

## 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 (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 **HNTB CORPORATION**, a corporation organized under the laws of the State of Delaware and authorized to do business in Colorado ("Consultant") (individually "Party" or "party" and collectively "Parties" or "parties").

### WITNESSETH:

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

**WHEREAS**, City desires to obtain Concourse Expansion Architectural and Engineering Design Services relating to DEN's Concourse Expansion Program ("Project" or "project"); 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 Concourse Expansion and

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

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

### ARTICLE I LINE OF AUTHORITY

**A. 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 ("Work" or "work" or "services"). Until otherwise notified in writing by the CEO, the CEO has delegated the authority granted herein to the Senior Vice President of Airport Infrastructure Management (the "SVP-AIM"). The SVP-AIM has delegated the authority granted herein to the Senior Director of Development (the "Director"). The Director will designate a Project Manager to coordinate Services under this Agreement. Reports, memoranda, correspondence, and other submittals required of Consultant hereunder shall be processed in accordance with the Project Managers directions.

**B. Accountability:** Unless otherwise directed by the Director, the Consultant shall report directly to the Project Manager.

### ARTICLE II DUTIES AND RESPONSIBILITIES OF CONSULTANT

**A. Scope of Services.** Consultant will provide professional services and provide deliverables for the City as described in the attached **Exhibit A** ("Scope of Work") in accordance with schedules and budgets included in **Exhibit A**. Task orders shall be used to describe the Parties' mutual agreement on the Work, schedule, compensation, and other Project requirements ("Task Orders"). Task Orders are binding upon written approval by both the City and Consultant.

In the event of a conflict between this Agreement and any Task Order, the terms and conditions of this Agreement shall prevail.

**B. Professional Responsibility.**

1. All of the services performed by the Consultant under this Agreement shall be performed in accordance with the standards of care, skill and diligence provided by competent professionals who perform services of a nature similar to the services described in this Agreement ("Standard of Care").

2. The Consultant understands and acknowledges that they are being paid to create and assist in the implementation of the drawings, plans, specifications, reports or any other such deliverables necessary to complete the Work (collectively hereinafter referred to as the "Design Deliverables").

3. The Consultant agrees to strictly conform to and be bound by written standards, criteria, budgetary considerations, Task Orders and memoranda of policy furnished to it by the City and further agrees to design each project in compliance with the Standard of Care, and all applicable laws, statutes, codes, ordinances, rules and regulations, and industry standards.

4. Design Deliverables shall be developed using Building Information Modeling (BIM) as more fully set forth in the Design Standards Manual and **Exhibit R** which are incorporated herein by reference. For each Task Order, the Consultant will develop a draft BIM Project Execution Plan (BPXP) with DEN and all sub-consultants.

5. The Consultant agrees to organize its Design Deliverables for any method of construction contracting selected by the City and identified for each phase of the Project. If directed by the City, the Consultant will coordinate Design Deliverables with the contractor(s) selected to construct the work outlined in the Design Deliverables.

**C. Construction Administration.**

1. If the Consultant is tasked with Construction Administration duties, these duties shall commence with execution of a construction contract(s) or issuance of a construction task order pursuant to an existing construction contract, and the issuance of the notice to proceed to the contractor(s), or the first of them, by the City.

2. Observation of the Construction work: The Consultant shall not bear responsibility or liability for construction defects or deficiencies or for the failure to detect. The Consultant shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the work of each contractors.

**D. Remedies.**

1. The Consultant shall faithfully perform the Work required under this Agreement in accordance with standards of care, skill, training, diligence and judgment provided by competent professionals who perform work of a similar nature to the Work described in this Agreement. Consultant shall provide to the City in a timely manner all designs, documents,

submittals and services necessary to achieve completion of the Work in accordance with this Agreement. All designs, documents, submittals and services provided by Consultant shall be:

- a. Fully coordinated and integrated with related work being performed by the Consultant's sub-consultants, the City and the City's consultants, and all of their respective suppliers and sub-consultants of any tier; and
- b. Checked for compliance with applicable laws, ordinances, codes, rules, regulations and current industry standards applicable to the Work. Codes and laws are often subject to differing interpretations. Consultant will use due diligence to ascertain interpretations which will be acceptable to the City and relevant regulatory authorities.

2. In the event Consultant fails to comply with any provisions of this Agreement, Consultant shall be liable to the City for all costs of correcting the Work, without additional compensation, including but not limited to:

- a. All costs of correcting and replacing any affected design documents, including reproducible drawings; and
- b. Additional costs incurred by the City or its other consultants or Consultants, if any, arising out of such defective Work; and
- c. These remedies are in addition to, and do not limit the provisions and requirements of Section 15- Insurance, and Section 16 – Indemnification, below.

3. The Consultant acknowledges that time is of the essence in the performance of its services under this agreement and that the City of Denver may suffer damages if the Project is delayed as a result of the Consultant's failure to provide its services in a timely and diligent manner. Consultant shall perform the Work described herein in a timely manner in accordance with schedules and budgets included in the Scope of Work, **Exhibit A**, and/or Task Orders.

#### **E. Key Personnel Assignments.**

1. All key professional personnel identified in the Key Personnel document will be assigned by Consultant or subconsultants to perform work under this Agreement. It is the intent of the Parties that all Key Personnel be engaged to perform their specialty for all such services required by this Agreement and that Consultant's and the subconsultant's Key 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 Consultant fails to correct the

performance, the Project Manager will notify the Consultant that Key Personnel will not be retained on this project.

3. If any Key Personnel leaves the project for any reason, the Consultant will use its best efforts to submit for approval adequate substitute personnel. Such substitute personnel shall be approved in writing by the Project Manager. Failure to obtain the requisite approval may be grounds for termination for cause in accordance with Article 3, Section B.

#### **F. Subcontractors.**

1. Although Consultant may retain, hire, and contract with outside subconsultants for work under this Agreement, no final agreement or contract with any such subconsultant shall be entered into without the prior consent of the Project Manager, provided that those subconsultants identified in the Key Personnel, **Exhibit D**, are pre-approved by the City for the Project. 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 subconsultant, and any other information requested by City. Any final agreement or contract with an approved subconsultant must contain a valid and binding provision whereby the subconsultant 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. The terms "subcontractor" and "subconsultant" are used interchangeably throughout this Agreement.

2. Because Consultant's qualifications are part of the City's consideration for entering into this Agreement, the SVP-AIM shall have the right to reject any proposed outside subconsultant for this work deemed by the SVP-AIM, in the SVP-AIM's reasonable discretion, to be unqualified or reasonably unsuitable to perform the proposed services. The Project Manager, in his/her reasonable discretion, shall have the right to limit the number of outside subconsultants or to limit the percentage of work to be performed by the subconsultants.

3. Consultant is subject to D.R.M.C. § 20-112 wherein Consultant is to pay its subconsultants in a timely fashion. A payment is timely if it is mailed to the subconsultant 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).

**G. Ownership and Deliverables.** Upon payment to Consultant, all records, data, deliverables, and any other work product prepared by or through the Consultant or any custom development work performed by or through 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 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 G within 10 business days in the event a schedule or otherwise agreed upon timeframe does not exist.

**H. Changes.** The Parties may at any time agree to modify the Work, schedules, budgets, Task Orders, or any other Project requirement via a written change order to be executed by both Parties ("Task Order Modification"). A Task Order Modification shall modify the requirements of this Agreement as to the subject matter of such Task Order Modification and shall appropriate funds otherwise made available under this Agreement for the purpose of carrying out such changes under the same payment terms contemplated for the Work in Article IV of this Agreement. Consultant shall not be obligated to proceed with any changes to the Scope of Services until a Task Order Modification has been executed by the Parties.

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

**A. Term.** The Term of this Agreement shall commence on the date stated on City's signature page (the "Effective Date"), and shall terminate five years from the Effective Date, unless sooner terminated as provided in this Agreement. The City, in the CEO's sole discretion, may elect to extend the term of this Agreement for three additional one year terms. The election to extend, shall also extend all terms and conditions of the Agreement and be memorialized in a writing executed by the Parties. Should for any reason the Term expire prior to the completion by Consultant of any outstanding work, which has previously been authorized, then in the CEO's sole discretion this Agreement shall remain in full force and effect to permit completion of any work that was commenced prior to the date that otherwise would have been the termination date.

**B. Termination.**

1. City has the right to terminate this Agreement without cause on thirty (30) days prior written notice to Consultant, and both Parties shall have the right to terminate with cause on ten (10) days prior written notice to the other Party. In the event of termination for cause, the non-terminating Party shall be allowed five (5) days to commence remedying its defective performance, and in the event the non-terminating Party diligently cures its defective performance to the terminating Party's satisfaction, within a reasonable time, 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.

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 payment for the Work performed through 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 Sixty Five Million dollars (\$65,000,000.00) ("Maximum Contract Liability"). Consultant will be performing the services on a time and material basis, or with prior written consent of the project manager, a lump sum basis as set forth in each Task Order up to the Maximum Contract Liability. Consultant's fee in each Task Order shall be based on the time and materials or identified services required by its professionals to complete the Work.

1. 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.

2. Payment under this Agreement shall be paid from funds of the Airport System of the City and County of Denver 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.

