AGREEMENT FOR ON-CALL PROFESSIONAL SERVICES

THIS AGREEMENT FOR ON-CALL PROFESSIONAL SERVICES ("Agreement") is made and entered into as of the date stated on City's signature page below 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 **BURNS & MCDONNELL ENGINEERING COMPANY, INC.** a corporation organized under the laws of the state of Missouri. and authorized to do business in Colorado ("Consultant") (collectively, the "Parties").

W I T N E S S E T H:

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

WHEREAS, the City desires to obtain Professional Commissioning services for witnessing start-up and final commissioning on certain designated expansion construction contracts (the "Work"); and

WHEREAS, the 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, the Consultant's proposal was selected for award of the Expansion Project Commissioning contract known by contract number 201739135; and,

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

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

ARTICLE I LINE OF AUTHORITY

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. 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 will designate a Project Manager to coordinate the Work 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 SVP-AIM, the Consultant shall report directly to the Project Manager.

ARTICLE II DUTIES AND RESPONSIBILITIES OF CONSULTANT

A. Scope of Services. The Consultant will provide professional on-call facilities and systems commissioning services as generally defined in ASHRAE Guideline 0 (the "Commissioning Standard"). This Work will be based on specifically issued tasks ("Task Order") as designated by the CEO or the SVP-AIM from time to time and as described in the

attached ***Exhibit A*** ("Scope of Work") in accordance with schedules and budgets to be mutually agreed upon in each Task Order. A Task Order is a written instrument signed by the Manager, other designated parties, and the Consultant, that contains the specific items of work to be competed in each particular Task Order.

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").

C. Remedies.

1. The Consultant shall faithfully perform the Work required under this Agreement in accordance with Standard 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.

2. The Consultant shall be liable to the City for acts and omissions of Consultant's employees, Consultants, subconsultants, agents and any other party with whom the Consultant contracts to perform any portion of the Work, including any design elements of any authorized Task.

3. 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 any additional costs incurred by the City or its other consultants or Consultants, if any, arising out of such defective Work.

4. These remedies are in addition to, and do not limit the provisions and requirements of Article V Insurance, Indemnification, and Dispute Resolution.

5. The Consultant acknowledges that time is important in the performance of its services under this Agreement and that the City of Denver may suffer damages if the Work is delayed as a result of the Consultant's failure to provide its services in a timely and diligent manner. To determine if the Work is timely performed, the City will evaluate whether all conditions precedent have been completed so that Consultant can perform its Scope of Work. Consultant shall perform the Work described herein in a timely manner and as directed by the SVP-AIM or his or her authorized representatives.

D. Key Personnel Assignments.

1. All key professional personnel identified in the Scope of Work, ***Exhibit A***, will be assigned by Consultant or subconsultants to perform work under this Agreement. It is the intent of the Parties that all key professional personnel be engaged to perform their specialty for all such services required by this Agreement and that Consultant's and the subconsultant's key professional personnel be retained for the life of this Agreement to the extent practicable and to the extent that such services maximize the quality of work performed.

2. If, during the term of this Agreement, the Project Manager determines that the performance of approved key personnel is not acceptable, the Project Manager shall

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

E. Subcontractors.

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

2. Because Consultant's represented qualifications are consideration to City in entering into this Agreement, the SVP-AIM shall have the right to reject any proposed outside subcontractor for this work deemed by the SVP-AIM, in the SVP-AIM's sole discretion, to be unqualified or unsuitable for any reason to perform the proposed services, and the Project Manager shall have the right to limit the number of outside subcontractors or to limit the percentage of work to be performed by them, all in the Project Manager's sole and absolute discretion.

