

ON-CALL AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT FOR PROFESSIONAL SERVICES (“**Agreement**”) is made and entered into as of the date stated on the 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 (the “**City**”), and **BIRDAIR INC.**, a Delaware corporation authorized to do business in the State of Colorado (“**Consultant**”) (collectively the “**Parties**”).

WITNESSETH:

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

WHEREAS, the City desires to obtain professional Maintenance and Repair services for DEN’s tensile fabric roof surfaces; and

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

WHEREAS, Consultant’s proposal was selected for award of the Tent Roof Maintenance services contract; and

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

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

ARTICLE I. LINE OF AUTHORITY

The Chief Executive Officer of the Department of Aviation (the “**CEO**”), his/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 DEN Airport Infrastructure Management (“**AIM**”). The relevant Executive Vice President (the “**EVP**”), or his/her designee (the “**Director**”), will designate a Project Manager to coordinate professional services under this Agreement. Reports, memoranda, correspondence, and other submittals required of Consultant hereunder shall be processed in accordance with the Project Manager directions.

ARTICLE II. SCOPE OF WORK AND CONSULTANT RESPONSIBILITIES

A. Scope of Services. Consultant shall provide professional services and provide deliverables for the City as designated by the CEO, and/or her designee, from time to time and as described in the attached ***Exhibit A*** (“**Scope of Work**”) and in accordance with this Agreement, including Task Orders, and in accordance with schedules and budgets set by the City.

B. Task Orders. The Project Manager will issue task orders for work to be completed under this Agreement (“**Task Orders**”). The terms of each Task Order must include but are not limited to information regarding schedule, staffing, and pricing. The Director may reduce or increase the scope of work and/or staffing required by a Task Order and the time and cost of performance shall be adjusted to reflect the time and cost resulting from the reduction or increase.

C. Standard of Performance.

1. Consultant shall faithfully perform the work required under this Agreement in accordance with the standard of care, skill, efficiency, knowledge, training, and judgment provided by highly competent professionals who perform work of a similar nature to the work described in this Agreement.

2. Consultant understands and acknowledges that it shall create and assist in the implementation of the drawings, plans, specifications, reports, and/or any other such deliverables necessary to complete the work (collectively hereinafter referred to as the “**Design Deliverables**”), as required by the City.

3. Consultant shall strictly conform to and be bound by written standards, criteria, budgetary considerations, Task Orders, and memoranda of policy furnished to it by the City.

4. Consultant shall develop Design Deliverables using Building Information Modeling (“**BIM**”) as set forth in the Design Standards Manual, which is incorporated herein by reference. For each Task Order, Consultant will develop a draft BIM Project Execution Plan (“**BPXP**”) with the City and all sub-consultants. The BXP is only applicable for task orders where design drawings are going to be created and it will be outlined in the RFP for the task.

5. Consultant shall organize its Design Deliverables for any method of construction contracting selected by the City. Consultant shall fully coordinate Design Deliverables with the contractor selected to construct the work outlined in the Design Deliverables.

6. In performing all work under this Agreement, Consultant shall fully coordinate and integrate all services and Design Deliverables with related work being performed by other contractors, Consultant’s sub-contractors, the City, the City’s consultants, related suppliers and subcontractors of any tier, and, at the City’s request, other adjacent projects at DEN.

7. Consultant shall be liable to the City for all acts and omissions of Consultant and its employees, subcontractors, agents and any other party with whom Consultant contracts to perform any portion of the work under this Agreement, including any design elements of any authorized Task Order.

D. Time Is of the Essence. Consultant acknowledges that time is of the essence in its performance of all work and obligations under this Agreement. Consultant shall perform all work under this Agreement in a timely and diligent manner.

E. Construction Administration. If the City tasks Consultant with construction administration duties, such duties shall commence upon the earlier to occur of the following events: (a) the City's execution of a construction contract(s); (b) issuance of a construction task order pursuant to an existing construction contract; or (c) the City's issuance of the notice to proceed to the contractor(s).

F. Subcontractors.

1. In order to retain, hire, and/or contract with an outside subcontractor for work under this Agreement, Consultant must obtain the prior written consent of the CEO or the CEO's designee. Consultant shall request the CEO's approval in writing and shall 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 the City.

2. The CEO shall have the right to reject any proposed outside subcontractor deemed by the CEO to be unqualified or unsuitable for any reason (so long as reasonable and communicated to Consultant in a timely manner) to perform the proposed services. The CEO shall have the right to limit the number of outside subcontractors and/or to limit the percentage of work to be performed by them.

3. 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 the City or to file or claim any lien or encumbrance against any City property arising out of the performance or non-performance of this Agreement and/or the subcontract.

4. Consultant is subject to Denver Revised Municipal Code ("**D.R.M.C.**") § 20-112, wherein Consultant shall 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 the City. Any late payments are subject to a late payment penalty as provided in the Denver Prompt Payment Ordinance (D.R.M.C. §§ 20-107 through 20-118).

5. This Section, or any other provision of this Agreement, shall not create any contractual relationship between the City and any subcontractor. The City's approval of a subcontractor shall not create in that subcontractor a right to any subcontract. The City's approval of a subcontractor does not relieve Consultant of its responsibilities under this Agreement, including the work to be performed by the subcontractor.

G. Key Personnel Assignments.

1. Consultant or its subcontractor(s) shall assign all key personnel identified in the Scope of Work or Relevant Task Order(s) to perform work under this Agreement ("**Key Personnel**"). Only Key Personnel shall perform work under this Agreement, unless otherwise approved in writing by the EVP or his/her authorized representative.

2. It is the intent of the Parties that all Key Personnel perform their specialty for all such services required by this Agreement. Consultant and its subcontractor(s) shall

retain Key Personnel for the entire Term of this Agreement to the extent practicable and to the extent that such services maximize the quality of work performed.

3. If, during the Term of this Agreement, the Project Manager determines that the performance of any Key Personnel is not acceptable, or that any Key Personnel is no longer needed for performance of any Task Order, the Project Manager shall notify Consultant (in a timely manner) and may give Consultant notice of the period of time which the Project Manager considers reasonable to correct such performance or remove the Key Personnel, as applicable.

4. If Consultant fails to correct such performance, then the City may revoke its approval of the Key Personnel in question and notify Consultant that such Key Personnel will not be retained on this project. Within ten (10) days of receiving this notice, Consultant shall use its best efforts to obtain adequate substitute personnel who must be approved in writing by the Project Manager. Consultant's failure to obtain the Project Manager's approval shall be grounds for Termination for Cause in accordance with Article IV, Section C.3.

ARTICLE III. OWNERSHIP AND DELIVERABLES

Upon payment to Consultant, all records, data, deliverables, and any other work product prepared by Consultant or any custom development work performed by Consultant for the purpose of performing this Agreement on or before the day of payment shall become the sole property of the City. Upon request by the City, or based on any schedule agreed to by Consultant and the City, Consultant shall provide the 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 Parties. Consultant also agrees to allow the City to review any of the procedures Consultant uses in performing any work or other obligations under this Agreement, and to make available for inspection any and all notes, documents, materials, and devices used in the preparation for or performance of any of the scope of work, for up to three (3) years after termination of this Agreement. Upon written request from the City, Consultant shall deliver any information requested pursuant to this Article within ten (10) business days in the event a schedule or otherwise agreed-upon timeframe does not exist.

ARTICLE IV. TERM AND TERMINATION

A. Term. The Term of this Agreement shall commence on the Effective Date and shall expire Five Years from the Effective Date, unless terminated in accordance with the terms stated herein (the "**Expiration Date**"). If the Term expires prior to Consultant completing the work under this Agreement, subject to the prior written approval of the CEO or his/her authorized representative, this Agreement shall remain in full force and effect until the completion of any services commenced prior to the Expiration Date. Consultant has no right to compensation for services performed after the Expiration Date without such express approval from the CEO or his/her authorized representative.

B. Suspension and Termination.

1. Suspension. The City may suspend performance of this Agreement or any Task Order issued pursuant to this Agreement at any time with or without cause. Upon receipt of notice from the Director, Consultant shall stop work as directed in the notice and, as directed in the notice, shall submit an invoice for any work performed but not yet billed. Any milestones or other deadlines contained in the Task Order shall be extended by the period of suspension unless otherwise agreed to by the City and Consultant. The Expiration Date shall not be extended as a result of a suspension.

2. Termination for Convenience. The City may terminate this Agreement or any Task Order at any time without cause upon written notice to Consultant from the Director.