**B. Fee:** For Task Orders paid on a time and material basis, the City hereby agrees to pay the Consultant, the Core Staff Labor Rates contained in **Exhibit E** ("Initial Core Staff Labor Rates"), which may be modified throughout the term of the Agreement. Modification shall be subject to annual escalation of not less than 3.5% and will be memorialized in writing. Any escalation amount above the 3.5% must be approved in writing by the Project Manager. No formal Amendment is required to modify the Core Staff Labor Rates. The Consultant asserts that Core Staff Labor Rates are business confidential information; therefore, the original form of **Exhibit E** is held at DEN. In no event shall the City be liable for any amount in excess of the sum of the Maximum Contract Liability.

**C. Payment Schedule.** Subject to the Maximum Contract Liability set forth in section 3.A. of 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 monthly 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.

**D. Invoices.** Payments shall be based upon monthly progress invoices and receipts submitted by Consultant, audited and approved by City, in accordance with **Exhibit B**, and this Section IV.D., as follows:

1. An executive summary and status reports that describe the progress of the services and summarize the work performed including MWBE compliance 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.

6. City reserves the right to reject and not pay any invoice or part thereof where the CEO reasonably 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 in accordance with Article V.C.

**E. 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 reasonable 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, 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, Consultant 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, Consultant 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. 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 subconsultant, or each subconsultant shall provide its own insurance coverage as required by and in accordance with the requirements of this section of the Agreement. All coverages for subconsultants shall be subject to all of the requirements set forth in the form certificate and Consultant shall insure that each subconsultant 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, 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 Consultant 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 Consultant or the Consultant'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. Consultant's obligation to defend and indemnify may be determined after Consultant's liability or fault has been determined by adjudication, alternative dispute resolution, or otherwise resolved by mutual agreement between the Parties. Consultant's duty to defend and indemnify City shall relate back to the time written notice of the Claim is first provided to City regardless of whether suit has been filed and even if Consultant is not named as a Defendant.

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



such Claims or seeking to enforce this indemnity obligation. 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 Consultant under the terms of this indemnification obligation. The Consultant shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

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:

Chris Migneron  
HNTB Corporation  
715 Kirk Drive  
Kansas City, MO 64105

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 subconsultants or suppliers.

**B. Small Business Enterprises.** 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 17%. 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 17%, 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 subconsultant 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 CEO shall be notified in advance of the date and time of any such presentations. Nothing herein, however, shall preclude Consultant's use of this contract and its component parts in GSA SF330 form, 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 Open Records Act, and Consultant 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 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 Denver Executive Order No. 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, 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 include a substantially similar obligation in all subconsultant agreements.

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

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

## **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 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 the DEN's Security Office.

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

Appendices A & E:	Standard Federal Assurances
Exhibit A:	Scope of Work
Exhibit B:	Scheduling, Progress Reporting, Invoicing and Correspondence Control
Exhibit C:	Certificate of Insurance
Exhibit D:	Key Personnel (Creation at Task Order, incorporated herein by reference)
Exhibit E:	Initial Core Staff Labor Rates
Exhibit R:	BIM

In the event of an irreconcilable conflict between 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:

Appendices A & E  
Articles I through X hereof  
Exhibit A  
Exhibit B  
Exhibit C  
Exhibit D  
Exhibit E  
Exhibit R

## **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 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

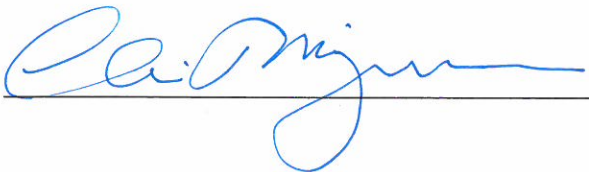
is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the 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:** PLANE-201631727-00

**Contractor Name:** HNTB Corporation

By: 

Name: CHRIS MIGNERON  
(please print)

Title: VICE PRESIDENT  
(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\_\_\_\_\_



## **Appendix No. 1**

### **Standard Federal Assurances and Nondiscrimination**

## APPENDIX A

### COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS

NOTE: As used below the term "Contractor" shall mean and include Concessionaire, and the term "sponsor" shall mean the "City."

During the term 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 will comply with the Title VI List of Pertinent Non-Discrimination Statutes and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made part of this Agreement.
2. **Nondiscrimination.** The Contractor, with regard to the work performed by it during this Agreement, will not discriminate on the grounds of race, creed, color, national origin, or sex 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 Acts and Regulations, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontractors, 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 Agreement and the Acts and Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
4. **Information and Reports.** The Contractor will provide all information and reports required by the Acts, Regulations or 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 (FAA) to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the sponsor or the FAA, 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 nondiscrimination provisions of this Agreement, the sponsor will impose such Contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:
  - a. Withholding of payments to the Contractor under this Agreement until the Contractor complies, and/or;
  - b. Cancelling, terminating, or suspending this Agreement, in whole or in part.
6. **Incorporation of Provisions.** The Contractor will include the provisions of

paragraphs one (1) through six (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations or directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the sponsor or the FAA 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 such litigation to protect the interests of the sponsor. In addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

## APPENDIX E

### TITLE VI LIST OF PERTINENT NONDISCRIMINATION AUTHORITIES

As used below, the term "Contractor" will mean and include Concessionaire and the term "sponsor" will mean City.

During the performance of this Agreement, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following nondiscrimination 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);
- 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 1 00-209), (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 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).

# **Exhibit A**

## **Scope of Work**





# EXHIBIT A - SCOPE OF WORK

## CONCOURSE EXPANSION PROJECTS

### **INTRODUCTION**

Denver International Airport (DEN) is a commercial air carrier facility located 23 miles northeast of the metropolitan Denver area. The airport proposes to expand mainline gate capacity on Concourse A, Concourse B, and Concourse C to serve domestic and international routes. Each project will be designed to LEED gold V4.0 standards in accordance with Executive Order 123 2.0 (a.). The project will also correctly resize hold rooms and create additional office space for ongoing operations at DEN.

The scope of services includes schematic design, design development, construction documents, construction administration, and project closeout. Designs and plans shall be prepared in accordance with DEN building information modeling (BIM) standards with approved software packages as outlined in 2017 BIM Design Standards Manual (DSM) including approved versions of Revit and AutoCAD Civil3D. Coordination with airlines, concessionaires, airport operations, and ground transportation, the FAA and City and County of Denver will be critical to the success of this project. Previous experience working at active concourse gates will be necessary.

### **PROJECT DESCRIPTION**

DEN proposes to design and construct the concourse expansion program (CEP). Each project will be designed and constructed using Construction Manager at Risk (CMR) delivery. Each expansion project will be constructed from multiple component packages to fast-track the schedule and defined specifically in the A/E consultant's Task Order.

The Concourse Expansion Program (CEP) team, composed of the owner and program management team (PMT), A/E consultant, and contractor, will work collaboratively during the design phase in an owner provided, co-located office, on airport property, to develop project costs while allocating and mitigating project risks. The contractor will develop cost estimates and the team will perform constructability and value engineering reviews necessary for the contractor to prepare guaranteed maximum prices (GMPs) for each component package developed during the construction documents phase of design.

**Pre-Construction Phase:** The contractor will be included during the development and construction design phase of the project for the purpose of preparing detailed cost estimates, risk reviews, constructability reviews, construction schedules, construction phasing, and value engineering (VE) reviews. Cost estimating will include the owner's independent cost review, the contractor's cost estimate, and review by the A/E consultant.

The Owner understands and agrees that the A/E consultant is not preparing cost estimates and that the A/E consultant has no control of costs or the price of labor, equipment or materials, or of any contractor's method of pricing, and that the review of any construction cost estimates are made solely



on the basis of the A/E consultant's qualifications and experience as a design professional. A/E consultant makes no warranty, expressed or implied, as to the accuracy of any cost estimates as compared to bids or actual costs.

As the project progresses through construction document milestones, cost estimate variation between the independent cost estimator and the contractor's estimate is expected to decrease as risk should be mitigated and allocated throughout the design process in preparation for setting component GMPs.

In support of the CMR process, the contractor and A/E consultant will participate in constructability reviews, risk assessment workshops, and value engineering (VE) evaluations for each milestone listed in the scope of work. It should be understood that VE revisions for each of the milestone reviews are included in the A/E consultant's scope of work and services. These changes are likely to result in additional work expected to be completed in a timely manner. Accordingly, the A/E consultant shall respond in a timely manner with additional quality procedures incorporated into constructability and VE recommendations.

**Construction Phase:** The A/E consultant will serve as the designer of record (DOR) and will provide professional services for submittal reviews, requests for information, and weekly attendance of construction meetings and site visits among other services outlined in the scope of services.

## **SCOPE OF WORK**

The scope of work defined herein may be accomplished to completion or in-part for any project included in the CEP at the direction of DEN. All work shall be prepared according to the procedures and standards outlined in the Design Standards Manual (DSM). The current DSM (consisting of the 2016 Standards and Criteria, 2017 BIM, 2016 Structural, 2017 Electrical, 2017 Mechanical, 2016 Architectural, and 2017 Life Safety), DEN Design Principles, Airport Rules and Regulations, and DEN AIM development project management guidelines (PMG) are available for download under the DEN Business website at <http://business.flydenver.com/bizops/bizRequirements.asp>.