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

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

ARTICLE III TERM AND TERMINATION

A. Term. The Term of this Agreement shall commence upon execution of this Agreement (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 two additional one-year terms. The election to extend, shall also extend all terms and conditions of the Agreement and be memorialized in a writing issued to the Consultant by the SVP. 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 with cause on ten (10) days prior written notice to Consultant. In the event of termination by City for cause, Consultant shall be allowed five (5) days to commence remedying its defective performance, and in the event, Consultant diligently cures its defective performance to City's satisfaction, within a reasonable time as determined solely by City, then this Agreement shall not terminate. However, nothing herein shall be construed as giving Consultant the right to perform services under this Agreement beyond the time when such services become unsatisfactory to the CEO.

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

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

ARTICLE IV COMPENSATION AND PAYMENT

A. Maximum Contract Liability. Notwithstanding any other provision of this Agreement, in no event shall City be liable for payment for services rendered and expenses incurred by Consultant under the terms of this Agreement for any amount in excess of the sum of Seven Million. dollars ($7,000,000.) ("Maximum Contract Liability"). Consultant will be performing the services on a time and material basis up to the Maximum Contract Liability. Consultant's fee is based on the time required by its professionals to complete the services.

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. Rates & Fees: The City hereby agrees to pay the Consultant, the Labor Rates and any applicable multiplier contained in **Exhibit E** ("Initial Labor Rates & Multiplier"), which may be modified throughout the term of the Agreement. Modifications shall be in the City's sole discretion and will be memorialized in writing. No formal Amendment is required to modify the Initial Labor Rates & Multiplier. The Consultant asserts that Core Staff Labor Rates are business confidential information; therefore, the original form of **Exhibit E and Submittal 2** (collectively **"Exhibit E"**) are held at DEN. In no event shall the City be liable for any amounts which exceed the Maximum Contract Liability.

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

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 3.D., as follows:

1. An executive summary and status reports that describe the progress of the services and summarize the work performed during the period covered by the invoice.

2. A statement of hours spent where billing is based upon hourly rates. Time sheets shall be maintained by Consultant and shall be available for examination by City, at City's request.

3. The amounts shown on the invoices shall comply with and clearly reference the relevant services, the hourly rate and multiplier where applicable, and allowable reimbursable expenses.

4. Consultant shall submit itemized business expense logs or copies of receipts for all allowable reimbursable expenses, where billing is based upon such items.

5. The signature of an officer of Consultant, along with such officer's certification they have examined the invoice and found it to be correct, shall be included on all

invoices.

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

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 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.

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

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

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

5. City in no way warrants and/or represents the minimum limits contained herein are sufficient to protect Consultant from liabilities arising out of the performance of the terms and conditions of this Agreement by Consultant, its agents, representatives, or employees. Consultant shall assess its own risks and as it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. Consultant is not relieved of

any liability or other obligations assumed or pursuant to this Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. In no event shall City be liable for any: (i) business interruption or other consequential damages sustained by Consultant; (ii) damage, theft, or destruction of Consultant's inventory, improvements, or property of any kind; or (iii) damage, theft, or destruction of an automobile, whether or not insured.

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

B. Defense and Indemnification.

1. 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 relating to the work performed under this Agreement ("Claims"), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Consultant or its subcontractors either passive or active, irrespective of fault, including City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

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

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. 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 reasonable discretion of the SVP-AIM. The City shall not assign this Agreement without written consent of Consultant.

C. Compliance with all Laws and Regulations. All of the work performed under this Agreement by Consultant shall be performed in compliance 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:

Mark Lichtwardt
Burns & McDonnell Engineering Company, Inc.
9785 Maroon Cir., Ste. 400,
Centennial, CO 80112

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 term, provision or condition herein is subject to the provisions of Colorado law, the Charter of City and County of Denver, and the ordinances and regulations enacted pursuant thereto.

2. This Agreement is in all respects subject and subordinate to any and all City bond ordinances applicable to the Denver Municipal Airport System and to any

other bond ordinances which amend, supplement, or replace such bond ordinances.