3. Termination for Cause. In the event Consultant fails to perform any provision of this Agreement, including any provision of any Task Order, the City may either:

a. Terminate this Agreement or the Task Order for cause with ten (10) days prior written notice to Consultant; or

b. Provide Consultant with written notice of the breach and allow Consultant an Opportunity to Cure.

4. Opportunity to Cure. Upon receiving the City's notice of breach pursuant to Section C.3.b of this Article, Consultant shall have five (5) days to commence remedying its defective performance. If Consultant diligently cures its defective performance to the City's satisfaction within a reasonable time as determined by the City, then this Agreement or the Task Order shall not terminate and shall remain in full force and effect. If Consultant fails to cure the breach to the City's satisfaction, then the City may terminate this Agreement or the Task Order pursuant to Article IV, Section C.3.a.

5. Compensation for Services Performed Prior to Suspension or Termination Notice. If this Agreement or any Task Order is suspended or terminated, the City shall pay Consultant the reasonable cost of only those services performed to the satisfaction of the CEO or his/her authorized representative prior to the notice of suspension or termination. Consultant shall submit a final invoice for these costs within thirty (30) days of the date of the notice. Consultant has no right to compensation for services performed after the notice unless directed to perform those services by the City as part of the termination process or as provided in Section 6 below.

6. Reimbursement for Cost of Orderly Termination. In the event of Termination for Convenience or this Agreement or any Task Order pursuant to Article IV, Section C.2., Consultant may request reimbursement from the City of the reasonable costs of orderly termination associated with the Termination for Convenience as part of its submittal of costs pursuant to Section C.5. In no event shall the total sums paid by the City pursuant to this Contract, including Sections C.5 and C.6, exceed the Maximum Contract Amount.

7. **No Claims.** Upon termination of this Agreement or any Task Order, Consultant shall have no claim of any kind against the City by reason of such termination or by reason of any act incidental thereto. Consultant shall not be entitled to loss of anticipated profits or any other consequential damages as a result of termination.

C. Remedies. In the event Consultant performs services under this Agreement in violation of any provision herein, Consultant shall be liable to the City for all costs of correcting the work without additional compensation, including but not limited to:

1. All costs of correcting and replacing any affected design documents, including reproducible drawings;

2. All removal and replacement costs of any improvements or other work installed or performed pursuant to and in accordance with design documents containing negligent errors, omissions, and/or defects; and

3. Additional costs incurred by the City, its tenants, or its other contractors arising out of Consultant's defective work.

These remedies are in addition to, and do not limit, the remedies available to the City in law or in equity. These remedies do not amend or limit the requirements of Article VII and Article VIII of this Agreement.

ARTICLE V. COMPENSATION AND PAYMENT

A. Maximum Contract Amount. Notwithstanding any other provision of this Agreement, the City shall not be liable under any theory 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 **Two Million Five Hundred Thousand Dollars and Zero Cents (\$2,500,000.00)** ("**Maximum Contract Amount**"). Consultant shall perform the services under each Task Order on either an hourly rate basis or a lump sum basis up to the Maximum Contract Amount.

B. Limited Obligation of City. The obligations of the City under this Agreement shall extend only to monies encumbered for the purposes of this Agreement. Consultant acknowledges and understands the 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 the City. The City is not under any obligation to make any future encumbrances or appropriations for this Agreement nor is the City under any obligation to amend this Agreement to increase the Maximum Contract Amount above.

C. Payment Source. For payments required under this Agreement, the City shall make payments to Consultant solely from funds of the City and County of Denver Airport System Fund and from no other fund or source. The City has no obligation to make payments from any other source.

D. Payment Schedule. Subject to the Maximum Contract Amount, for payments required under this Agreement, the City shall pay Consultant's fees and expenses in accordance

with this Agreement. Unless otherwise agreed to in writing, Consultant shall invoice the City on a regular basis in arrears and the City shall pay each invoice in accordance with Denver's Prompt Payment Ordinance, D.R.M.C. § 20-107, et seq., subject to the Maximum Contract Amount.

E. Invoices. Unless otherwise provided in a Task Order, Consultant shall submit to the City a monthly progress invoice containing reimbursable costs and receipts from the previous month for professional services rendered under this Agreement to be audited and approved by the City ("**Invoice**"). Each Invoice shall provide the basis for payments to Consultant under this Agreement. In submitting an Invoice Consultant shall comply with all requirements of this Agreement and:

1. Include an executive summary and status report(s) that describe the progress of the services and summarize the work performed during the period covered by the Invoice;
2. Include a statement of recorded hours that are billed at an hourly rate;
3. Include the relevant purchase order ("**PO**") number related to the Invoice;
4. Ensure that amounts shown on the Invoices comply with and clearly reference the relevant services, indicate the hourly rate and multiplier where applicable, and identify the allowable reimbursable expenses;
5. For only those reimbursable costs incurred in the previous month, submit itemized business expense logs and, where billing is based upon receipts, include copies of receipts for all allowable reimbursable expenses;
6. Include the signature of an authorized officer of Consultant, along with such officer's certification they have examined the Invoice and found it to be correct; and
7. Submit each Invoice via email to ContractAdminInvoices@flydenver.com.
8. Late Fees. Consultant understands and agrees interest and late fees shall be payable by the City only to the extent authorized and provided for in the City's Prompt Payment Ordinance.
9. Travel Expenses. Travel and any other expenses are not reimbursable unless such expenses are related to and in furtherance of the purposes of Consultant's engagement, are in accordance with this Agreement, and Consultant receives prior written approval of the EVP or his/her authorized representative.

F. Fee. Initial individual hourly rates including any applicable multiplier are set forth in **Exhibit D**. The Project Manager, in his or her sole discretion, may annually adjust the hourly rates and/or the multiplier on the anniversary of the Effective Date through a Task Order applicable to future work as further provided in the Task Order. Hourly rate adjustments shall not exceed the Denver-Aurora-Lakewood Consumer Price Index issued by the U.S. Department of Labor, Bureau of Labor Statistics.

G. Timesheets. Consultant shall maintain all timesheets kept or created in relation to the services performed under this Agreement. The City may examine such timesheets upon the City's request.

H. Disputed Invoices. The City reserves the right to reject and not pay any Invoice or part thereof, including any final invoice resulting from a Termination of this Agreement or any Task Order, where the EVP or his/her authorized representative determines the amount invoiced exceeds the amount owed based upon the work satisfactorily performed. The City shall pay any undisputed items contained in an Invoice. Disputes concerning payments under this provision shall be resolved in accordance with procedures set forth in Article IX.

I. Carry Over. If Consultant's total fees for any of the services provided under this Agreement are less than the amount budgeted for, the amount remaining in the budget may be used for additional and related services rendered by Consultant if the CEO or his/her authorized representative determines such fees are reasonable and appropriate and provides written approval of the expenditure.

ARTICLE VI. MWBE, WAGES AND PROMPT PAYMENT

A. Minority/Women Business Enterprises.

1. This Agreement is subject to Article III, Divisions 1 and 3 of Chapter 28, Denver Revised Municipal Code ("**D.R.M.C.**"), designated as §§ 28-31 to 28-40 and 28-51 to 28-90 (the "**MWBE Ordinance**") and any Rules or Regulations promulgated pursuant thereto. The contract goal for MWBE participation established for this Agreement by the Division of Small Business Opportunity ("**DSBO**") is 0%.

2. Under § 28-68 D.R.M.C., Consultant has an ongoing, affirmative obligation to maintain for the duration of this Agreement, at a minimum, compliance with its originally achieved level of MWBE participation upon which this Agreement was awarded, unless the City initiates a material alteration to the scope of work affecting MWBEs performing on this Agreement through contract amendment, or other contract modifications, or as otherwise described in § 28-70, D.R.M.C. Consultant acknowledges that:

- a. If required by DSBO, Consultant shall develop and comply with a Utilization Plan in accordance with § 28-63, D.R.M.C. Along with the Utilization Plan requirements, Consultant must establish and maintain records and submit regular reports, as directed by DSBO, which will allow the City to assess progress in complying with the Utilization Plan and achieving the MWBE participation goal. The Utilization Plan is subject to modification by DSBO.
- b. If contract modifications are issued under the Agreement, Consultant shall have a continuing obligation to immediately inform DSBO in writing of any agreed upon increase or decrease in the scope of work of such contract, upon any of the bases discussed in § 28-70, D.R.M.C., regardless of whether such increase or decrease in scope of work has been reduced to writing at the time of notification.