In case of conflicts or inconsistencies between this Scope of Work, DEN Standards Manual and other contract requirements, the A/E consultant and contractor shall comply with the more stringent provisions, as agreed to by the CEP team.

The intent of the design phase is to develop all items required for the execution and completion of construction. Documents for separate concourses shall be developed, tracked, and packaged as separate GMP tasks. Each expansion project will be constructed from multiple component packages to fast-track the schedule and shall be delivered as shown on Table 1. Accordingly, the A/E consultant shall coordinate, establish, and track the design and procurement schedule with the CMR to avoid conflicts in the scope of work and unnecessary assumptions or contingencies which will lead to additional cost. The A/E consultant shall prepare agency and utility permits required to construct the project.

The A/E consultant shall also participate as an advisor for the Call for Entries and/or as a member of the art evaluation panel. Construction documents shall include all supporting structure, attachment,



mechanical, electrical power, and lighting as may be required for any artwork that requires project integration.

Table 1. Milestone Schedule for CGMP Packages

Milestone	Enabling	Early	Main	Late
<b>SD – 30%</b>			X	
<b>DD – 60%</b>		X	X	X
<b>95% CD</b>	X	X	X	X
<b>IFC</b>	X	X	X	X
<b>CONFORMED</b>	X	X	X	X

## 1. SCHEMATIC DESIGN PHASE (30% Design)

The A/E consultant shall prepare schematic design documents based upon the program validation phase and advanced planning review comments, and direction provided by the DEN stakeholder team. These services shall include but not be limited to:

- a. Engineering surveys: Topographical surveys have been completed for these projects by the A/E consultant. The A/E consultant may be required to conduct supplemental surveys that are required to complete the design of the project, which may be considered an additional service and eligible for additional fees. A list of supplemental surveys required to complete the work may include but is not limited to existing utilities, existing structure, existing systems, existing site layout, and finishes. Soils investigations have been completed for these projects by DEN and will be made available to the A/E consultant. Geotechnical test pits and soils testing will be coordinated by the project team and prepared under a separate contract.
- b. The A/E consultant will advance the design, including development of alternative design solutions, for review and selection of the preferred solution. Study level 3D images will be created as part of this process where appropriate.
- c. 30% drawings: The A/E consultant shall prepare drawings of the preferred solution which are in sufficient detail to illustrate design concepts, systems concepts, interfaces, scale, and relationships to the level defined in the DSM. The drawings shall identify project components, systems, circulation, and access including but not limited to, site plans, aircraft parking plans, interior elevations, sections, floor plans that include access locations and passenger circulation patterns, mechanical/electrical design concepts, process flow diagrams, schematic space and general arrangement plans, building



systems, emergency exiting plans, and building elevations and sections with overall dimensions.

- d. Outline technical specifications: DEN provides and maintains a standard set of DEN specific boilerplate specifications. The A/E consultant shall obtain a set of the most current specifications from the Project Manager. The A/E consultant shall prepare a list of proposed Construction Specification Institute (CSI) Specifications Sections and furnish a brief outline description of all major systems selected by each discipline. An outline of the Division 01 General Requirements will be provided by DEN.
- e. Presentation level images of areas of the project: Prepare interior and exterior perspective renderings of areas of the project or portions of the project.
- f. Schematic Design Analysis Report (DAR): Summarize the basis of design including a description of project opportunities and constraints. Document changes to the programming phase DAR and describe design criteria, assumptions, calculations, design coordination, cost estimates (provided by others), and schedules.
- g. LEED checklist: Update preliminary LEED checklist and scoring based on current LEED rating system. Develop strategies for maximizing each project's energy efficiency to achieve a Gold Rating according to Executive Order 123. Coordinate with the owner's commissioning agent (CxA) as required to develop the owner's project requirements (OPR) and basis of design for certification.
- h. Existing conditions BIM model: Provide Revit and Civil 3D models of all surveyed elements according to DEN CADD standards for review and approval.
- i. Establish preliminary life safety and code analysis. List anticipated permit requirements.

## **2. DESIGN DEVELOPMENT PHASE (60% Design)**

The A/E consultant shall prepare design development documents based upon the schematic design phase review comments and direction provided by the DEN stakeholder team. These services shall include but not be limited to:

- a. 60% drawings: The A/E consultant shall prepare drawings which are in sufficient detail to define the location, character, material composition, scope, and size of each discipline of the project. Describe proposed solutions to problems discovered during this phase. The drawings shall illustrate overall dimensions, code requirements, spot elevations, connection location and dimensions of existing systems and adjacent systems.

Provide Building plans, enlarged partial plans, building sections, enlarged wall sections, exterior and interior details, reflected ceiling plans, elevations, aircraft parking plan, site plan, study perspectives, and electronic study models showing building spaces, and relationships. The drawings shall fully illustrate constructed areas, space planning and



component sizes, scope, systems, interfaces, spaces, functions, general materials, and finishes.

The A/E consultant shall prepare a set of presentation drawings and material/color sample finish boards of interior and exterior materials and shall submit them to DEN. The presentation boards are property of DEN and shall not be returned to the A/E consultant. The sample boards shall illustrate as closely as possible, the material in similar ratios, as they would appear to each other, in the project.

In addition to the structural, mechanical, and electrical components, the submittal should also include the same level of information for civil, communications, security, signage, and special systems. Plans for incorporating the City's Art Program shall also be detailed.

- b. General Conditions and Preliminary Technical Specifications: The A/E consultant shall be responsible for preparation of the Technical Specifications. An outline of the Divisions 00 (Procurement and Contracting Requirements) and 01 (General Requirements) Specifications will be furnished by DEN and shall be reviewed and commented on by the A/E consultant. DEN provides and maintains a standard set of boilerplate specifications that shall be used on this project. Additional specifications for utilities and the FAA may also be required and shall be furnished by the A/E consultant.

In the event that a specification does not exist, the A/E consultant may develop specifications based on Master Spec or other industry standard specifications. Nonstandard specifications shall be submitted to the Project Manager for an independent review and acceptance prior to the milestone review.

Specifications shall be reviewed and tailored to each project and submitted in redline format. Specifications shall be edited in Microsoft Word with the track changes tool enabled.

- c. DAR: Document changes to the schematic phase DAR and describe design criteria, assumptions, calculations, design coordination, cost estimates (by others), and schedules. Provide description, capacity evaluation, and performance data of project systems, tenant systems, and incorporation of the City's Art Program.
- d. Environmental Controls: Provide documentation locating and defining erosion control, stormwater control, temporary drainage, spoils areas, and locations of de-watering control areas. Coordinate preliminary submittals with the City and County of Denver in preparation for Final permit documentation.
- e. LEED Checklist: Provide updated LEED checklist based on project changes and revisions including design review comments, coordination with DEN LEED Campus, and coordination with GBCI for alternative compliance path. Design documents shall be tailored to illustrate requirements to meet LEED Gold for each project. Coordinate with the owner's commissioning agent (CxA) as required to develop the owner's project requirements (OPR) and basis of design for certification.



- f. BIM model: The A/E consultant shall prepare models which are in sufficient detail to define the location, character, material composition, scope, and size of each discipline of the project. Illustrate proposed solutions to problems discovered during this phase. The model shall illustrate overall dimensions, code requirements, connection location and dimensions of new systems, existing systems and adjacent systems.

### **3. 95% CONSTRUCTION DOCUMENTS PHASE**

The 95% Construction Documents shall include items necessary for the proper execution and completion of the construction work. The A/E consultant shall prepare contract documents based upon the design development review comments and direction provided by the DEN stakeholder team. These services shall include but not be limited to:

- a. 95% Construction drawings: The A/E consultant shall prepare drawings which are in sufficient detail to construct of each discipline of the project. The drawings shall fully illustrate constructed areas, space planning and component sizes, scope, systems, interfaces, spaces, functions, general materials, and finishes as applicable to each package.

The A/E consultant shall update the 60% DD presentation drawings and material/color sample finish boards of interior and exterior materials and shall submit them to DEN. The presentation boards are property of DEN and shall not be returned to the A/E consultant. The sample boards shall illustrate as closely as possible, the material in similar ratios, as they would appear to each other, in the project.

- b. Technical Specifications: The A/E consultant shall be responsible for updating and finalizing the Contract Document Technical Specifications based on design evolution and comments from stakeholders. The Divisions 00 (Procurement and Contracting Requirements) and 01 (General Requirements) Specifications will be furnished by DEN and shall be reviewed and commented on by the A/E consultant.

In the event that a specification does not exist, the A/E consultant may develop specifications based on Master Spec or other industry standard specifications. Nonstandard specifications shall be submitted to the Project Manager for an independent review and acceptance prior to the milestone review.

Specifications shall be reviewed and tailored to each project and submitted in redline format. Specifications shall be edited in Microsoft Word with the track changes tool enabled.

Engineering soils investigations and other existing conditions shall be incorporated into the contract documents and specifications to be issued in the procurement package for information only.

- c. Final Drainage Report: Provide final reports documenting required design for new storm lines, drainage channels, and drainage ways. The A/E consultant shall coordinate



submittal and of the final drainage report and respond to comments to facilitate approval of the drainage report with the City plan reviewer.

