

SERVICES PREMIUM VALUE CONCESSION PROGRAM

PARTICIPATION AGREEMENT

(First Amendment)

THIS SERVICES PREMIUM VALUE CONCESSION PARTICIPATION AGREEMENT (First Amendment) (referred to hereinafter as the “SPVC Program Participation Agreement”) is made and entered into as of the date stated on the City’s signature page, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado acting for and on behalf of the Department of Aviation (“City”), and **XPRESSPA DENVER AIRPORT, LLC**, a limited liability company formed under the laws of New York and authorized to conduct business in Colorado (“Concessionaire”) d/b/a/ **XpresSpa**.

RECITALS:

A. The Parties hereto entered into an agreement (201102125) dated February 7, 2012, (“Original Agreement”) for the operation of a concession offering consumer services to the traveling public at Denver International Airport (“DEN”).

B. The Parties agree that it is desirable for DEN to retain its best concessions, as they are most likely to offer the best overall performance in concession agreement compliance and customer service, the combination of which can lead to greater revenues.

C. For that reason, with an effective date of October 1, 2014, DEN created a Services Premium Value Concessions Program (the “SPVC Program”) which is described in Rule 46 of the Denver Municipal Airport System Rules and Regulations as they may be amended from time to time (the “SPVC Rules”). The SPVC Program applies to DEN concessions offering consumer services to the traveling public (“Service Concessions”). SPVC Program performance is measured by customer service performance and compliance with a concessionaire’s existing concession agreement. The SPVC Program objectively measures, recognizes, and rewards top performing SPVC Program participants operating first-class concessions at DEN with a “Program Benefit.” The Program Benefit is the opportunity to enter into direct negotiations for a new concession agreement (“Concession Agreement”) rather than competing through the normal competitive solicitation process for a new agreement.

D. Any new Concession Agreement offered as a Program Benefit will be offered (i) for the same or a different location, (ii) for the same or a different concept within the same major merchandise category, and (iii) in accordance with DEN’s concession policies in effect at the time of the offer. Typically, DEN’s concession policies may address, without limitation, such aspects of a new Concession Agreement as capital investment, length of term, percentage rent, surety requirements, common use services, and the form of a standard concession agreement.

E. Because the customer service portion of the SPVC Program requires 36 months of evaluation and some existing service contracts may expire prior to the completion of those 36 months, Concessionaire understands and acknowledges that the SPVC Program will be implemented over different phase-in periods as provided in the SPVC Rules. The SPVC Program Start Date, as that term is defined in the SPVC Rules, will be the first day of the month those Service Concessions intending to participate in the SPVC Program have fully executed concession agreements or amendments that refer to the SPVC Rules and include appropriate, applicable SPVC Program provisions.

F. For these reasons, Concessionaire wishes to enroll in, provide for the funding of, and participate in the SPVC Program.

G. These recitals are hereby incorporated into this SPVC Program Participation Agreement.

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

AGREEMENT

1. Effective as of the date this SPVC Program Participation Agreement is executed, which date is set out on the City's signature page, Concessionaire agrees to participate in the SPVC Program and abide by the requirements of the SPVC Rules. Concessionaire is solely responsible for understanding all aspects, terms, and requirements of the SPVC Rules.

2. The Original Agreement hereby is amended by deleting Section 13 (Promotion Program), Subsection 13.01 (Joint Marketing Fund) and Subsection 13.02 (Premium Value Concessions Program) and replacing the same with the following:

SECTION 13 – PROMOTIONAL PROGRAM

13.01. JOINT MARKETING FUND

A. The City shall provide or cause to be provided a central marketing and promotional fund, which in the City's sole judgment will serve to promote overall service, retail, and food and beverage concessions at DEN. The fund shall be known as the "Joint Marketing Fund." The City shall not be obligated to expend more for promotions and advertising than is actually collected from DEN's concessionaires. Promotional services and personnel provided or associated with this Joint Marketing Fund shall be under the exclusive control and supervision of the City. The City reserves the right at any time to terminate the Joint Marketing Fund and thereafter, continue to provide marketing and promotional services until the balances remaining in the Fund are exhausted.