- c. If amendments or other contract modifications are issued under the contract that include an increase in the scope of work of this Agreement, which increases the dollar value of the contract, whether or not such change is within the scope of work designated for performance by an MWBE at the time of contract award, such amendments or modifications shall be immediately submitted to DSBO for notification purposes.
- d. Those amendments or other modifications that involve a changed scope of work that cannot be performed by existing project subconsultants are subject to the original goal. Consultant shall satisfy the goal with respect to such changed scope of work by soliciting new MWBEs in accordance with § 28-70, D.R.M.C. Consultant must also satisfy the requirements under §§ 28-64 and 28-73, D.R.M.C., with regard to changes in scope or participation. Consultant shall supply to the DSBO Director all required documentation described in §§ 28-64, 25-70, and 28-73, D.R.M.C., with respect to the modified dollar value or work under the Agreement.
- e. Failure to comply with these provisions may subject Consultant to sanctions set forth in § 28-76 of the MWBE Ordinance.
- f. Should any questions arise regarding DSBO requirements, Consultant should consult the MWBE Ordinance or may contact the Project's designated DSBO representative at (720) 913-1999.

B. Prevailing Wage. To the extent required by law. Consultant shall comply with, and agrees to be bound by, all requirements, conditions and City determinations regarding the Payment of Prevailing Wages Ordinance, §§ 20-76 through 20-79, D.R.M.C. including, but not limited to, the requirement that every covered worker working on a City owned or leased building or on City-owned land shall be paid no less than the prevailing wages and fringe benefits in effect on the Effective Date of this Agreement.

- 1. Prevailing wage and fringe rates will adjust on, and only on, the anniversary of the Effective Date of this Agreement. Unless expressly provided for in this Agreement, Consultant will receive no additional compensation for increases in prevailing wages or fringe benefits.
- 2. Consultant shall provide the Auditor with a list of all subcontractors providing any services under the contract.
- 3. Consultant shall provide the Auditor with electronically-certified payroll records for all covered workers employed under this Agreement.
- 4. Consultant shall prominently post at the work site the current prevailing wage and fringe benefit rates. The posting must inform workers that any complaints regarding the payment of prevailing wages or fringe benefits may be submitted to the Denver Auditor by calling 720-913-5000 or emailing auditor@denvergov.org.

5. If Consultant fails to pay workers as required by the Prevailing Wage Ordinance, Consultant will not be paid until documentation of payment satisfactory to the Auditor has been provided. The City may, by written notice, suspend or terminate work if Consultant fails to pay required wages and fringe benefits.

C. City Minimum Wage. To the extent required by law, Consultant shall comply with and agrees to be bound by all requirements, conditions, and the City determinations regarding the City's Minimum Wage Ordinance, §§ 20-82 through 20-84 D.R.M.C., including, but not limited to, the requirement that every covered worker shall be paid no less than the City Minimum Wage in accordance with the City's Minimum Wage Ordinance. By executing this Agreement, Consultant expressly acknowledges that Consultant is aware of the requirements of the City's Minimum Wage Ordinance and that any failure by Consultant, or any other individual or entity acting subject to this Agreement, to strictly comply with the foregoing D.R.M.C. Sections shall result in the penalties and other remedies authorized therein.

D. Prompt Pay. The City will make monthly progress payments to Consultant for all services performed under this Agreement based upon Consultant's monthly invoices. Such invoices shall be in a form acceptable to the City and shall include detail of the time worked by Consultant's own personnel, billings from subcontractors, and all other information necessary to assess Consultant's progress. Invoices shall be accompanied by documentation of expenses for which reimbursement is sought, and all other supporting documentation required by the City. The City's Prompt Payment Ordinance, §§ 20-107 to 20-118, D.R.M.C., applies to invoicing and payment under this Agreement.

1. Final Payment to Consultant shall not be made until after the Project is accepted, and all certificates of completion, record drawings and reproducible copies are delivered to the City, and the Agreement is otherwise fully performed by Consultant. The City may, at the discretion of the Director, withhold reasonable amounts from billing and the entirety of the final payment until all such requirements are performed to the satisfaction of the Director. However, no deductions shall be made from Consultant's compensation because of penalty, liquidated damages or other sums withheld from payments to contractor(s)/consultants.

2. **Prompt Pay of MWBE Subcontractors.** For contracts of one million dollars (\$1,000,000.00) and over, Consultant is required to comply with the Contractor Prompt Payment provisions under § 28-72, D.R.M.C., regarding prompt payments by Consultant to MWBE subcontractors. Payment to MWBE subcontractors shall be made no later than thirty-five (35) days after receipt of an MWBE subcontractor invoice.

ARTICLE VII. INSURANCE REQUIREMENTS

A. Consultant shall obtain and keep in force all of the minimum insurance coverage forms and amounts set forth in *Exhibit C* ("**Insurance Requirements**") during the entire Term of this Agreement, including any extensions of the Agreement or other extended period stipulations stated in *Exhibit C*. All certificates of insurance and any required endorsements must be received and approved by DEN Risk Management before any airport access or work commences.

B. Unless specifically excepted in writing by DEN Risk Management, if Consultant shall be using subcontractors to provide any part of the services under this Agreement, Consultant shall do one of the following:

1. Include all subcontractors performing services hereunder as insureds under its required insurance and specifically list on all submitted certificates of insurance required under *Exhibit C*; or
2. Ensure that each subcontractor provides its own insurance coverage in accordance with the requirements set forth in this Agreement.

C. The City in no way warrants 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, employees, or subcontractors. Consultant shall assess its own risks and maintain higher limits and/or broader coverage as it deems appropriate and/or prudent. Consultant is not relieved of any liability or other obligations assumed or undertaken pursuant to this Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types.

D. In no event shall the City be liable for any of the following: (i) business interruption or other consequential damages sustained by Consultant; (ii) damage, theft, or destruction of Consultant's inventory, or property of any kind; or (iii) damage, theft, or destruction of an automobile, whether or not insured.

E. The Parties understand and agree that the City, its elected and appointed officials, employees, agents and volunteers are relying on, and do not waive or intend to waive by any provisions of this Agreement, the monetary limitations and 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 the City, its elected and appointed officials, employees, agents and volunteers.

ARTICLE VIII. DEFENSE AND INDEMNIFICATION

A. 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.

B. 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.

C. 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.

D. 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.

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

ARTICLE IX. DISPUTES

All disputes arising under or related to this Agreement shall be resolved by administrative hearing under the procedures described in D.R.M.C. § 5-17 and all related rules and procedures. 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 X. GENERAL TERMS AND CONDITIONS

A. Status of Consultant. Parties agree that the status of Consultant shall be an independent Consultant 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 the City and County of Denver (the "**City Charter**"). It is not intended, nor shall it be construed, that Consultant or its personnel are employees or officers of the 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 CEO or his/her authorized representative. Any attempt by Consultant to assign or transfer its rights hereunder without such prior written consent shall, at the option of the CEO or his/her authorized representative, automatically terminate this Agreement and all rights of Consultant hereunder.

C. Compliance with all Laws and Regulations. Consultant and its subcontractor(s) shall perform all work under this Agreement in compliance with all existing and future applicable laws, rules, regulations and codes of the United States and the State of Colorado and with the City Charter, ordinances and rules and regulations of the City.

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, as they may be amended from time to time. Consultant will not utilize any protected patent, trademark or copyright in performance of its work unless it has obtained proper permission, 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 such documents.

2. Pursuant to Article VIII, Consultant shall indemnify and defend the City from any and all claims, damages, suits, costs, expenses, liabilities, actions or proceedings 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.

1. Notice of Termination. Notices concerning termination of this Agreement 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 the City to:

Birdair Inc.
6461 Main Street
Amherst, NY 14221

Attn: Thomas M. Connell
tconnell@birdair.com

2. Delivery of Formal Notices. Formal notices of the termination of this Agreement shall be delivered personally during normal business hours to the appropriate office above or by prepaid U.S. certified mail, return receipt requested, or by electronic delivery directed to the person identified above and copied to the Project Manager through the electronic or software system used at the City's direction for Task Order-related and other official communications and document transmittals. Mailed notices shall be deemed effective upon deposit with the U.S. Postal Service and electronically transmitted notices by pressing "send" or the equivalent on the email or other transmittal method sufficient to irretrievably transmit the document. Either party may from time to time designate substitute addresses or persons where and to whom such notices are to be mailed, delivered or emailed, but such substitutions shall not be effective until actual receipt of written or electronic notification thereof through the method contained in Subsection E.2.