- d. Final Construction Activities Stormwater Discharge Permit (CASDP): The A/E consultant shall submit for City approval the erosion control, stormwater control, temporary drainage, spoils areas, and locations of de-watering control areas. Coordinate preliminary submittals with the City and County of Denver in preparation for Final permit documentation. Include plan review fees if applicable.
- e. Sewer Use and Drainage Permit (SUDP): The A/E consultant shall submit for City approval of the SUDP permit. Include plan review fees if applicable.
- f. Applications for permits: Provide technical support for applications for 7460 permit and Xcel permits. Applications to be prepared and submitted by others.
- g. Final DAR: Document all changes to the design development phase DAR and describe design criteria, assumptions, calculations, design coordination, cost estimates (by others), and schedules. Provide description, capacity evaluation, and performance data of project systems, tenant systems, and incorporation of the City's Art Program.
- h. LEED Checklist: Provide updated LEED checklist based on project changes and revisions including design review comments, coordination with DEN LEED Campus, and coordination with GBCI for alternative compliance path. Design documents shall be tailored to illustrate requirements to meet LEED Gold for each project. Coordinate with the owner's commissioning agent (CxA) as required to develop the owner's project requirements (OPR) and basis of design for certification.
- i. LEED Design Submittal: Assist DEN with the on-line registration for the design phase of the contracted project based on the final specified systems.
- j. BIM model: The A/E consultant shall prepare models which are in sufficient detail to define the location, character, material composition, scope, and size of each discipline of the project. Illustrate proposed solutions to problems discovered during this phase. The model shall illustrate overall dimensions, code requirements, connection location and dimensions of new systems, existing systems and adjacent systems.

#### **4. CONSTRUCTION DOCUMENT REVIEWS**

The construction documents shall be completed and checked by the A/E consultant as appropriate at each phase deliverable. The A/E consultant shall provide electronic and hard copies of submittal documents in accordance with direction provided by the owner/PMT. The A/E consultant shall include internal quality control review meetings and processes at each milestone. Design review meetings may also be held with the DEN stakeholder team during each milestone.

Comments collected through each plan review phase shall be serialized and documented in a comment/response matrix. These comments include DEN, Denver Building Department, Denver





Public Works, and all other third party reviews required to design and build the project. Collected comments and responses shall be provided to DEN in a timely manner for on-going coordination of the project.

## **5. IFC/PERMIT AND CONFORMED PHASE**

Upon completion of the 95% Construction Document review submittal and DEN acceptance of the submittal, the A/E consultant shall prepare issued for construction (IFC) contract documents and final permit documents required for construction of the project. The contract documents shall be completed, checked, signed, and sealed by the A/E consultant. The A/E consultant shall provide electronic and two (2) full size hard copies of the IFC submittal to the City's Building Department for Permit review and approval. DEN comments from previous reviews shall be incorporated in the conformed Contract Documents and all outstanding issues shall be resolved to the satisfaction of DEN.

During the IFC/Permit/Conformed phase, the A/E consultant shall assist DEN and the CMR in preparation of addenda, contract forms, substitutions, and changes made prior to the NTP into the conformed contract documents. The A/E consultant shall incorporate all addenda, contract forms, substitutions, and changes made prior to the NTP into the conformed contract documents. All conformed documents shall be sealed by Colorado licensed architects and professional engineers.

The A/E consultant shall participate in pre-bid and pre-proposal meetings to respond to inquiries and requests for interpretations. The A/E consultant shall also assist with written responses to questions and shall forward these responses to DEN for review and acceptance. Answers to questions that do not change the contract documents will not be issued as addenda, rather will be issued in a question and answer summary.

## **6. CONSTRUCTION PHASE**

The construction phase begins after completion of conformed documents.

Additional coordination for incorporation of public art will be required including coordination services between the artist and contractor during the construction. The A/E consultant shall review the art piece production timelines, systems integration and modifications that impact the overall project schedule as prepared by others.

Services during the construction shall include but not be limited to:

- a. Attend pre-construction meetings for each construction task and program phase
- b. Attend weekly construction meetings
- c. Visit project site
- d. Review and process submittals. Basic services include review of original submittals and up to one revision of each submittal.





- e. Interpret contract documents
- f. Review, evaluate, and update contract documents
- g. Review change orders
- h. Review and respond to RFIs
- i. Prepare observation reports based on project site visits
- j. Assist DEN in final acceptance reviews. Upon receipt of preliminary punch-lists from the CMR, the A/E consultant will perform one initial punch-list walk review for each project/area/discipline and update the preliminary lists.
- k. Make LEED submittals and coordinate with USGBC for documentation for design team credits
- l. Complete as-built BIM model and record drawings based on documentation issued by A/E consultant during construction and additional information provided by the contractor.
- m. Coordinate with commissioning agent to complete commissioning processes.

#### **7. CLOSEOUT & POST CONSTRUCTION WARRANTY PHASE**

The A/E consultant shall assist the contractor with the turnover of new facilities and systems by providing final punch-list reviews, training manual reviews, and operations manual reviews for final acceptance of the project. One final punch-list review will be performed for each project/area/discipline. Additional punch-list reviews will be considered an additional service. Should it be deemed beneficial to DEN, the project may require partial acceptance and beneficial occupancy for phased opening of new aircraft gates.

When the work for each CGMP is complete the Contractor shall provide a single set of Contract Drawings and Technical Specifications to the A/E design team for development and submission of final record documents including PDF documents and BIM model files to the owner. These Drawings must be submitted to and approved by the Project Manager before final payment can be made.

# Exhibit B

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## **PROFESSIONAL SERVICES**

### **Concourse Expansion Program**

CONTRACT NO.:

SCHEDULING, PROGRESS REPORTING,  
INVOICING AND CORRESPONDENCE CONTROL

---

City and County of Denver



Airport Infrastructure Management Division

## **EXHIBIT B**

### **SCHEDULING, PROGRESS REPORTING, INVOICING AND CORRESPONDENCE CONTROL**

#### **1 INTRODUCTION**

**1.1** This Exhibit B describes the Consultant's obligations to prepare and submit schedules, budgets, invoices, and progress reports, and to control correspondence. The Consultant shall prepare invoices that are based on its progress toward completing the Consultant's Task Order(s). The Consultant schedules the work and identifies the resources (costs and man-hours), which will be required to complete each scheduled phase of a Task Order. Those resources are totaled for each phase. The Consultant then measures monthly progress and prepares invoices on the basis of payment alternatives, which the Consultant must propose for written approval for each Task Order as described in Section Three (3) of this Exhibit B.

**1.2** The Consultant shall be paid on its progress toward completing a task shown on its work schedule for that Task Order(s). Submittal of time sheets may be required concurrent with the submittal of each invoice. Payments for each Task Order will be calculated in accordance with the payment method set forth in each Task Order pursuant to Section three (3) of this Exhibit B, and shall not exceed the Not-to-Exceed amount allocated to that Task Order unless modified by a revised Task Order/Change Order.

**1.3** The City shall have the right to audit all payments made to the Consultant under this Agreement. Any payments to the Consultant which exceed the amount to which the Consultant is entitled under the terms of this Agreement will be subject to set-off and not approved for payment.

**1.4** The Consultant will keep and retain records relating to this Agreement and will make such records available upon request to representatives of the City, at reasonable times during the performance of this Agreement and for at least three (3) years after termination of this Agreement for purposes of audit, inspection, copying, transcribing and abstracting.

**1.5** The Consultant will furnish, or cause to be furnished to the Manager of Aviation, such information as may be requested relative to the progress, execution, and cost of individual Task Orders. The Consultant will maintain, or cause to be maintained, records showing actual time devoted and costs incurred. The Consultant will maintain, or cause to be maintained, its books, records, documents, and other evidence, and adopt, or cause to be adopted, accounting procedures and practices sufficient to reflect properly all costs of whatever nature, claimed to have been incurred and anticipated to be incurred for or in connection with the Project for three (3) years after termination of this Agreement. This system of accounting will be in accordance with generally accepted accounting principles and practices, consistently applied throughout and in accordance with instructions from the City.

**1.6** In the event of the failure by the Consultant to provide records when requested, then and in that event, the Consultant will pay to the City reasonable direct damages the City may sustain by reason thereof.

**1.7** No provision in the Agreement granting the City a right of access to records is intended to impair, limit or affect any right of access to such records, which the City would have had, in the absence of such provision.

## 2 WORK SCHEDULE

**2.1** The Consultant, working jointly with DIA Airport Infrastructure Management, will develop scheduling and management procedures which allow for seamless communications of its requirements for managing Task Orders and the City's information requirements to monitor the Consultant's activities. Task Order schedules shall include all of the tasks that the Consultant must perform to complete the Consultant's Task Order Scope of Work. It shall also identify activities or actions that must be performed by the City and third parties, which would affect the Consultant's Work.

**2.2** The City will provide its comments to the Consultant within five (5) working days after the Task Order Schedule is submitted. The Consultant shall incorporate the City's comments into the Task Order Schedules.