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

ARTICLE VII STANDARD CITY PROVISIONS

A. Diversity and Inclusiveness.

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

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

B. 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 30%. 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 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 Work under this Agreement, Consultant agrees not to refuse to hire, discharge, promote, demote, or to discriminate in matters of compensation against any person otherwise qualified solely because of race, creed, color, religion, national origin, gender, age, military status, sexual orientation, gender variance, marital status, and/or physical and mental disability. Consultant further agrees to insert the foregoing provision in all subcontracts hereunder.

D. Prevailing Wage. Consultant shall comply with City's Prevailing Wage Ordinance, D.R.M.C § 20-76 et seq., as such Ordinance may apply to Consultant's activities under this Agreement. The Consultant is prohibited from hiring any subcontractor that is currently debarred by City in accordance with D.R.M.C § 20-77.

E. Advertising and Public Disclosures. Consultant shall not include any reference to this Agreement or to work performed hereunder in any of its advertising or public relations materials without first obtaining the written approval of the Project Manager. Any oral presentation or written materials related to DEN shall include only presentation materials, work product, and technical data which have been accepted by City, and designs and renderings, if any, which have been accepted by City. The 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, subcontractors, principals, or employees will not engage in any transaction, activity or conduct which would result in a conflict of interest. Consultant represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities, or conduct that would affect the judgment, actions or work of Consultant by placing Consultant's own interests, or the interest of any party with whom Consultant has a contractual arrangement, in conflict with those of City. City, in its sole discretion, shall determine the existence of a conflict of interest and may terminate this Agreement if such a conflict exists, after it has given Consultant written notice which describes such conflict.

Consultant shall have thirty (30) days after the notice is received in which to eliminate or cure the conflict of interest in a manner which is reasonably 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 subcontractor 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 subcontractor provides information to establish that the subcontractor or subconsultant has not knowingly employed or contracted with an illegal alien.

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

L. Funding Source. Payment under this Agreement shall be paid from 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, subcontractors, 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, subcontractors or those under its control, fail or refuse to comply with said measures and such non-compliance results in a monetary penalty being assessed against City, then, in addition to any other remedies available to City, Consultant covenants to fully reimburse City any fines or penalties levied against City, and any attorney fees or related costs paid by City as a result of any such violation. This amount must be paid by Consultant within fifteen (15) days from the date of the invoice or written notice.

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

D. General Civil Rights Provision. The contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from

participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the contractor and subtier contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

ARTICLE IX CONTRACT DOCUMENTS; ORDER OF PRECEDENCE

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

Appendix 1: Standard Federal Assurances
Exhibit A: Scope of Work
Exhibit B: Scheduling, Progress Reporting, Invoicing and Correspondence Control
Exhibit C: Certificate of Insurance
Exhibit E: Initial Labor Rates & Multiplier

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

Appendix 1
Articles I through X hereof
Exhibit A
Exhibit B
Exhibit C
Exhibit E

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-201739135-00

Contractor Name: BURNS & MCDONNELL ENGINEERING COMPANY

By: _____

Name: David Yeomans
(please print)

Title: President
(please print)

ATTEST: [if required]

By: _____

Name: JOELLE PARACSI
(please print)

Title: ASSISTANT SECRETARY
(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 NONDISCIRIMINATION 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 Ill 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

The project consists of commissioning services to complete start-up and final commissioning on designated expansion and other construction contracts. These services may include Lighting Controls, Power Monitoring Controls, Generators, UPS, Switchgear, HVAC Equipment, HVAC Controls and Operation, Conveyance Controls and other systems as needed. All projects will be completed by individual task order. The concourse expansion project is being completed to add 39 new aircraft gates to Concourse A, Concourse B, and Concourse C. The project is expected to be completed over the course of a three to five-year duration.