3. Other Correspondence. Other notices and day-to-day correspondence between the Parties may be done via email directed to the Project Manager or through the

electronic or software system used at the City's direction in writing for Task Order-related communications and document transmittals.

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

G. No Third-Party Beneficiaries. The Parties agree that enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement shall be strictly reserved to the City and Consultant, and nothing contained in this Agreement shall give or allow any such claim or right of action by any third party. It is the express intention of the Parties that any person or entity other than the City or Consultant receiving services or benefits under this Agreement shall be deemed an incidental beneficiary and shall not have any interest or rights under this Agreement.

H. Governing Law. This Agreement is made under and shall be governed by the laws of the State of Colorado. Each and every term, provision and condition herein is subject to the provisions of Colorado law, the City Charter, and the ordinances and regulations enacted pursuant thereto, as may be amended from time to time.

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

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

K. Cooperation with Other Contractors.

1. The City may award other contracts for additional work, and Consultant shall fully cooperate with such other contractors. The City, in its sole discretion, may direct Consultant to coordinate its work under this Agreement with one or more such contractors.

2. Consultant shall have no claim against the City for additional payment due to delays or other conditions created by the operation of other contractors. The City will decide the respective rights of the various contractors in order to secure the completion of the work.

L. Inurement. The rights and obligations of the Parties herein set forth shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns permitted under this Agreement.

M. Force Majeure. The Parties shall not be liable for any failure to perform any of its obligations hereunder due to or caused by, in whole or in part, fire, strikes, lockouts, unusual

delay by common carriers, unavoidable casualties, war, riots, acts of terrorism, acts of civil or military authority, acts of God, judicial action, or any other causes beyond the control of the Parties. The Parties shall have the duty to take reasonable actions to mitigate or prevent further delays or losses resulting from such causes.

N. Coordination and Liaison. Consultant agrees that during the term of this Agreement it shall fully coordinate all services that it has been directed to proceed upon and shall make every reasonable effort to fully coordinate all such services as directed by the EVP or his/her authorized representative, along with any City agency, or any person or firm under contract with the City doing work which affects Consultant's work.

O. No Authority to Bind City to Contracts. Consultant has no authority to bind the City on any contractual matters. Final approval of all contractual matters which obligate the City must be by the City as required by the City Charter and ordinances.

P. Information Furnished by the City. The City will furnish to Consultant information concerning matters that may be necessary or useful in connection with the work to be performed by Consultant under this Agreement. The Parties shall make good faith efforts to ensure the accuracy of information provided to the other Party; however, Consultant understands and acknowledges that the information provided by the City to Consultant may contain unintended inaccuracies. Consultant shall be responsible for the verification of the information provided to Consultant.

Q. Taxes and Costs. Consultant shall promptly pay, when due, all taxes, bills, debts and obligations it incurs performing work under this Agreement and shall allow no lien, mortgage, judgment or execution to be filed against land, facilities or improvements owned by the City.

R. Environmental Requirements. Consultant, in conducting its activities under this Agreement, shall comply with all existing and future applicable local, state and federal environmental rules, regulations, statutes, laws and orders (collectively "**Environmental Requirements**"), including but not limited to Environmental Requirements regarding the storage, use and disposal of Hazardous or Special Materials and Wastes, Clean Water Act legislation, Centralized Waste Treatment Regulations, and DEN Rules and Regulations.

1. For purposes of this Agreement the terms "Hazardous Materials" shall refer to those materials, including without limitation asbestos and asbestos-containing materials, polychlorinated biphenyls (PCBs), oil or any other petroleum products, natural gas, source material, pesticide, and any hazardous waste, toxic substance or related material, including any substance defined or treated as a "hazardous substance," "hazardous waste" or "toxic substance" (or comparable term) in the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Sec. 9601 et seq. (1990)), the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq. (1990)), and any rules and regulations promulgated pursuant to such statutes or any other applicable federal or state statute.

2. Consultant shall acquire all necessary federal, state and local environmental permits and comply with all applicable federal, state and local environmental permit requirements.

3. Consultant agrees to ensure that its activities under this Agreement are conducted in a manner that minimizes environmental impact through appropriate preventive measures. Consultant agrees to evaluate methods to reduce the generation and disposal of waste materials.

4. In the case of a release, spill or leak as a result of Consultant's activities under this Agreement, Consultant shall immediately control and remediate the contaminated media to applicable federal, state and local standards. Consultant shall reimburse the City for any penalties and all costs and expenses, including without limitation attorney's fees, incurred by the City as a result of the release or disposal by Consultant of any pollutant or hazardous material.

ARTICLE XI. RECORD RETENTION AND OTHER STANDARD CITY PROVISIONS

A. Diversity and Inclusiveness. The City encourages the use of qualified small businesses doing business within the metropolitan area that are owned and controlled by economically or socially disadvantaged individuals. Consultant is encouraged, with respect to the goods or services to be provided under this Agreement, to use a process that includes small businesses when considering and selecting any subcontractors or suppliers.

B. Non-Discrimination Policy. In connection with the performance of services under this Agreement, Consultant shall not 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 this provision in all subcontracts hereunder.

C. 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 EVP or his/her authorized representative. Any oral presentation or written materials related to DEN shall include only presentation materials, work product, and technical data which have been accepted by the City, and designs and renderings, if any, which have been accepted by the City. Consultant shall notify the EVP in advance of the date and time of any such presentations. Nothing herein, however, shall preclude Consultant's transmittal of any information to officials of the City, including without limitation, the Mayor, the CEO, any member or members of Denver City Council, and the Auditor.

D. Colorado Open Records Act.

1. Consultant acknowledges that the City is subject to the provisions of the Colorado Open Records Act ("**CORA**"), C.R.S. §§ 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 or otherwise exempt from disclosure. Any other provision of this Agreement notwithstanding, all materials, records, and information provided by Consultant to the City shall be considered confidential by the City only to the extent provided in CORA, and

Consultant agrees that any disclosure of information by the City consistent with the provisions of CORA shall result in no liability of the City.

2. In the event of a request to the City for disclosure of such information, time and circumstances permitting, the 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, the 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, the City may 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 the 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 the City of all reasonable attorney's fees, costs, and damages the City may incur directly or may be ordered to pay by such court, including but not limited to time expended by the City Attorney Staff, whose costs shall be computed at the rate of two hundred dollars and no cents (\$200.00) per hour of City Attorney time.

E. Examination of Records and Audits.

1. Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and records related to Consultant's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. Consultant shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations, if longer than three (3) years. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require Consultant to make disclosures in violation of state or federal privacy laws. Consultant shall at all times comply with D.R.M.C. §20-276.

2. Additionally, Consultant agrees until the expiration of three (3) years after the final payment under the Agreement, any duly authorized representative of the City, including the CEO or his or her representative, shall have the right to examine any pertinent books, documents, papers and records of Consultant related to Consultant's performance of this Contract, including communications or correspondence related to Consultant's performance, 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.

3. In the event the City receives federal funds to be used toward the services performed under this Agreement, 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.

F. Use, Possession or Sale of Alcohol or Drugs. Consultant shall cooperate and comply with the provisions of Denver 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 the City barring Consultant from City facilities or participating in City operations.

G. 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.

H. Conflict of Interest.

1. Consultant and its subsidiaries, affiliates, subcontractors, principals, or employees shall 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, including 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 the City.

2. The City, in its sole discretion, shall determine the existence of a conflict of interest and may terminate this Agreement if such a conflict exists, after it has given Consultant written notice which describes such conflict. Consultant shall have thirty (30) days after the notice is received in which to eliminate or cure the conflict of interest in a manner which is acceptable to the City.

I. Prohibition Against Employment of Illegal Aliens to Perform Work Under this Agreement.

1. The Agreement is subject to § 8-17.5, C.R.S., and D.R.M.C. § 20-90 and Consultant is liable for any violations as provided in said statute and ordinance.

2. 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. 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 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 the City within three (3) days. Consultant will also then terminate such subcontractor or subconsultant if within three (3) days after such notice the subcontractor or subconsultant does not stop employing or contracting with the illegal alien, unless during such three-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 the City Auditor under authority of D.R.M.C. § 20-90.3.

ARTICLE XII. 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 the Code of Federal Regulations, 49 C.F.R. Part 1520. Consultant specifically agrees to comply with all requirements of the applicable federal regulations, including but not limited to, 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.