**2.3 Two - Week Schedule:** Immediately following the Notice to Proceed and throughout the Task Order, the Consultant shall submit to the Project Manager, a rolling two-week, look-ahead schedule, for the following two week's work.

## 3 PROGRESS PAYMENT MEASUREMENT ALTERNATIVES

**3.1** The Consultant may propose, for approval, one of the following measurement alternatives for each Task Order or the overall Program for calculating progress payments and reporting schedule status to the City. The City shall make the final determination and the Consultant shall use the alternative as approved for the scope of work described in the Task Order.

**3.1.1 Submittal Status:** Progress payments will be made after the submittals described in a Task Order have been delivered and approved by the City. A portion of the Fee will be allocated to each submittal as defined in the Task Order scope.

**3.1.2 In Progress Status:** Progress payments will be based on the percentage of designs submittals, drawings, specifications, reports or other documents, which have been prepared, submitted, and reviewed or completed. This alternative is acceptable for Task Orders, which have a long duration, and several months may elapse between submittal dates. The Consultant shall prepare a detailed worksheet for each Task Order showing a schedule of proposed billing points and the number of design submittals, drawings, specifications, reports and reviews that establish each point.

**3.1.3 Completion:** Payments will be made for completed Task Orders. This method may be used for Task Orders whose total duration is less than one month.

**3.1.4 Level of Effort:** Progress payments will be based on the actual number of man-hours utilized to perform a Task Order. Progress payments will be based on the actual number of direct labor-hours expended for the period invoiced to perform a Task Order. Progress payments will not be made for amounts above the Not-to-Exceed (NTE) amount (if applicable).

**3.2 Note:** Approvals by the City of submittals do not waive any obligation by the Consultant to provide complete work that has been authorized.

## 4 INVOICES AND PROGRESS PAYMENTS

**4.0** Task orders are issued for projects with a pre-defined maximum value known as the Not-to-

Exceed amount. The Not-to-Exceed is not a guaranteed amount to the Consultant. It is the maximum amount allowed to be paid out for the Task Order, plus or minus any pre-authorized changes. The Project Manager will determine when the Task Order deliverables have been met. The ultimate value of the Task Order may or may not be the Not-to-Exceed amount.

**4.1** The City will provide the Consultant with the format required to process the payment through Primavera Contract Management. The Consultant shall provide to the City a completed invoice format for review and approval no later than fourteen (14) days after the Notice to Proceed. This format will identify the measurement alternatives, which will be used to measure progress for an individual task or the entire Project or each task within the Project.

**4.2** By the 10<sup>th</sup> of each month in which an invoice is submitted, the Consultant shall invoice the City for its achieved progress on each task during the previous 30 day period. The worksheet(s) which the Consultant used to calculate progress for each Task Order must be submitted with each copy of the invoice. (The Project Manager must provide written approval of the format for these worksheets before they may be used. One (1) electronic copy of both the invoice and the Consultant's worksheet(s) shall be submitted each month to the DIA Technical Services Contract Administrator.

**4.3** The Consultant shall submit with each invoice signed Partial Releases from each subconsultant which states the amount of payment(s) received and/or amount(s) invoiced but unpaid for services performed through the prior billing period.

**4.4** The employee labor data (company name, employee name, hourly rate, and number of hours) on each invoice shall be submitted in PDF or Excel file with the name format (last, first or first, last) consistent with the name format in the Employee Lookup Table.

**4.5** Payment for invoices received after the 10<sup>th</sup> of each month may be delayed. Accordingly, timely submission of invoices is required.

**4.6** The Project Manager will review all invoices and, in the event, the Project Manager disagrees with the invoiced progress, he/she will notify the Consultant. The Consultant and Project Manager will meet within fifteen (15) days of the receipt of the invoice to discuss the reasons for the disagreement and whether a portion of the payment for the task should be deferred. Notwithstanding anything contained herein to the contrary and in accordance with Article IV.D.6 in the Agreement, disputes concerning payments under this Agreement shall be resolved by the dispute resolution process set forth in Article V.C in the Agreement. The Manager or his/her designee shall have the authority in his/her sole and absolute discretion to withhold portions of any progress payment request if he/she determines that the progress claimed for any task in the invoice has not been achieved.

**4.7** In accordance with requirements set forth in this Agreement, the Consultant must have provided the City with the following documentation before any payments will be made to the Consultant:

- A current Certificate of Insurance providing the levels of protection required per Prime Agreement
- Final Organizational Chart (Updated with new Subconsultants as they are acquired)
- Authorization Forms ([Attachment B](#)) for any salaried Professional Personnel Assignment who are not already approved in this Agreement.
- Certifications of M/WBE Subconsultants as evidenced by inclusion on the Certified Directory listing of The Denver Office of Economic Development at <https://denver.mwdbe.com>.
- Name and Title for Authorized Signatures. The table shall also include the type(s) of documents which can be signed, any dollar threshold limitations, and a facsimile of the employee's signature.

**4.8 Monthly Invoice Checklist - Professional Services Agreements ([Attachment A](#)):** The Monthly Invoice Checklist must be submitted with each invoice. Failure to submit the Monthly Invoice Checklist and all requirements of Exhibit B will be cause for rejection of the invoice until such time that all requirements are fulfilled.

**4.9 Final Close Out Invoice:** By submitting a final close out invoice, Consultant agrees that in consideration of the prior and final payments made and all payments made for authorized changes, the Consultant agrees to release and forever discharge the Owner from any and all obligations, liens, claims, security interests, encumbrances and/or liabilities regarding payment that may arise by virtue of the contract and authorized changes between the parties, either verbal or in writing.

## **5 MONTHLY PROGRESS REPORT DEVELOPMENT**

**5.1 Invoice Report:** The Consultant shall submit to the Project Manager an electronic submittal of the Monthly Progress Report with its invoice. This Report shall contain the following sections:

- a.) Executive Summary
- b.) Work Schedule (in a Primavera “.xer” format)
- c.) Cost Status
- d.) Cash Flow Requirements
- e.) Subcontract and Minority/Women/Small/Disadvantaged Business Enterprise (M/W/S/DBE) Goals and Status
- f.) Status of Task Order
- g.) Drawing/Document Schedule and Status
- h.) Task/Project Schedule and Manpower Status
- i.) Task/Project Activities Planned for Next Month
- j.) Monthly Task/Project Activity and Accomplishments
- k.) Identification and Analysis, of any Scheduling, Coordination, or Other Problem Areas.
- l.) Change Order Log – Approved and Pending

**5.2** The exact format and detail level required for The Monthly Progress Report will be established jointly by the Project Manager and the Consultant within seven (7) days after Notice to Proceed based on a proposed format prepared by the Consultant. The Report shall describe Task Order(s) completion status in terms of original plan, actual, a forecast of time to complete the Task Order(s) and any expected Task Order budget or schedule completion variances. The "Status of Task Order" report shall be formatted separately for each Task Order Scope of Work.

**5.3 Cumulative Invoice Summary Spreadsheet:** Prior to the initiation of work, the Consultant shall meet with the Project Manager and determine which items below shall be included to produce a Cumulative Invoice Summary, which will be submitted with each invoice for payment. The Cumulative Invoice Summary spreadsheet shall contain the following information.

- a.) Consultant Name
- b.) Contract Number
- c.) Contract Date
- d.) Contract Term
- e.) Contract Encumbrance Number
- f.) Base Contract Amount
- g.) Individual Additional Services Amounts (if issued)
- h.) Date of Invoice was submitted
- i.) Time period covered by the invoice
- j.) Invoice Number

- k.) Total Billed
- l.) Breakdown of Total Billed for the Prime Consultant
- m.) Breakdown of Total Billed for the Subconsultant
- n.) Approved Total
- o.) Approved for Payment
- p.) Pending Amounts
- q.) Disallowed Amounts
- r.) Approved Payments to Date
- s.) Balance of Contract
- t.) Approved Payments To Date Percentage of Contract
- u.) Notations at the completion of each contract phase, i.e., design analysis, schematic, etc.

**5.4** The Consultant may have spreadsheet formats that are currently in use. The City will review and consider for acceptance in reporting this information. The Consultant may request acceptable sample formats for the Cumulative Invoice Summary.

**5.5** The Consultant shall be available, when requested, to meet with City representatives to discuss the Monthly Progress Report.

## **6 SCHEDULE CHANGES AND INCREASES IN PROJECT AMOUNT**

**6.1** Any requests for schedule changes or increases in a Task Order amount shall be submitted to the City in writing and shall include an explanation and justification for the proposed schedule change or increases. The City and Consultant shall follow the change management process set forth in Article II.H in the Agreement regarding any requests for changes.

## **7 ALLOWABLE GENERAL AND ADMINISTRATIVE OVERHEAD (Indirect Costs)**

**7.0** All Allowable General and Administrative Overhead expenses are incorporated in the Submittal 2; Overhead / Multiplier Factor Calculation – Professional Services Agreements, and paid through the application of the Overhead Multiplier Factor against core staff wage reimbursements. The Overhead Multiplier Factor shall be subject to annual escalation, which must be approved in writing by the Project Manager, and will be effective on January 1 of each year commencing in 2018.