Exhibit B

PROFESSIONAL SERVICES

Design and Engineering

SCHEDULING, PROGRESS REPORTING,
INVOICING AND CORRESPONDENCE CONTROL

Revised: June 2018

Contents

I. PURPOSE 3
II. TASK ORDER-BASED CONTRACTS (Airport Infrastructure Management) 3
1. Introduction 3
2. Work Schedule 4
3. Progress Payment Measurement Alternatives 4
4. Invoices and Progress Payments 5
5. Monthly Progress Report Development 6
6. Schedule Changes and Increase in Project Amount 7
7. Allowable General and Administrative Overhead (Indirect Costs) 7
8. Allowable (Non-Salary) Expenses 8
9. Summary of Contract Task Order Control 9
10. Information Management Format and Electronic-Mail Protocols 10
Attachment A – Monthly Invoice Checklist 12
Attachment B – Professional Employee Authorization Form 13
Attachment C – Expense Greater than $500 Approval Form 14
Attachment D – Mileage Reimbursement Form 15
Attachment E – Advance Travel Authorization Form 16

I. TASK ORDER-BASED CONTRACTS (Airport Infrastructure Management)

1. Introduction

1.1 This Exhibit B describes the Consultant's obligations to prepare and submit schedules, budgets, invoices, progress reports, and correspondences. The Consultant shall prepare invoices that are based on its progress toward completing the Consultant's Task Order. 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 of the Task Order. The Consultant then measures monthly progress and prepares invoices on the basis of payment alternatives, which the Consultant must submit written approval for each Task Order as described in Section Three (3) of this Exhibit B. **Billing shall be at one task per invoice.**

1.2 The Consultant shall be paid on its progress toward completing a task shown on its work schedule for that Task Order. Submittal of time sheets is 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 an approved 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 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 damages the City may sustain by reason thereof.

2. Work Schedule

2.1 The Consultant, working jointly with DEN, 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 activities that the Consultant must perform to complete the Consultant's Task Order Scope of Work. The schedule 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 fourteen (14) days after the Task Order Schedule is submitted. The Consultant shall incorporate the City's comments into the Task Order Schedules.

2.3 Immediately following the issuance of a Notice to Proceed, the Consultant shall submit to the Project Manager, a rolling three-week, look-ahead schedule, for the following three week's work.

3. Progress Payment Measurement Alternatives

3.1 DEN will propose and the consultant may offer alternatives, 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 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.

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, if applicable.

3.1.4 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.

3.2 Note: Approvals by the City of submittals do not waive any obligation by the Consultant to provide complete work that has been authorized. Authorized payments on previous invoicing may be set-off on subsequent invoicing in the event work submitted is found to be in non-compliance with the scope of work requirements.

4. Invoices and Progress Payments

4.1 Task orders are issued for projects with a pre-defined maximum value known as the Not-to- Exceed amount. The Not-to-Exceed is <u>not</u> 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.

4.2 The City will provide the Consultant with the format required to process the payment through Textura® Payment Management. Textura is the default payment system and shall be used on all projects unless an alternative method is expressly stated in the Contract. The Consultant shall provide to the City a completed invoice report format for review and approval no later than fourteen (14) days after the issuance of Notice to Proceed. This format will identify the measurement alternatives, which will be used to measure progress for an individual task.

The Project Manager and the Consultant shall agree on the day of the month the Consultant's invoices shall be submitted. By the day of the month agreed to for submitting invoices, the Consultant shall invoice the City for its achieved progress on each task during the previous 30- d a y period. The Attachment(s) which the Consultant used to calculate progress for the Task Order must be submitted with the copy of the invoice. (The Project Manager must provide written approval of the format for these worksheets before they may be used). If the Project Manager elects not to use Textura, one (1) electronic copy of both the invoice and the Consultant's worksheet(s) shall be submitted each month to the DEN Business Management Services Contract Administrator via email ContractAdminInvoices@flydenver.com.

4.3 The employee labor data (company name, employee name, hourly rate, and number of hours) on each invoice shall be submitted in Unifier and correspond to the specific Task Order and

4.4 Payment for invoices received after the day of the month agreed to for submitting invoices may be delayed. Accordingly, timely submission of invoices is required.