ARTICLE XIII. DEN SECURITY

A. Consultant, its officers, authorized officials, employees, agents, subcontractors, and those under its control, shall comply with safety, operational, or security measures required of Consultant or the 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 the City, then, in addition to any other remedies available to the City, Consultant shall fully reimburse the City any fines or penalties levied against the City, and any attorney fees or related costs paid by the City as a result of any such violation. Consultant must pay this amount within fifteen (15) days from the date of the invoice or written notice. Any fines and fees assessed by the FAA or TSA against the City due to the actions of Consultant and/or its agents will be deducted directly from the invoice for that billing period.

B. Consultant is responsible for compliance with Airport Security regulations and 49 C.F.R. Parts 1542 (Airport Security) and 14 C.F.R. Parts 139 (Airport Certification and Operations). Any and all violations pertaining to Parts 1542 and 139 resulting in a fine will be passed on to and borne by Consultant. The fee/fine will be deducted from the invoice at time of billing.

ARTICLE XIV. FEDERAL RIGHTS

This Agreement is subject and subordinate to the terms, reservations, restrictions and conditions of any existing or future agreements between the 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 the City for airport purposes and the expenditure of federal funds for the extension, expansion or development of the Denver Municipal Airport System. As applicable, Consultant shall comply with the Standard Federal Assurances identified in Appendix 1.

ARTICLE XV. CONTRACT DOCUMENTS; ORDER OF PRECEDENCE

A. Attachments. This Agreement consists of Article I through XVI 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: Insurance Requirements

Exhibit D: Rates

B. Order of Precedence. In the event of an irreconcilable conflict between a provision of Article I through XVI 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

Article I through XVI hereof

Exhibit A
Exhibit D
Exhibit C
Exhibit B

ARTICLE XVI. CITY EXECUTION OF AGREEMENT

A. City Execution. This Agreement is expressly subject to, and shall become effective upon, the execution of all signatories of the City and, if required, the approval of Denver City Council. 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.

B. Electronic Signatures and Electronic Records. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City and/or Consultant 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-201951034
Contractor Name: BIRDAIR INC

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

SEAL **CITY AND COUNTY OF DENVER:**

ATTEST: By: _____

APPROVED AS TO FORM: **REGISTERED AND COUNTERSIGNED:**
Attorney for the City and County of Denver
By: _____ By: _____

By: _____

Contract Control Number:
Contractor Name:

PLANE-201951034
BIRDAIR INC

By:  87DC466EE9B14CB...

Name: Hikaru Konno
(please print)

Title: President
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

TENT ROOF MAINTENANCE AND REPAIR

PROJECT NO. 201951034

EXHIBIT A: SCOPE OF WORK AND TECHNICAL REQUIREMENTS

1.0 Scope of Services: This solicitation is for the annual inspection, testing, maintenance and repair of the Polytetrafluoroethylene (PTFE) coated tensile fabric roofs and the Herculite (PVC/Polyester) Liner at the Denver International Airport (DEN). Refer to Section 1.1 for physical elements to be included in this scope. Task Orders for this contract may include inspections, testing, and/or repairs and maintenance to any of the physical elements of the roofs.

1.1 Physical elements

- A. Main terminal roof
 - i. Outer fabric membrane
 - a. Fabric panels
 - b. In-fabric cables
 - i). Cables
 - ii). PVC sheathing
 - iii). End fittings, including pins, cotter pins, etc.
 - c. Fabric panel edge details (ridge, valley, edge catenary, sectionalizing, etc.)
 - i). Anchorage plates and angles
 - ii). Gaskets, clamp plates, and bolts
 - iii). Cable straps
 - iv). Rain diverter
 - v). Turnbuckles and eyebolts
 - vi). Cable cuffs
 - vii). Aluminum sheet metal and fabric covers
 - d. Drainage system
 - ii. Masts
 - a. Masts
 - b. Spherical bearings
 - c. Rings
 - d. Ring-supporting cables
 - e. Fiberglass enclosures (cones)
 - f. Fabric closures (between mast and cone)
 - g. Skylights (high masts)
 - iii. Off-fabric cables
 - a. Cables
 - b. PVC sheathing
 - c. End fittings, including pins, cotter pins, etc.
 - d. Anchorage plates (to conventional roof framing or foundation)

- e. Concrete foundations
 - iv. Tie-down connectors (structural steel)
 - a. At top of vertical tie-down cables
 - v. Struts
 - a. Struts
 - b. Spherical bearings
 - c. Cable connection plates
 - d. Anchorage plates (to conventional roof framing)
 - e. Concrete foundations
 - vi. Air-filled closure ("bladder")
 - a. Bladder
 - b. Connections to main roof membrane
 - c. Connections to south and north walls and clerestory framing
- B. Perimeter wall framing
 - i. South wall framing
 - a. Structural steel
 - b. Cables
 - i). Cables
 - ii). PVC sheathing
 - iii). End fittings, including pins, cotter pins, etc.
 - iv). Anchorage plates (to conventional roof framing)
 - ii. North wall framing
 - a. Structural steel
 - b. Cables
 - i). Cables
 - ii). PVC sheathing
 - iii). End fittings, including pins, cotter pins, etc.
 - iv). Anchorage plates (to conventional roof framing)
 - iii. Clerestory framing
 - a. Structural steel
 - b. Cables
 - i). Cables
 - ii). PVC sheathing
 - iii). End fittings, including pins, cotter pins, etc.
 - iv). Anchorage plates (to conventional roof framing)
- C. Inner liner
 - i. Fabric membrane
 - a. Fabric panels
 - b. In-fabric cables
 - i). Cables
 - ii). PVC sheathing
 - iii). End fittings, including pins, cotter pins, etc.
 - iv). Anchorage plates (to clerestory)
 - c. Fabric panel edge details (ridge, valley, sectionalizing, etc.)

- i). Anchorage plates and angles
 - ii). Gaskets, clamp plates, and bolts
 - iii). Cable straps
 - iv). Fabric covers
 - ii. Off-fabric cables
 - a. See perimeter wall framing
- D. Perimeter wall architectural infill
 - i. Glazing units
 - ii. Aluminum mullions, muntins, etc.
 - iii. Caulk, sealant, etc.
- E. Other tensile fabric roof structures included in this scope of work
 - i. East and west curbside canopies
 - ii. East and west departure level canopies
 - iii. East and west toll plaza canopies

2.0 Annual Inspections and Testing

- 2.1 Annual Inspections: Perform annual inspections of the physical elements of the main terminal roof listed in Section 1.1 and produce a detailed report to assist with the planning of continued maintenance of the main terminal roof and eventual replacement of the outer fabric membrane and other roof components. When testing is performed, include test results and conclusions and recommendations based on the test results.

2.2 Field Inspections

- A. Include inspections of any physical elements (Section 1.1) listed for each task order.
- B. Access physical elements from within terminal, on adjacent roofs, and on membrane.
 - i. Use existing basket lift system for masts and mast-top areas.
 - ii. Use lifts, scaffolding, etc. as coordinated with DEN.
 - iii. Use binoculars for areas not within close reach.
- C. Perform visual inspection of all physical elements unobstructed from view.
 - i. Where occurs and required for items included, remove obstructing architectural enclosures, fabric or sheet metal closures, etc.; re-attach or replace, as appropriate.
 - ii. Where occurs, remove obstructing roof ballast, debris, soil, etc. if possible; coordinate with DEN for replacement or disposal, as appropriate.
- D. Perform hands-on inspection of elements where access allows.
- E. Collect field notes.
 - i. Maintain written record of general conditions and specific deficiencies.
 - ii. Capture color photographs of all areas and items of interest.
 - iii. Use inspection forms (plans, maps, detail diagrams, worksheets, checklists) to document locations of deficiencies and photographs.

- iv. Bring to the attention of DEN maintenance staff (or other designated personnel) any deficiencies requiring immediate and/or priority repairs.
 - a. Recommend action and/or further investigation.
- v. Bring to the attention of DEN maintenance staff (or other designated personnel) any deficiencies of items not included in scope for which further investigation may be warranted.