**7.1** Indirect costs are the general administrative overhead costs that benefit more than one project; costs that cannot be directly identified with a single specific task objective of the project. Department of Aviation policy is to allow overhead costs in the following manner:

**7.1.1 OFFICE PROVISIONS:** Utilities, communications systems, rent, depreciation allowances, furniture, fixed equipment, etc.

**7.1.2 SUPPLIES, EQUIPMENT & VEHICLES:** For office, drafting, engineering copying, postage, freight, surveying vehicles, computer drafting and graphics, computers, software, etc.

**7.1.3 MAINTENANCE AND REPAIR:** On office equipment, survey & testing equipment, buildings, vehicles, etc.

**7.1.4 INSURANCE:** Professional liability, errors and omissions liability, vehicles, facilities, etc.

**7.1.5 TAXES:** Personal property, state & local taxes, real estate, (state and federal income taxes excluded).

**7.1.6 MARKETING FEES & PUBLICATIONS:** Licenses, dues, subscriptions, trade shows, staff support.

**7.1.7 ADMIN & CLERICAL OFFICE STAFF:** All administrative, clerical & management support staff not directly involved in the specific project or task.

**7.1.8 OTHER INDIRECT COSTS:** Training, technical seminars, library, financial & legal costs, employment fees & recruiting costs.

**7.1.9 SUBCONSULTANT MARK-UP:** The Consultant shall be allowed a 5% mark-up on all Subconsultant labor expenses. Subconsultant expenses shall be paid in accordance with Section 8, and no mark-up will be allowed.

**7.2 NON-ALLOWABLE OVERHEAD:** Including but not limited to: Advertising, bad debts, bank fees, bonuses, contingencies, distribution of profits, donations, gifts, & charitable contributions, employee stock ownership plans, entertainment & social functions, state and federal income taxes, fines & penalties, goodwill, interest expense, lobbying costs, overtime premium, unallowable relocation costs pursuant to Federal Acquisition Regulations (FAR 31.205-35),.

**7.3 OTHER INDIRECT COSTS:** All other indirect costs are not reimbursable unless the Consultant receives prior written approval of the Project Manager.

## **8 ALLOWABLE (NON-SALARY) EXPENSES**

**8.0 EXPENSES REIMBURSED AT COST:** All Allowable (Non-Salary) expenses are reimbursed at cost.

**8.1 RECEIPTS REQUIRED:** All direct expenses submitted for reimbursement must be evidenced by a submitted itemized receipt.

**8.2 EXPENSES GREATER THAN \$500:** All direct expenses greater than \$500 must be pre-approved by the Manager or his/her designee ([Attachment C](#)). Any asset purchased by DIA must be surrendered to DIA at the end of the project or task. The consultant shall be charged replacement value for any asset purchased by DIA that is not accounted for at the end of the project or task.

**8.3 MILEAGE OUTSIDE OF THE DENVER METRO AREA:** Mileage reimbursement will be provided only for travel outside the Denver Metropolitan area that has been pre-approved by the Manager or his/her designee ([Attachment D](#)). The reimbursement will be at the current rate established for reimbursement by the United States Internal Revenue Service ([www.irs.gov](http://www.irs.gov)). Denver metropolitan area mileage for employees assigned to the project and employees not assigned to the project will not be reimbursed. Tolls will not be reimbursed.

**8.4 AIRFARE:** All travel must be pre-approved on the DIA Advance Travel Authorization Form and signed by the Manager or his/her designee. Airfare will be reimbursed for Economy/Coach class travel only. Seat upgrades will not be reimbursed.

**8.5 RENTAL CAR:** At cost for standard class or smaller and when required for out-of-town personnel or out-of-town travel.

**8.6 LODGING RATE / NIGHT:** A maximum of the Lodging per diem for the Denver metropolitan area as published by the U.S. General Services Administration website [www.gsa.gov](http://www.gsa.gov) plus taxes per night, unless approved in advance in writing by the Manager or his/her designee.



**8.7 MEALS:** At the current per diem rate for the Denver metropolitan area as published by the U.S. General Services Administration [www.gsa.gov](http://www.gsa.gov). Per diem meal reimbursements will cease once an individual has relocated to Colorado. Meal receipts will not be reimbursed for those individuals who are covered by a per diem. Alcohol will not be reimbursed.

Meal reimbursements are **not** allowed for employees located in the Denver metropolitan area and attending regularly scheduled or non-regularly scheduled Task Order meetings and/or Task Order related functions in the Denver metropolitan area.

**8.8 SPECIAL:** Including printing, equipment, express courier, delivery, rentals, etc., that is not already included in O.H. and is for the specific project or a task related to the Agreement. All expenditures in section 8.8 submitted for reimbursement must be pre-approved by the Manager or his/her designee.

**8.9 SPECIALTY CONSULTING:** Including geotechnical testing, surveying, legal, real estate, computer, financial, renderings, animations, modeling, etc. must be pre-approved by the Manager or his/her designee.

**8.10 RELOCATION EXPENSES FOR KEY PERSONNEL:** All relocations intended to be submitted for reimbursement must be allowed by the contract terms and pre-approved by the Manager or his/her designee prior to incurring the expense. Unallowable relocation costs pursuant to Federal Acquisition Regulations (FAR 31.205-35) will not be reimbursed. DIA will reimburse only for actual relocation expenses evidenced by receipts. Reimbursement of relocations will be based on the approved receipts submitted up to a maximum of \$20,000.00 for each relocation. Only relocations to the Denver metropolitan area will be considered for reimbursement. Any individual relocated must work on the related Denver International Airport project for at least six (6) months after the relocation or the reimbursement of the relocation will be refunded back to the City.

**8.11 PROJECT FIELD OFFICE & EQUIPMENT:** Including utilities, rent, communications systems, furniture, fixed equipment.

**8.12 PROJECT FIELD SUPPLIES, EQUIPMENT & VEHICLES:** For field office, engineering copying, postage, freight, field vehicles, computer drafting and graphics, computers, all software / license fees.

**8.13 NON-ALLOWABLE EXPENSES:** Including but not limited to: valet parking, alcohol, tolls, laundry and dry cleaning, flight upgrades, flight change fees (unless flight changes resulted from action(s) caused by Denver International Airport), entertainment & social functions (corporate and civic), overtime premium, fines & penalties, items included in section 7.2 above, etc.

**8.14 PREPARATION OF PROPOSALS:** Costs for proposal preparation and negotiation will not be reimbursable.

**8.15 OTHER EXPENSES:** All other expenses are not reimbursable unless the Consultant receives prior written approval of the Project Manager.

## **9 SUMMARY OF CONTRACT TASK ORDER CONTROL REQUIREMENTS**

### **9.1 PRIOR TO COMMENCEMENT OF WORK - SUBMITTALS REQUIRED**

**9.1.1** Current Certificate of Insurance reflecting the Mandatory Coverage in Exhibit D.

**9.1.2** Exhibit E listing the subconsultant's core staff rates and a Submittal 2 (Overhead/Multiplier Factor Calculator).

- 9.1.3 Final Organizational Chart of the Prime Contractor and all Subconsultants.
- 9.1.4 Authorization Forms for salaried Personnel Assigned for the Prime Contractor and all Subconsultants ([Attachment B](#)).
- 9.1.5 MBE/WBE Certifications as evidenced by inclusion on the Certified Directory listing of The Denver Office of Economic Development at <https://denver.mwdbe.com>.
- 9.1.6 List of the names and titles of Authorized Signers, which document(s) they can sign, and a facsimile of the employee's signature.

## **9.2 WITHIN 3 DAYS AFTER NOTICE TO PROCEED - SUBMITTALS REQUIRED**

- 9.2.1 The Consultant shall meet with the Project Manager for a Pre-Work Meeting.

## **9.3 WITHIN 7 DAYS AFTER NOTICE TO PROCEED**

- 9.3.1 Correspondence Control Methods and Progress Report Format
- 9.3.2 Invoice and Progress Payment Format
- 9.3.3 Work Schedule and Task List formatting
- 9.3.4 The Consultant shall submit their proposed Monthly Progress Report Format

## **9.4 BIWEEKLY SUBMITTAL**

- 9.4.1 The Consultant shall submit a detailed two-week look-ahead schedule of activities for the Task Order.

## **9.5 MONTHLY SUBMITTALS**

- 9.5.1 The Consultant shall submit the Monthly Progress Report.
- 9.5.2 The Consultant shall submit invoicing by the day of the month referenced in section 4.2.

## **9.6 WITHIN 7 DAYS AFTER REQUEST FOR PROPOSAL FOR TASK ORDER - SUBMITTALS REQUIRED**

- 9.6.1 Scope Definitions and Detailed Cost Estimate per task and per sub-consultant, List of Submittals or Deliverables, Drawing and Specification.
- 9.6.2 Work Schedule per task and overall Task Order schedule showing appropriate milestones.
- 9.6.3 The Consultant shall submit the *Exhibit F Task Order Fee Proposal* template detailing the costs of the project.

# **10 INFORMATION MANAGEMENT FORMAT AND ELECTRONIC-MAIL PROTOCOLS**

- 10.1 All information between the Consultant and the City, and other entities with participation in the services as stated in the development of the Task Order shall be handled using Primavera Contract Management. Primavera Contract Management system includes both Textura and Unifier.