4.5 The Project Manager will review all invoices and, in the event, the Project Manager disagrees with the invoiced progress, he will notify the Consultant. The Consultant and Project Manager will meet within fourteen (14) days of the receipt of the invoice to discuss the reasons for the disagreement. The Project Manager shall have the authority in his/her sole and absolute discretion to reject any progress payment wherein the progress claimed for any task in the invoice has not been achieved.

4.6 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
- Signed Subconsultant Agreement(s) on: Initial Subconsultants and as new Subconsultants are acquired.
- 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.
- 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.

4.7 Monthly Invoice Checklist (*Attachment A*): The Monthly Invoice Checklist must be submitted to the project manager 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.

4.8 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 City from any and all obligations, liens, claims, security interests, encumbrances and/or liabilities arising by virtue of the contract and authorized changes between the parties, either verbal or in writing. Consultant agrees that this release is in full settlement of any and all claims, causes of action, and liability of any nature whatsoever which Consultant, any of its subconsultants, suppliers, or the employees of each of them may now have or may assert in the future against the City of Denver, its elected and appointed officials, and its officers, employees and agents arising out of or associated with the design of the above-referenced project. It is understood and agreed that this release extends to all claims of every nature and kind whatsoever, known or unknown, suspected or unsuspected.

4.9 Textura®: The Consultant recognizes and agrees that it may be required to use the Textura® Payment Management System (CPM System) for this Project. The City will provide the Textura Fee amount to the Consultant during contract negotiations. Consultant will pay this amount to Textura directly. The City will reimburse the Consultant as a pass through expense for the Textura Fee with no mark-up.

5. Monthly Progress Report Development

Invoice Report: The Consultant shall submit to the Project Manager an electronic submittal of the Monthly Progress Report which is attached hereto as Attachment A with its invoice.

5.1 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 Issuance of task order 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.

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

6. Schedule Changes and Increase 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. No work may be completed without prior written approval of the Project Manager.

7. Allowable General and Administrative Overhead (Indirect Costs)

7.1 All Allowable General and Administrative Overhead expenses are incorporated in the Labor Rates and Classifications or the Overhead / Multiplier Factor Calculation – Professional Services Agreements and paid through the application of the Overhead Multiplier Factor against core staff wage reimbursements.

7.2 Indirect costs are the general administrative overhead (O.H.) 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 as part of the negotiated multiplier as calculated in the Labor Rates and Classifications Exhibit:

7.2.1 Office Provisions: Utilities, communications systems, rent, depreciation allowances, furniture, fixed equipment.

7.2.2 Supplies, Equipment & Vehicles: For office, drafting, engineering copying, postage, freight, surveying vehicles, computer drafting and graphics, computers, software.

7.2.3 Maintenance and Repair: On office equipment, survey & testing equipment, buildings, vehicles.

7.2.4 Insurance: Professional liability, errors and omissions liability, vehicles, facilities.

7.2.5 Taxes: Personal property, state & local taxes, real estate, (state and federal income taxes excluded).

7.2.6 Marketing Fees & Publications: Licenses, dues, subscriptions, trade shows, staff support.

7.2.7 Admin & Clerical Office Staff: All administrative, clerical & management support staff not directly involved in the specific project or task.

7.2.8 Other Indirect Costs: Training, technical seminars, library, financial & legal costs, employment fees & recruiting costs.

7.3 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). If an expense is not explicitly included in this Agreement as an allowable expense, it is not an allowable expense.

8. Allowable (Non-Salary) Expenses

8.1 Expenses Reimbursed at Cost: All Allowable (Non-Salary) expenses are reimbursed at cost.

8.2 Receipts Required: All direct expenses submitted for reimbursement must be evidenced by a submitted receipt.

8.3 Expenses Greater Than $500: All direct expenses greater than $500 must be pre-approved by the Project Manager or his/her designee **(*Attachment C*)**. Any asset purchased by DEN must be surrendered to DEN at the end of the project or task. The consultant shall be charged replacement value for any asset purchased by DEN that is not accounted for at the end of the project or task.