2.3 Obtain Samples for Testing

A. Procedures

- i. Install temporary supports as needed.
 - ii. Fabric panels
 - a. Install replacement panel.
 - b. Remove panel for testing.
 - iii. Cables, including PVC sheathing and end fittings
 - a. Remove cable for testing.
 - b. Install replacement cable.
 - iv. Clamp bars, bolts, gaskets, etc.
 - a. Remove and replace items one at a time.
 - v. Remove temporary supports.
 - vi. Maintain integrity of structural systems at all times.
 - vii. Record location, general condition, and specific deficiencies (if any) of each sample.
 - viii. Obtain similar samples for both own facility and DEN third-party testing laboratory.
 - ix. Tag or permanently mark each sample for identification.
 - x. Package samples and ship to testing laboratories.
 - a. Protect samples from damage during shipping.
- B. Perform all work in such a way as to minimize interference with normal operation of the facility.
- i. Notify DEN maintenance staff (or other designated personnel) of each day's areas of work and equipment to be used.
 - ii. Arrange for security escort, if required.

2.4 Testing of samples

- A. Perform all testing in own facility (or other facility acceptable to DEN) in accordance with established testing standards (e.g., those published by ASTM, FTMS, etc.).
- B. Submit for review proposed methodology for tests for which established testing standards do not exist.
- C. Fabric panels
 - i. Prepare specimens for testing.
 - a. Cut specimens from panels or subpanels.
 - b. Wash specimens.
 - c. Evaluate condition of fabric.
 - ii. Test specimens for the following properties.

- a. Weight
- b. Water absorption
- c. Thickness
- d. Strip tensile strength, wet and dry
- e. Strip tensile strength after flexfold, wet and dry
- f. Trapezoidal tear strength, dry
- g. Coating adhesion, wet and dry
- h. Lap shear strength
- i. Uniaxial elongation

2.5 Reports

- A. Provide final reports.
 - i. Include the following sections (and others, if warranted).
 - a. Executive summary
 - b. Summary of priority and safety repairs
 - c. Table of contents; list of tables, photographs, maps, drawings, etc.; location plans
 - d. Physical elements included and scope of work
 - e. Inspection procedures
 - f. Definitions and terminology
 - g. Building data
 - h. For each structural component
 - i). Inspection findings
 - ii). Results of testing of samples
 - iii). Conclusions
 - iv). Recommendations
 - v). Photographs (captioned)
 - vi). Maps
 - i. Laboratory testing data
- B. Conduct meeting with DEN staff (or other designated personnel) to discuss critical findings.
 - i. Discuss overall conditions.
 - ii. Summarize and describe immediate and priority repairs.
 - iii. Provide recommendations for additional inspections, tests, etc.

3.0 Repairs and Maintenance

3.1 Repairs

- A. In conjunction with field inspection, perform immediate, priority, safety, and/or routine repairs where time and available tools and materials allow.
- B. Include locations of repairs and methods used to perform them in field notes and reports.
- C. Arrange for repairs to be made at a later date (based on urgency) where time, tools, and/or materials do not allow for repairs to be made during inspection.

3.2 Maintenance

- A. Task Orders may be issued when maintenance is required on any of the physical elements listed in Section 1.1.

Exhibit B

PROFESSIONAL SERVICES

Design and Engineering

SCHEDULING, PROGRESS REPORTING,
INVOICING AND CORRESPONDENCE CONTROL

Revised: June 2018



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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 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.

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-day 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 is 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 the Textura Fee along with any applicable fees or taxes 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. The Denver Metro area is Adams, Arapahoe, Boulder, Clear Creek, Douglas, Gilpin and Jefferson counties, the City and County of Denver, the City and County of Broomfield and southwest Weld County. The DRCOG Area Agency on Aging service area includes Adams, Arapahoe, Clear Creek, Douglas, Gilpin and Jefferson counties, the City and County of Denver, and the City and County of Broomfield. 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 Senior Director 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 Parking: Parking at the airport can be validated or reimbursed if the vendor is required to come in at the City's request. Only long-term parking will be validated; tickets will not be validated or reimbursed for short-term or valet parking

8.15 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 not an allowable expense.

8.16 Preparation of Proposals and Billing: Costs for proposal preparation, negotiation and invoicing/billing will not 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 14 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

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.

Submitted/Reviewed by: _____

Name and Title

Signature: _____ **Date:** _____



Attachment B

Staff Augmentation

Personnel Request and Assignment Form

Section 1 - Request

☐ New☐ Renewal

Contract Title: _____

Contract Number: _____ Prime Consultant: _____

Position Title: _____

DEN Supervisor: _____

CSA Title: _____
(Attach Description)

Pay Range: _____ to _____

Preferred
Qualifications:

Section 2 - Authorization

Employee Name: _____
(Attach Resume)

Section 3 - Assignment

Employer: _____

Proposed Hourly Rate: _____ Multiplier: _____ Proposed Billing Rate: _____

Current Hourly Rate: _____ Multiplier: _____ Current Billing Rate: _____

Assignment Date: _____

Director Signature: _____

Sr. Director Signature: _____



Attachment C

Expense Greater than \$500 Approval Form

Date: _____

Contract Name: _____

Contract Number: _____ Task Numbers, if needed: _____

Company Name: _____

Employee Name: _____

Estimated Total Cost: _____

Reason for Expense:

Below to be completed by DEN personnel

Capital Assets: ☐ Yes ☐ No

(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.

Approved by: _____ **Date:** _____
Project Manager

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:

Below to be completed by DEN personnel

Travel for the above named individual and purpose is approved.

Approved by: _____ **Date:** _____
Project Manager



Attachment E

Advance Travel Authorization Form

Contract No: _____ **Date:** _____

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

Traveler's Employer: _____

Destination: _____

Duration: From _____ **To** _____

Approximate Travel Costs: _____

Purpose of Trip:

Reviewed by: _____ **Date:** _____
Project Manager

Approved by: _____ **Date:** _____
Supervisor

Approved by: _____ **Date:** _____
Director

**CITY AND COUNTY OF DENVER
INSURANCE REQUIREMENTS FOR DEPARTMENT OF AVIATION
SERVICES AGREEMENT
EXHIBIT C**

A. Certificate Holder

The certificate shall be issued to: CITY AND COUNTY OF DENVER
Denver International Airport
8500 Peña Boulevard, Suite 8810
Denver CO 80249
Attn: Risk Management

B. Acceptable Certificate of Insurance Form and Submission Instructions

Please read these requirements carefully to ensure proper documentation and receipt of your certificate(s) of insurance.

- ACORD FORM (or equivalent) must be emailed in pdf format to:
contractadmininvoices@flydenver.com
- HARD COPIES of certificates and/or copies of insurance policies will not be accepted.
- ACORD FORM (or equivalent) must reference the DEN assigned Contract Number.

C. Coverages and Limits

1. Commercial General Liability:

Contractor shall maintain insurance coverage including bodily injury, property damage, personal injury, advertising injury, independent contractors, and products and completed operations in minimum limits of \$5,000,000 each occurrence, \$5,000,000 products and completed operations aggregate and \$5,000,000 project/location aggregate.

- a. Coverage shall include contractual liability covering liability assumed under this Agreement (including defense costs assumed under contract) within the scope of coverages provided.
- b. Coverage shall include Mobile Equipment Liability.
- c. Coverage shall include Fire Legal Liability in a minimum limit of \$100,000 each fire.

2. Business Automobile Liability:

Contractor shall maintain a minimum limit of \$1,000,000 combined single limit each occurrence for bodily injury and property damage for all owned, leased, hired and/or non-owned vehicles used in performing services under this Agreement.

- a. If operating vehicles unescorted airside at DEN, a \$10,000,000 combined single limit each occurrence for bodily injury and property damage is required.
- b. If Contractor does not have blanket coverage on all owned and operated vehicles, then a schedule of insured vehicles (including year, make, model and VIN number) must be submitted with the Certificate of Insurance.
- c. The policy must not contain an exclusion related to operations on airport premises.
- d. If transporting waste, hazardous material, or regulated substances, Contractor shall carry a Broadened Pollution Endorsement and an MCS 90 endorsement on its policy.
- e. If Contractor is an individual or represents that Contractor does not own any motor vehicles and Contractor's owners, officers, directors, and employees use their personal vehicles for business purposes, Personal Automobile Liability insurance coverage will be accepted provided it includes a business use endorsement.
- f. If Contractor will be completing all services to DEN under this Agreement remotely this requirement will be waived.

3. **Workers' Compensation and Employer's Liability Insurance:**

Contractor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits no less than \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.

- a. If Contractor is a sole proprietor, Workers' Compensation and Employer's Liability is exempt under the Colorado Workers' Compensation Act.