**10.2** Within 3 days following the Notice to Proceed, the Consultant shall meet with the City to review the City's proposed method of correspondence, email, & submittal communication control. Within 7 days following this review, the Consultant shall institute its control procedures for the Program.

**10.2.1** General: Procedures for professional services agreements require the serialization of all correspondence between the City, consultants, subconsultants, and all project entities. All Consultants, Subconsultants, that communicate via e-mail must maintain an e-mail tracking system. Web-based programs or other methods of tracking electronic communications may be proposed. However, those systems must be compatible with DIA records management data system. The Consultant shall review its system with the Records Management group to determine its compatibility with DIA procedures, processes and systems.



## Attachment A

# Monthly Invoice Checklist Professional Services Agreements

**Date:** \_\_\_\_\_ **Invoice Number:** \_\_\_\_\_

**Contract Number:** \_\_\_\_\_

**Contract Name:** \_\_\_\_\_

**Consultant:** \_\_\_\_\_  
(Name)  
\_\_\_\_\_  
(Address)

### Monthly Progress Payment Invoice and Exhibit B Progress Requirements Checklist:

(Place a check in the box to indicate that the item was supplied in accordance with Exhibit B requirements)

- ☐ Two Week Schedules for period covered by this invoice (Section 2.4)
- ☐ Originals of Sub-Consultant Partial Releases (Section 4.3)
- ☐ Invoice Report (Section 5.1)
  - ☐ Executive Summary
  - ☐ Work Schedule(s)
  - ☐ Cost Status
  - ☐ Cash Flow Requirements
  - ☐ Manpower and Task Completion Variance Analysis, Achieved vs. Planned, and any Planned or Proposed Schedule or Budget Revisions or other Remedial Actions
- ☐ Subcontract and Minority/Women/Small/Disadvantaged Business Enterprise (M/W/S/DBE) Goals and Status
- ☐ Status of Task Order
- ☐ Drawing / Document Schedule and Status
- ☐ Task/Project Schedule and Manpower Status
- ☐ Task/Project Activities Planned for Next Month
- ☐ Monthly Task/Project Activity and Accomplishments
- ☐ Identification and Analysis, of any Scheduling, Coordination, or Other problem Areas
- ☐ Change Order Log – Approved and Pending

The preceding and noted reports, schedules and logs have been submitted at the appropriate intervals and in accordance with the requirements of Exhibit B. The Consultant acknowledges that failure to submit the required items will result in the rejection of the Monthly Progress Payment Invoice until such time that all requirements are fulfilled.

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Type Name and Title

Attachment B

**Professional Employee Authorization Form**

**Date:** \_\_\_\_\_

**Contract Name:** \_\_\_\_\_

**Contract Number:** \_\_\_\_\_ **Task Number(s) (if applicable):** \_\_\_\_\_

**Company Name:** \_\_\_\_\_

**Employee Name:** \_\_\_\_\_

**Employee Title:** \_\_\_\_\_

**Hourly Rate Paid to Employee:** \$ \_\_\_\_\_ **Multiplier Factor:** \_\_\_\_\_

**Hourly Rate Charged to DIA:** \$ \_\_\_\_\_  
(per the Exhibit Q or Exhibit R previously submitted)

**Qualifications:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Resume Attached:** Yes / No

**Facsimile Signature:** \_\_\_\_\_

This employee is approved to work on the above referenced Task Order.

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Type Name and Title

## Expense Greater than \$500 Approval Form

Attachment D

**Mileage Reimbursement Form**

**Date:** \_\_\_\_\_

**Contract Name:** \_\_\_\_\_

**Contract Number:** \_\_\_\_\_ **Task Number(s):** \_\_\_\_\_

**Company Name:** \_\_\_\_\_

**Employee Name:** \_\_\_\_\_

**Travel From:** \_\_\_\_\_

**Travel To:** \_\_\_\_\_

**Estimated Total Miles:** \_\_\_\_\_

**Estimated Total Cost:**     \$ \_\_\_\_\_

**Reason for Travel:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Travel for the above named individual and purpose is approved.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_

**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

**CONTRACT NAME & NUMBER TO WHICH THIS INSURANCE APPLIES: 201631727 – Concourse Expansion Program A/  
E Design**

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**I. MANDATORY COVERAGE**

**Colorado Workers' Compensation and Employer Liability**

<b>Minimum Limits of Liability (In Thousands)</b>	<b>\$100, \$500, \$100</b>
---------------------------------------------------	----------------------------

- 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.
- If liquor is to be sold or distributed, then Liquor Liability, (\$1,000,000 per claim and \$1,000,000 policy aggregate limit) with the City as an additional insured is required.

**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, Design, Engineering and Construction Supervision

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

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

The policy must provide the following:

1. Coverage shall extend to cover the full scope of all cost estimating work performed under the insured's contract with City.
2. Coverage shall apply for three (3) years after project is complete.
3. Coverage is to be on a primary basis, if other professional coverage is carried.

## 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.

# **Exhibit D**

## **Key Personnel**

*Incorporated herein by reference*

**Exhibit E**  
**Core Staff Labor Rates**

*incorporated herein by reference*

## **EXHIBIT R**

### **BUILDING INFORMATION MODELING EXHIBIT**

#### **I. GENERAL**

##### **A. Purpose of Exhibit.**

This Building Information Modeling Exhibit (“Exhibit”) establishes the Level of Development (“LOD”) for the Building Information Model (“Model”) for the Project. It is intended that such protocols will be memorialized in the Project’s Building Information Modeling Project Execution Plan (“BIMPxP”), which will be developed soon after execution of the Agreement to which this Exhibit is appended. The BIMPxP will be used to create and modify the Model throughout the life of the Project. The BIMPxP will be updated throughout the Project and is hereby incorporated into the agreement by reference.

##### **B. Application of Exhibit.**

This Exhibit is a Contract Document and is intended to supplement both the professional services agreement (“Design Agreement”) between the Denver International Airport (“Owner”) and the Owner’s Prime Design Consultant (“Consultant”), which this Exhibit is attached to. It is also intended that this Exhibit will apply to all project participants who receive Digital Data throughout the Project’s development. Project participants may be required to verify that they have incorporated this Exhibit into their respective agreements and have likewise agreed to the most recent version of the Project’s BIMPxP.

##### **C. Necessity of the Model.**

The Consultant recognizes that the Model is an indispensable deliverable under the Design Agreement and will be used by the City for future construction and maintenance projects. Failure to meet the LODs and/or deliver the model in accordance with the BIMPxP may result in a for cause termination of the Design Agreement.

#### **II. RESPONSIBILITY FOR MODEL DEVELOPMENT**

##### **A. General**

The Consultant is responsible for the Models content and coordination among the Contractor, subcontractors, subconsultants and any other project participants and is assigned the responsibility for detecting and correcting errors.

##### **B. Subsidiary Models.**

It is anticipated that the Contractor and its Subcontractors may use Digital Data from the Model to develop several subsidiary construction models or such other uses as described in the BIMPxP. Any subsidiary models developed by the Contractor or its team shall be for the Contractor’s own benefit and none of the subsidiary models shall be considered part of Contract Documents.

##### **C. Responsibility for Model Content & Coordination among the Project Team.**

1. Consultant’s Responsibility: The Consultant retains ultimate responsibility for the Model’s content as well as its development throughout the Project’s entire design and construction. These responsibilities are non-delegable. The Consultant shall further be responsible for incorporating all

appropriate Digital Data relating to the design's development into the Model. The Consultant will update the Model with Construction Information that it receives from the Contractor at intervals prescribed in the BIMPxP. (For purpose of this obligation, the term "Construction Information" includes, but is not limited to the identification, location and description of element properties of the Project's assets.) The Consultant will decide all issues involving design intent and will be responsible for coordinating the design efforts of its own subconsultants and integrating *design* comments from Owner.

2. Owner's Responsibility: Owner shall be responsible for and decide all issues involving the LOD for the various Model elements. The Owner will work with the Contractor to ensure that the format of the Digital Data it provides to the Consultant complies with the transfer protocols contained in the BIMPxP and Building Information Model Design Standards Manual ("BIM DSM").

**D. Responsibility for detecting & correcting errors and revising the Model.**

1. Design issues: The Consultant shall be responsible for detecting and remedying interferences within the Model including any designs developed by consultants hired separately by the Owner. Once a solution is developed, the Consultant shall promptly revise the Model as required by the BIM DSM.

2. Construction issues: When requested by the Owner, the Consultant will be responsible for working with the Contractor to detect and remedy any interferences within the Model including any construction coordination issues with the Owner. Once a solution is developed, the Consultant shall promptly coordinate any revisions to the Model with the Owner.

3. Design/Construction Reconciliation Issues: The Consultant shall be responsible for detecting and remedying differences within the Model regarding the location and disposition of Owner designated facility assets as laid out in BIM DSM. Once a solution is developed, the Design shall promptly revise the Model as required by the BIM DSM.