8.4 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). 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.

8.5 Travel and Airfare: All travel must be pre-approved on the DEN Advance Travel Authorization Form (***Attachment E***) and signed by the Project Manager or his/her designee. Travel shall be done using the most reasonable cost and means under the circumstances. Travel expenses are reasonable, appropriate, and necessary travel and business-related expenses(s) that are incurred while carrying out official City business as it relates to the consultant's contractual obligations and scope of work. The determination of reasonableness of cost and of the means of travel shall be at the discretion of the Project Manager or his/her designee, who shall consider economic factors and circumstances, including but not limited to number of days of travel, advance notice, possibility of trip cancellation, distance of travel, travel alternatives, and hours of arrival or departure.

Airfare will be reimbursed for Economy/Coach class travel only, including luggage check-in fees. Convenience expenses such as seat upgrades, in-flight meals and refreshments, entertainment, etc. will not be reimbursed.

8.6 Rental Car: At cost for standard class or smaller and when required for out-of-town personnel or out-of-town travel.

8.7 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 plus taxes per night, unless approved in advance in writing by the Project Manager or his/her designee.

8.8 Meals: The City shall reimburse the Traveler for reasonable meals expenses at the meal and incidental expense (M&IE) rates established through federal guidelines and IRS regulations, or at actual cost, so long as any actual costs which exceed the per diem amount are directly

attributable to the actual business conducted. The Agency/Department will decide on the reimbursement method. Only one method of reimbursement may be used per trip. The per diem rate includes breakfast, lunch, and dinner. Reimbursements will be made per individual Traveler conducting official City business as it relates to the consultant's contractual obligations and scope of work.

Alcohol will not be reimbursed. Meal reimbursements are not allowed for consultant employees located in the Denver Metropolitan Area.

8.9 Special: Including printing, equipment, express courier, delivery, rentals, etc., that is not already included in the Overhead or Multiplier 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 Project Manager or his/her designee.

8.10 Specialty Consulting: Including geotechnical testing, surveying, legal, real estate, computer, financial, renderings, animations, modeling, etc. must be pre-approved by the Project Manager or his/her designee.

8.11 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 Project 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. DEN 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.

8.12 Project Field Office & Equipment: Including utilities, rent, communications systems, furniture, fixed equipment.

8.13 Project Field Supplies, Equipment & Vehicles: For field office, engineering copying, postage, freight, field vehicles, computer drafting and graphics, computers, all software / license fees.

8.14 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. If an expense is not explicitly included in this Agreement as an allowable expense, it is <u>not</u> an allowable expense.

8.15 Preparation Of Proposals and Billing: Costs for proposal preparation, negotiation and invoicing/billing will <u>not</u> be reimbursable.

9. Summary of Contract Task Order Control

9.1 Project Manager Discretion

9.1.1 All requirements in this section 9 may be modified by the project Manager to meet the specific needs of the Project. Any modifications to this section must be documented in writing.

9.2 Prior To Commencement Of Work – Submittals Required

9.2.1 Signed Subconsultant Agreement(s) with an Exhibit listing the subconsultant's core staff rates and calculated Labor Rates and Classifications.

9.2.2 Authorization Forms for salaried Personnel Assigned for the Prime Consultant and all Subconsultants **(*Attachment B*).**

9.1.4 List of the names and titles of Authorized Signers, which document(s) they can sign, and a facsimile of the employee's signature.

9.1.5 Work Schedule and Task List formatting

9.2 Monthly Submittals

9.2.1 The Consultant shall submit the Monthly Progress Report.

9.2.2 The Consultant shall submit invoicing by the day of the month referenced in section 4.2.

9.3 Days After Request For Proposal For Task Order – Submittals Required

9.3.1 Scope Definitions and Detailed Cost Estimate per task and per sub-consultant, List of Submittals or Deliverables, Drawing and Specification.