B. Marketing Assessment. Each month during the Term hereof, Concessionaire shall calculate in its monthly revenue statement and pay to the City as a Marketing Assessment, an amount equal to one percent (1%) of the monthly Gross Revenues as stated on the Summary Page, which represents Concessionaire's share of the Joint Marketing Fund described above. The Marketing Assessment is payable to the City on the tenth (10th) day of the first full month following execution of this SPVC Program Participation Agreement and each succeeding month thereafter.

13.02. SERVICES PREMIUM VALUE CONCESSIONS PROGRAM

A. SPVC Program. The Department of Aviation has created a Services Premium Value Concessions Program ("SPVC Program") pursuant to Rule 46 of DEN's Rules and Regulations (the "SPVC Rules") to reward certain concessionaires that maintain the high performance standards defined in the SPVC Rules.

B. Participation Required. Concessionaire acknowledges that it is required by this SPVC Program Participation Agreement and the SPVC Rules to participate as a single concession in the SPVC Program.

C. Services Category. Service Concessions, covered by the SPVC Rules, are distinguished from food and beverage or retail concessions, which are covered by Rule 45 of the Denver Municipal Airport System Rules and Regulations.

D. SPVC Program Costs. SPVC Program Costs shall be borne by the Joint Marketing Fund. Any reasonable cost related to the SPVC Program and/or the PVC Program incurred by DEN or by a Third Party Administrator (“TPA”) as that term is defined in the SPVC Rules shall be considered a reimbursable cost to administer the SPVC Program (“SPVC Program Costs”). SPVC Program Costs shall include, but not be limited to, TPA contract fees, litigation costs, surveys, evaluations, training programs, and insurance. Other SPVC Program Costs shall be borne by the Concessionaire and payable to the City, without setoff, deduction, or abatement within thirty days upon receipt of written notice from the CEO or the CEO’s authorized representative. The “CEO” or “Chief Executive Officer” is the Manager of Aviation’s successor in function. Concessionaire agrees that it shall contribute Concessionaire’s pro-rata share of the SPVC Program Costs, which will be calculated in accordance with the methodology set forth in the SPVC Rules.

E. City’s Cost Obligations. The City shall not be obligated to expend more for the SPVC Program than is actually collected from DEN concessionaires. All services related to the SPVC Program and all personnel engaged by the City to provide services related to the SPVC Program, including TPA services, shall be under the exclusive control and supervision of the City.

F. Termination of Program. Under certain circumstances described in the SPVC Rules, the CEO has the sole and absolute discretion to terminate the SPVC Program upon thirty (30) days written notice to DEN concessionaires.

G. Agreement Supersedes in Event of Conflict. In the event of a conflict between any provision of the SPVC Rules and this SPVC Program Participation Agreement, the provisions of this SPVC Program Participation Agreement, including the Summary Page, exhibits, and appendices appended hereto, shall govern.

3. Except as modified or revised herein, all terms, conditions, covenants and provisions of the Original Agreement shall remain in full force and effect as if fully set forth herein.

4. This SPVC Program Participation Agreement is expressly subject to and shall not be or become effective or binding on the City until it is approved by the City Council, if required by the City’s Charter, and fully executed by all signatories of the City and County of Denver. This SPVC Program Participation Agreement may be signed in two or more counterparts, each of which shall be deemed to be an original signature page. This SPVC Program Participation Agreement may be signed electronically by the Parties in the manner specified by the City.

[SIGNATURE PAGES FOLLOW]

Contract Control Number: PLANE-201102125-01

Contractor Name: Xpres Spa Denver Airport, LLC

By: Rhonda Schladerbach

Name: Rhonda Schladerbach
(please print)

Title: Chief Operating Officer
(please print)

ATTEST: [if required]

By: n/a

Name: _____
(please print)

Title: _____
(please print)



Contract Control Number:

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

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____

By _____

By _____