**E. Deadlines for Model delivery**

The BIMPxP will contain a schedule for the Model's delivery (the "Model Delivery Schedule"). The Model Delivery Schedule identifies the intermediate and final deadline(s) for delivering each phase of the Model to the Owner for review and approval. It is anticipated that the Consultant will furnish Owner with a copy of the Model at the end of the phases as set forth in the Design Agreement. It is likewise acknowledged that the date for each deadline (as well as the LOD designations themselves) may be subsequently amended or modified in the BIMPxP. However, the Consultant needs a baseline schedule in order to price its efforts. Thus to the extent the BIMPxP subsequently modifies the original Model Delivery Schedule and such modifications impact the Consultant's initial pricing assumptions, the Consultant may be entitled to additional compensation. Failure by the consultant to meet the timelines or model phases, may result in the Owner holding pay applications until the Model phase is achieved and approved by the owner.

**F. Owner's review and input**

Based upon the Consultant's submittals as described above, Owner shall review and provide comments to the Consultant and/or Contractor (depending upon the nature of Owner's comments) in a timely manner. The Consultant and/or Contractor shall take all necessary and reasonable steps to address

such comments. Based upon the input of all concerned, and with Owner's approval, the Consultant shall revise the Model as soon as reasonably possible.

**G. Standard of Care**

The Consultant shall perform its professional design services in accordance with the Standards of Performance described in the Agreement. With respect to the performance of the Consultant's Model Development services, the Consultant shall, at a minimum, conform to the requirements in this BIM Exhibit, the BIM DSM as well as the high standards of care and practice as outlined by the Colorado State Board of Licensure for Architects, Professional Engineers and Professional Land Surveyors and the relevant statutes and rule of the laws of the State of Colorado.

**III. BIM PROJECT EXECUTION PLAN ("BIMPxP")**

**A. BIMPxP Contract Status.**

The BIMPxP will be modified as the Project develops. Nevertheless, the Parties are expected to comply with the requirements BIMPxP throughout the Term of the Agreement.

**B. Process for Development.**

Soon after being retained, the Consultant and the Owner will jointly develop the initial draft of the Project's BIMPxP using the Owner's BIMPxP Template as a starting point. If the Consultant believes that the protocols created in a subsequently developed BIMPxP represents a change in the scope of its services and believes that such change warrants an adjustment in compensation, contract sum, schedule or contract time, the Consultant is required to notify the Owner in writing in accordance with the terms of the Agreement. A failure to provide the required notice shall result in a waiver of any claim(s) for adjustments in compensation, contract sum, schedule or contract time as a result of the subsequently developed protocols.

**C. Elements of the BIMPxP**

The Modeling protocols to be addressed in the BIMPxP shall:

1. Identify the Discipline Model Coordinator, Prime BIM Manager and when appropriate, the Construction BIM Manager and confirm their respective responsibilities per the roles described in the BIM Guidelines;
2. Define the various Authorized Uses and LOD for each Model and/or Model Element at prescribed Project milestones;
3. Identify the Project's construction classification systems per Owner's BIM Guidelines;
4. Define the process (and intervals) by which Project Participants will exchange and share the Model(s) and/or Model Element(s);
5. Define the process by which the Project Participants will identify, coordinate and resolve changes and updates to the Model(s) and/or Model Element(s); and
6. Include any other topics as may be required by the Owner.
7. Identify Technical Requirements, computer platform, software, etc.
8. Transmission protocols and procedures (CDs, e-mail, etc.)
9. Electronic signatures & stamps
10. Back-up, Format for exchange of As-Built information

#### **IV. RESPONSIBILITY FOR MODEL OWNERSHIP**

##### **A. Model Ownership**

The Parties agree that the Owner owns and hereby retains all legal rights of ownership and title to the Model and/or Model Elements and all other ancillary Project materials (electronic or otherwise) developed or prepared specifically for the Project by the Consultant, their subconsultants and all other project participants. Nothing contained in this Exhibit shall alter, diminish or be construed as a waiver by the Owner of such ownership rights.

The mere act of transmitting Digital Data or Confidential Digital Data does not convey any ownership right or legal interest in such data or in the software used to generate such data. Unless otherwise granted in a separate license, the Party receiving Digital Data or Confidential Digital Data (other than the Owner), may only use such data to design, construct, maintain, alter and/or add to the Project consistent with the terms of this BIM Exhibit, and nothing contained herein conveys any other right to use such data.

##### **C. Owner's license to Project Team**

The Owner, as owner of all intellectual property rights associated with the Model(s) and/or Model Element(s) both at common law and by statute, hereby grants to the Consultant and Contractor, a revocable, non-exclusive, non-assignable, limited license to use the Model(s) and/or Model Element(s) and other relevant ancillary Project materials (electronic or otherwise) solely and exclusively to perform services for, or construction of the Project in accordance with the terms and conditions of the Design Agreement.

##### **D. Authorized Use**

The BIMPxP lists the Authorized BIM Uses and LOD of the Model(s) and/or Model Element(s) at defined Project milestones.

##### **E. Unauthorized Use**

If a Party uses a Model or Model Element in a way that is inconsistent with the Authorized Uses identified in the BIMPxP or not expressly authorized herein, such use shall be considered an Unauthorized Use and shall be at that Party's sole risk and without liability to any other Project Participant or Third-Party.

#### **V. RESPONSIBILITY FOR MAINTENANCE OF DIGITAL DATA**

##### **A. Warranty of authority to transmit Digital Data.**

The transmission of Digital Data constitutes an express warranty by the Party transmitting such data that it has legal permission to possess and transmit the Digital Data in accordance with the Authorized Uses described herein and in accordance with the BIMPxP.

##### **B. Confidential Digital Data.**

1. Confidential Digital Data: Confidential Digital Data is digital data expressly defined by the Owner as confidential. The transmission of Confidential Digital Data constitutes an express warranty by the Party transmitting such data that it is authorized and legally permitted to transmit the Confidential

Digital Data in accordance with the Authorized Uses described herein and in Owner's BIMPxP. The Party receiving Confidential Digital Data shall keep such data confidential and shall not disclose it to any other person or entity except as provided below.

The Party receiving Confidential Digital Data may disclose such data only as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. Such Party may also disclose the Confidential Digital Data to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided that such employees, consultants and contractors are likewise subject to the confidentiality restrictions set forth herein. In the event a Party in possession of Confidential Digital Data receives a subpoena seeking the production of such data, it shall immediately notify the Owner of the existence of such subpoena and give the Owner an opportunity to respond to the subpoena before releasing any such data.

2. Colorado Open Records Act: Consultant acknowledges that the 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 the City in the event of a request or lawsuit arising under such act for the disclosure of any materials or information which Consultant asserts is confidential 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 the City shall be considered confidential by the City only to the extent provided in the Open Records Act, and Consultant agrees that any disclosure of information by the City consistent with the provisions of the Open Records Act shall result in no liability of the City.

3. Sensitive Security Information: Sensitive Security Information ("SSI") is defined by 49 USC §1520. The management and handling of SSI is addressed in the BIMPxP, BIM DSM, and underlying Design Agreement and Construction Agreement (as appropriate).

#### **IV. RESPONSIBILITY FOR MODEL MANAGEMENT**

##### **A. Archiving**

Subsequent to Final Completion of the Project, the Consultant shall be responsible for archiving all Digital Data in accordance with the obligations of its profession and the underlying Agreement. To the extent such obligations do not specifically pertain to the archiving of Digital Data, the protocols for retaining paper records shall apply.

The Consultant's obligations herein likewise include the duty to maintain the Project's Digital Data in an updated, accessible and readable format for a period of five (5) years from Final Completion. This obligation also includes the duty to convert the Project's Digital Data into a format compatible with any subsequently developed technology that might render the Project's existing Digital Data obsolete. The obligations herein survive the completion, termination or expiration of the underlying Agreement.

##### **B. Record Model**



Upon Substantial Completion of the Project, the Contractor is to provide the Consultant with As-Built information in accordance with the requirements of the BIMPxP. The Consultant is required to verify the information in accordance with the requirements and standards in the underlying Consultant Agreement.

**C. Software upgrades**

Upon receiving authorization to commence their respective scopes of work, the Consultant and the Contractor shall each represent to the Owner in writing that the software platform upon which the Model is to be developed is based upon the most recent version available. To the extent the Model's software platform is upgraded during the course of the Project's development, the Owner shall have the right (but not the obligation) to order all Project Participants to upgrade their respective platforms (at no cost to the Owner) in order to comply with the most recent version available. Responsibility to coordinate any such upgrades shall be on the Consultant and the Contractor for their respective teams (as applicable).

**D. Governmental Approval of Model Drawings**

The Consultant shall produce printed paper and .pdf format drawings from the Model in order for the Contractor to obtain any necessary permits, approvals or government authorizations. Upon request, the Consultant shall also prepare an authentication (in a form prescribed by the Owner) verifying that the drawings are a true and accurate two-dimensional representation of the Model.

**E. Signing and Sealing Model**

As required by the BIMPxP.

**F. Standard of Care**

The Consultant shall perform its professional design services in accordance with the Standards of Performance described in the Agreement. With respect to the performance of the Consultant's Model Development services, the Consultant shall, at a minimum, conform to the requirements in this BIM Exhibit, the BIM DSM as well as the high standards of care and practice as outlined by the Colorado State Board of Licensure for Architects, Professional Engineers and Professional Land Surveyors and the relevant statutes and rule of the laws of the State of Colorado.