9.3.2 Work Schedule per task and overall Task Order schedule showing appropriate milestones.

9.3.3 The Consultant shall submit the *Exhibit 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 Unifier.

10.2 Within 3 days following the Issuance of task order, 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 be managed through the Primavera Unifier system. Web-based programs or other methods of tracking electronic communications may be proposed. However, those systems must be compatible with DEN records management data system. The Consultant shall review its system with the Records Management group to determine its compatibility with DEN 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)

- ☐ Three 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 DEN: $_____
(Per the Exhibit E 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

Attachment C – Expense Greater than $500 Approval Form

Date: _____

Contract Name: _____

Contract Number:_____ **Task Number(s) (if applicable):** _____

Company Name: _____

Employee Name: _____

Estimated Total Cost: **$**_____

Reason for Expense: _____

_____

_____

_____

_____

To be completed by DEN personnel:

Capital Assets **Y / N**

(Including but not limited to: computer equipment, copiers, furniture, vehicles, etc.)

Note: Any assets purchased by DEN must be returned to DEN at the end of the project. The Consultant will be charged replacement value for any assets purchased by DEN that are unaccounted for at the end of the project.

The above described expense has been approved.

_____

Signature Date

_____

Type Name and Title

cc: Finance if asset purchase

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

_____

Attachment E – Advance Travel Authorization Form

Contract No.:_____ **Date:**_____

Traveler's Name:_____ **Authorization No.:**_____

Traveler's Employer: _____

Destination: _____

Duration: From_____ **To** _____

Purpose of Trip: _____

Approximate Travel Costs: $_____

Reviewed by: _____
Project Manager Date

Approved by: _____
Section Manager Date

Approved by: _____
Deputy Manager Date

cc: BMS Contract Administrator

Exhibit C

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

Certificate Holder Information:

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

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

CONTRACT NAME & NUMBER TO WHICH THIS INSURANCE APPLIES: 201739135 – Expansion Project Commissioning

I. PRIMARY COVERAGE

Business Automobile Liability

Minimum Limits of Liability (In Thousands):

Combined Single Limit	$1,000

The policy must provide the following:

1. Coverage applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.
2. 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.

Builders' Risk Insurance or Installation Floater

Minimum Limits of Liability (In Thousands)

Special Completed Value Basis

The policy must provide the following:

1. The insurance must be in the amount of the initial Contract Sum, plus value of subsequent modifications, change orders, and cost of material supplied or installed by others, comprising total value of the entire Project at the site on a replacement cost basis.
2. The insurance shall be written on a **Special Completed Value** Covered Cause of Loss form and shall include theft, vandalism, malicious mischief, collapse, false-work, temporary buildings, transit, debris removal, demolition, increased cost of construction, flood (including water damage), earthquake, and if applicable, all below and above ground structures, piping, foundations including underground water and sewer mains, pilings including the ground on which the structure rests and excavation, backfilling, filling and grading**.**
3. The Policy shall remain in force until formal acceptance of the project by the City or the placement of permanent property insurance coverage whichever is later.
4. The Builders' Risk shall include a Beneficial Occupancy Clause. The policy shall specifically permit occupancy of the building during construction. Contractor shall take reasonable steps to obtain consent of the insurance company and delete any provisions with regard to restrictions within any Occupancy Clauses within the Builder's Risk Policy.
5. Equipment Breakdown Coverage (a.k.a. Boiler & Machinery) shall be included as required by the Contract Documents or by law, which shall specifically covers insured equipment during installation and testing (including cold and hot testing).

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 E*

Initial Labor Rates and Multiplier

* The full and complete Exhibit E contains business confidential information, and is therefore held by the project management team at Denver International Airport. The full and complete Exhibit E is incorporated herein by reference.