinement, as needed, for all customer market targets.
- c) Media planning/buying will include the use of all media vehicles as needed based on strategic direction and target audience media usage (radio, consumer print, trade print, digital, out-of-home etc.) and budget.

2. All media buying will be performed by Agency and include:

- a) Pre-buy estimates
- b) Goal accountability and defined delivery as well as cancellation guarantee
- c) Buy negotiations, contracts and placements
- d) Program/station determination
- e) Added value negotiations/recap
- f) Timely post-buy analyses and all billing/payment of invoices

3. Develop and execute comprehensive media strategy to maximize ROI.

4. Create holistic media plan recommendations reflective of the key metrics, research against the target audience, and creative direction.

5. Proactively identify and assess new opportunities and developments in media consumption and viewpoints that may impact City in the short and long term.
6. Maintain superior negotiation and stewardship of City media buys.
7. Act as primary contact, on behalf of the airport, with media reps.

**EXHIBIT B**

**RATES**

City agrees to pay and Agency agrees to accept the following Billable Rates in accordance with projects and deliverables requested through **Exhibit A** (Scope of Work):

- A blended rate of \$150 per hour for all Agency services excluding digital/interactive services.
- A blended rate of \$175 per hour for all digital/interactive services.
- A blended rate of \$150 per hour for Agency research and content studio costs for print and digital production (to be estimated in advance per request).
- Exemptions:
  - o City shall not be charged for Karsh Hagan principal's (Kathy Hagan Brown; Pocky Marranzino) time on the account.
  - o City shall not be charged for Agency's time to stay on top of DEN and its industry.
  - o All out-of-pocket production, research, and media buy costs shall be billed at cost, without mark-up.
  - o Any out-of-pocket costs, including but not limited to copies, travel, and deliveries shall be billed at cost, without mark-up.
  - o City will not reimburse Agency for mileage traveled.
- Reimbursable Expenses:
  - o All reimbursable expenses must be estimated in advance by the Agency and approved by the City in writing. In addition to approved reimbursable expenses, the following expenses are allowable:
    - Traffic Services – Billed at cost.
    - Digital File Transfers – Agency shall use City's accounts where possible. All other transfers shall be billed at cost.
    - Video Compression - \$25 per request
    - Digital Media Storage - \$260 per request
    - KH Brand Folder – Billed annually based on the level of DEN assets in the Brand Folder.

Unless specifically called out above, the following Rates shall apply to projects and/or deliverables requested by City:

Hourly Rates	
Type of Work	Per hr.
Account Coordination	\$120



Account Manager	\$150
Account Supervision	\$190
Management Supervision	\$210
Radio Producer	\$175
Integrated Producer	\$160
Video Producer	\$175
Digital Asset Manager/Art Buyer	\$160
Art Direction/Graphic Design	\$180
Copywriting	\$180
Creative Supervision	\$210
Creative Technology Strategy	\$200
Technology Architecture and Consulting	\$250
Back End Development	\$195
Creative Technologist	\$190
Experience Planner	\$180
Data Architect	\$190
Digital Producer/Project Manager	\$175
Digital Campaign Manager	\$150
Media Coordination	\$120
Media Planner/Buyer	\$150
Media Supervision	\$190
Public Relations	\$175
Marketing Analyst	\$200
PPC Management	\$150
Search Engine Optimization	\$190
Digital Campaign Manager	\$150
Automated Marketing	\$200
Brand Strategy	\$210
Content/Social Media Strategy	\$175
Photography	\$225
Videography	\$225
Motion Graphics	\$225
Video Editing	\$190
Studio Mechanicals	\$175
Image Retouching	\$175
Illustration	\$180
Digital Programming	\$170
Content Management	\$120
Research	\$175

Additionally, Agency agrees to provide cost estimates for all requested projects and/or deliverables prior to beginning work. The costs and scope of the project shall be agreed to in writing by City prior to Agency beginning work. Agency shall provide an itemized quarterly report of invested hours by project, budgeting and billing by City Division, and rates.

**EXHIBIT C**



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.