4. **Professional Liability (Errors and Omissions) Insurance:**

Contractor shall maintain a minimum limit of \$3,000,000 each claim and policy aggregate, providing coverage for applicable services outlined in the scope of work.

5. **Installation Floater:**

Contractor shall provide coverage with a limit equal to the full insurable value of materials and equipment and be written on a Special Covered Cause of Loss Form including theft, faulty workmanship, mechanical or electrical damage during testing and labor costs to repair damaged work, and soft costs. The policy shall cover property while located at the project site, at temporary locations, or in transit; and name the City as the loss payee on the policy, as its interests may appear. Coverage shall remain in force until acceptance of the work by the City.

6. **Excess/Umbrella Liability:**

Combination of primary and excess coverage may be used to achieve minimum required coverage limits. Excess/Umbrella policy(ies) must follow form of the primary policies with which they are related to provide the minimum limits and be verified as such on any submitted Certificate of Insurance.

D. Reference to Project and/or Contract

The City Project and/or Contract Number and project description shall be noted on the Certificate of Insurance.

E. Additional Insured

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

F. Waiver of Subrogation

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

G. Notice of Material Change, Cancellation or Nonrenewal

Each certificate and related policy shall contain a valid provision requiring notification to the Certificate Holder in the event any of the required policies be canceled or non-renewed or reduction in coverage before the expiration date thereof.

1. Such notice shall reference the DEN assigned contract number related to this Agreement.
2. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal or reduction in coverage unless due to non-payment of premiums for which notice shall be sent ten (10) days prior.
3. If such written notice is unavailable from the insurer or afforded as outlined above, Contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the Certificate Holder within seven (7) business days of receiving such notice by its insurer(s) and include

documentation of the formal notice received from its insurer's as verification. Contractor shall replace cancelled or nonrenewed policies with no lapse in coverage and provide an updated Certificate of Insurance to DEN.

H. Additional Provisions

1. Deductibles, Self-Insured Retentions, or any other type of retentions are the sole responsibility of the Contractor.
2. Defense costs shall be in addition to the limits of liability. If this provision is unavailable that limitation must be evidenced on the Certificate of Insurance.
3. A severability of interests or separation of insureds provision (no insured vs. insured exclusion) is included.
4. A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City, excluding Professional Liability and Workers' Compensation policies, if required.
5. Coverage limits purchased by Contractor greater than the minimum amounts required under this Agreement must be referenced on any provided certificate of insurance and extended to the benefit of the City.
6. All policies shall be written on an occurrence form when available. If an occurrence form is unavailable, claims-made coverage may be accepted by the City provided the retroactive date is on or before the Agreement Effective Date or the first date when any goods or services were provided to the City, whichever is earlier, and continuous coverage will be maintained or an extended discovery period of three years beginning at the time work under this Agreement is completed or the Agreement is terminated, whichever is later.
7. Contractor shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Contractor will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.
8. Certificates of Insurance must specify the issuing companies, policy numbers and policy periods for each required form of coverage. The certificates for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf and must be submitted to the City at the time Contractor signed this Agreement.
9. The insurance shall be underwritten by an insurer licensed or authorized to do business in the State of Colorado and rated by A.M. Best Company as A- VIII or better.
10. Certificate of Insurance and Related Endorsements: The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Contractor's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's acceptance of any submitted insurance certificate is subject to the approval of DEN Risk Management. All coverage requirements specified in the certificate shall be enforced unless waived or otherwise modified in writing by DEN Risk Management. Contractor is solely responsible for ensuring all formal policy endorsements are issued by their insurers to support the requirements herein.
11. The City shall have the right to verify or confirm, at any time, all coverage, information or representations, and the insured and its undersigned agent shall promptly and fully cooperate in any such audit the City may elect to undertake including provision of certified copies of insurance policies upon request.
12. No material changes, modifications or interlineations to insurance coverage shall be allowed without the review and approval of DEN Risk Management.
13. Contractor shall be responsible for ensuring DEN is provided updated Certificate(s) of Insurance ten (10) days prior to each policy renewal.

SCHEDULE OF RATES AND MARKUPS FORM

Refer to V-7 for a statement of the criteria to be evaluated with respect to this section. Use this form. Include Exhibit K and Exhibit L in their entirety.

A. Position

Project Manager: \$79.43 ~ Average

Project Superintendent: \$54.52 ~ Average

Project Engineer: \$48.80

Office Engineer: \$48.80

Administrative Asst / Timekeeper: _____

**Please See Exhibit L for additional staff.*

B. Labor Markup

Labor Markup Percentage: 12%

Markup to be multiplied by estimated labor cost as negotiated. Estimated labor cost will be the estimated actual labor costs submitted by contractor and verified by CCD. Estimated labor cost will include all craft wages, fringe benefits and burdens. Markup will include overhead, home office overhead safety and other training, profit, small tools, and consumables. Small tools are defined as any tool with a replacement value of \$500 or less. Consumables are defined as any materials that may be consumed by the work and are not part of the permanent installation (e.g. rags, drill bits, hard hats, safety glasses, gloves, saw blades, reciprocating saw blades, tape, welding rod, etc.).

C. Material Markup

Material Markup Percentage: 12%

Markup to be multiplied by actual material quotes if available or estimated cost if not available. Markup will include overhead, home office overhead and profit. Markup will not be applied to sales taxes.

D. Equipment Markup

Equipment Markup Percentage: 12%

Markup to be multiplied by estimated equipment costs as negotiated. Estimated equipment utilization rates will be derived from the Rental Rate Blue Book for Construction Equipment as modified by CDOT Standard Specifications for Road and Bridge Construction, Section 109.04 (c). Markup to include overhead, home office overhead and profit.

E. Subcontractor Markup

Subcontractor Markup Percentage: 12%

Markup to be multiplied by agreed-to subcontractor proposals submitted to the prime contractor. Markups to include all prime contractor overhead, home office overhead, and profit.

F. Engineering and Survey Markup

Engineering and Survey Markup Percentage: 12%

Markup to be multiplied by agreed-to subcontractor proposals submitted to the prime contractor. Markups to include all prime contractor overhead, home office overhead, and profit.

G. Testing Markup

Testing Markup Percentage: 12%

Markup to be multiplied by agreed-to subcontractor testing submitted to the prime contractor. Markups to include all prime contractor overhead, home office overhead, and profit.

H. Permits

Permits will be obtained by the contractor. Permit costs will be the agreed to or actual cost of the permit without markup. Costs to acquire the permit will be included in the other markups.

I. Sales Tax, Bond and Insurance

Sales tax, bonding and insurance costs will be the agreed to or actual cost without markup.

J. Additional or Extra Work Performed within a Task Order

Extra work will be performed utilizing the same markups as the original Task Order.

K. Retention

Final settlement and release of retention will be made upon completion of each Task Order rather than contract completion.

L. Subcontractors

Subcontractors will be required to use the same markups as the prime contractor. Reimbursement and mark-up percentage for subcontractor staff, when required, will be as described in section Labor Mark-up above.

FRINGE BENEFIT MULTIPLIER PERCENTAGE Calculation**Exhibit K - Construction Agreements****Proprietary and Confidential Information - Do Not Release**

Contractor's Name: **Birdair, Inc**
 Project Name & Number: _____
 Financial Information for the Year Ended: **10/31/2019**

Salary and Wage Expenses	Income Statement Amount Incurred	Adjustments +/- <u>Explanation</u> <u>Required</u>	Adjusted Income Statement Amount	% of Labor
Labor - Direct and Indirect	\$ 953,139		\$ 953,139	
Employers FICA	72,915		72,915	7.7%
FUI/SUI	28,028		28,028	2.9%
Holiday/Vacation	85,623		85,623	9.0%
Sick Leave	16,980		16,980	1.8%
Health Insurance	112,078		112,078	11.8%
Workers Compensation	65,066		65,066	6.8%
Denver Occupational Tax			-	0.0%
Retirement Plan	30,881		30,881	3.2%
Other - provide explanation			-	0.0%
Total Fringe/Benefits	411,572	-	411,572	43.2%
Total Fringe/Benefits as a percent of Labor	43.18%		43.18%	

Office & Field Overhead includes but is not limited to:

Automobiles & Field Vehicles
 Business Meals
 Computer Expense - Home and Field Office
 Continuing Professional Education
 Conventions/Seminars
 Depreciation & Amortization
 Dues & Subscriptions
 Equipment Rental & Maintenance
 Furniture - Home and Field Office
 Insurance
 Licenses
 Miscellaneous
 Office Supplies - Home and Field Office
 Photocopier - Home and Field Office
 Postage - Home and Field Office
 Professional Services - Accounting
 Professional Services - Consulting
 Professional Services - Legal
 Recruiting
 Relocation Costs
 Rent - Office only (Field Rent (if any) will be captured in Mobilization)
 Repairs & Maintenance - Home and Field Office
 Reproduction - In House
 Taxes (excludes Federal Income Taxes)
 Telephone, Staff Cell Phones, & Fax - Home and Field Office
 Temporary Help
 Training
 Travel
 Utilities

Exhibit D-2

Core Staff Labor Rate Data Entry Worksheet

	Select the Contractor Company	Enter the Employee Name	Select the appropriate Job Title	If "Other" is selected in column 'D' enter actual Job Title	Select the appropriate Experience Level	Enter the Employee Hourly Wage (Salary / 2,080)	Hourly rate for Allowances on the Payroll Register	Total Base Hourly Rate	Multiplier Factor	Hourly Rate Charged to the City
1	Birdair, Inc.	Thomas Connell	Other	Project Manager	Level IV, Supervisory	\$50.99		\$50.99	43.18%	\$73.00
2	Birdair, Inc.	Michael Sparks	Manager, Construction		Level V, Managerial	\$74.52		\$74.52	43.18%	\$106.70
3	Birdair, Inc.	Megan McGuire	Director of Finance		Level V, Managerial	\$48.08		\$48.08	43.18%	\$68.84
4	Birdair, Inc.	Hikaro Konno	Other	President	Level V, Managerial	\$48.96		\$48.96	43.18%	\$70.10
5	Birdair, Inc.	James Achcraft	Field Superintendent		Level III, Full Experience	\$30.00	\$5.00	\$35.00	43.18%	\$50.11
6	Birdair, Inc.	Eric Colon Diaz	Field Superintendent		Level III, Full Experience	\$28.00	\$5.00	\$33.00	43.18%	\$47.25
7	Birdair, Inc.	Brian Dentinger	Other	Project Manager	Level IV, Supervisory	\$48.08		\$48.08	43.18%	\$68.84
8	Birdair, Inc.	Michi Ishii	Engineer 9/Department Head		Level IV, Supervisory	\$30.43		\$30.43	43.18%	\$43.57
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<u>Company & Contract Information</u>			
	Contractor Name	Contract Number	
	Birdair, Inc.		
	Contract name		
	<u>Company Name</u>	<u>Enter the Fringe Benefit Multiplier Factor from Exhibit K</u>	MBE WBE SBE or DBE
1	Birdair, Inc.	43.1807%	
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Exhibit D-3**Birdair, Inc.****Core Staff Labor Rate Schedule**

	<u>Select the Consultant / Company</u> (Use the elevator bar to get to the top of the list)	Enter the Employee Name	<u>Select the appropriate Job Title</u>	If "Other" is selected in column 'D' enter actual Job Title	<u>Select the appropriate Experience Level</u>	Enter the Employee Hourly Wage (Salary / 2,080)	Multiplier Factor	Hourly Rate Charged to the City
1	Birdair, Inc. - Home	Thomas Connell	Other	Project Manager	Level V, Managerial	\$50.99	4.4104	\$224.88
2	Birdair, Inc. - Home	Michael Sparks	Manager, Construction		Level V, Managerial	\$74.52	4.4104	\$328.66
3	Birdair, Inc. - Home	Megan McGuire	Director of Finance		Level V, Managerial	\$48.08	4.4104	\$212.04
4	Birdair, Inc. - Home	Hikaro Konno	Other	President	Level V, Managerial	\$48.96	4.4104	\$215.92
5	Birdair, Inc. - Field	James Achcraft	Field Superintendent		Level III, Full Experience	\$30.00	4.2220	\$126.66
6	Birdair, Inc. - Field	Eric Colon Diaz	Field Superintendent		Level III, Full Experience	\$28.00	4.2220	\$118.22
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SUBMITTAL 2						
Overhead / Multiplier Factor Calculation - Professional Services Agreements						
Proprietary and Confidential Information - Do Not Release						
	Consultant's Name:	Birdair, Inc.				
	Project Name & Number:					
	Project Number:					
	Financial Information for the Year Ended:	10/31/2019			Data Entry in yellow cells only	
					Based of the % Direct Labor split	
Account Description	Income Statement Amount Incurred	Adjustments +/- Explanation Required	Adjusted Income Statement Amount	Office Overhead	Field Overhead	
A Overhead (Indirect) Expenses:						
Indirect Labor - Management & Administrative	\$ 581,191	\$ -	\$ 581,191	\$ 370,344	\$ 210,847	
Indirect Labor - Professional		-				
Employers FICA	44,461		44,461	28,331	16,130	
FUI/SUI	28,028	-	28,028	17,860	10,168	
Holiday/Vacation		-				
Sick Leave		-				
Personal Time Off		-				
Health Insurance	112,000		112,000	71,368	40,632	
Workers Compensation		-				
Denver Occupational Tax		-				
Retirement Plan	22,021		22,021	14,032	7,989	
Background Checks		-				
Total Indirect Labor and Fringe Benefits	787,701	-	787,701	501,935	285,766	
Automobiles						
Business Meals	30,896	(24,716)	6,180	3,938	2,242	
Computer Expense	6,682	(5,346)	1,337	852	485	
Continuing Professional Education		-				
Conventions/Seminars		-				
Depreciation & Amortization	58,141	(46,513)	11,628	7,410	4,218	
Dues & Subscriptions	1,664	(1,805)	(141)	(90)	(51)	
Equipment Rental & Maintenance	938	(743)	195	124	71	
Insurance	744,065	(744,065)				
IR&D w/O/H		-				
Licenses	36,088	(28,870)	7,218	4,599	2,619	
Office Supplies	22,062	(17,650)	4,412	2,811	1,601	
Miscellaneous	15,701	(12,561)	3,140	2,001	1,139	
Photocopier		-				
Postage	3,913	(3,130)	783	499	284	
Professional Services - Accounting	245,647	(196,517)	49,130	31,306	17,824	
Professional Services - Consulting	122,240	(24,448)	97,792	62,315	35,477	
Professional Services - Legal	76,226	(60,981)	15,245	9,714	5,531	
Recruiting		-				
Relocation Costs - Allowable per (FAR 31.205-35)		-				
Rent	112,687	(72,912)	39,775	39,775		
Repairs & Maintenance	11,987	(9,590)	2,397	1,527	870	
Reproduction - In House		-				
Taxes (excludes State & Federal Income Taxes)	14,702	(11,762)	2,940	1,873	1,067	
Telephone, Cell Phones, & Fax	58,871	(47,098)	11,774	7,503	4,271	
Temporary Help		-				
Travel	103,356	(82,684)	20,672	13,173	7,499	
Utilities	21,463	(17,170)	4,293	2,736	1,557	
Items Excluded from Overhead:						
Advertising & Promotion	-	-	-	-	-	
Bad Debts		-				
Bank Fees	9,997	(9,997)				
Bonuses	100,000	(100,000)				
Contingencies	(196,021)	196,021				
Distribution of Profits		-				
Donations, Gifts, and Charitable Contributions		-				
Employee Stock Ownership Plans		-				
Entertainment & Social Functions	9,610	(9,610)				
Federal & State Income Taxes		-				
Fines & Penalties		-				
Goodwill		-				
Interest Expense	170,993	(170,993)				
Lobbying Costs		-				
Overtime Premium		-				
Relocation Costs - Unallowable per (FAR 31.205-35)		-				
Total Overhead Cost	\$ 2,569,609	\$ (1,503,139)	\$ 1,066,471	\$ 694,001	\$ 372,470	
B Direct labor	\$ 371,948		\$ 371,948	\$ 237,011	\$ 134,937	
				63.7%	36.3%	
TOTAL INCOME STATEMENT EXPENSE AMOUNT	\$ 2,941,557	\$ (1,503,139)	\$ 1,438,419			
Indirect Overhead Rate (A/B):				2.9281	2.7603	
Salary				1.0000	1.0000	
Profit	12.28%			0.4822	0.4616	
Total Multiplier Factor				4.4104	4.2220	
Percent Fringe & Benefits	21.7%		21.7%			
For Audited Overhead Rates						
Audited Overhead Rate						
Salary				1.0000	1.0000	
Profit				0.0000	0.0000	
Total Multiplier Factor				1.0000	1.0000	