

THIRD AMENDATORY AGREEMENT

THIS THIRD AMENDATORY AGREEMENT is entered into as of the date indicated on the signature page, by and between the **CITY AND COUNTY OF DENVER**, a Colorado municipal corporation (“City”), Party of the First Part, and **ABM AVIATION, INC.**, a Georgia corporation authorized to conduct business in the State of Colorado (the “Contractor” or “ABM”), Party of the Second Part.

WITNESSETH

WHEREAS, the parties entered into an Agreement dated December 28, 2016 which was subsequently amended on November 13, 2020, and amended again on December 15, 2021 (the “Existing Agreement”) for shuttle bus operation services (the “Services”) for airport facilities at Denver International Airport (“DEN”); and

WHEREAS, the parties desire to amend the Existing Agreement by increasing the Maximum Liability and other terms of the Existing Agreement; and

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

1. **Section 4.10 Maximum Contract Liability; Funding** is hereby amended by deleting said section in its entirety and substituting in its place the following:

“4.10 Maximum Contract Liability; Funding

A. Any other provision in this Agreement notwithstanding, in no event shall the City be liable for payment under this Agreement for any amount in excess of One Hundred and Ninety Million Dollars and No Cents (\$190,000,000.00). All payments under this Agreement shall be paid solely and exclusively from the City’s “Airport System Fund” and from no other fund or source. The City is under no obligation to make any future appropriations, apportionments or allocations to said fund.

B. It is agreed and understood that this Agreement is a multi-year agreement with only partial funding authorized at the commencement of the term of this Agreement. The City’s payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by the Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years, and the Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.”

2. **Section 5.1 Term** is hereby amended by deleting said section in its entirety and substituting in its place the following:

“5.1 Term The term of this Agreement shall commence on February 1, 2017 and terminate on January 31, 2025, unless terminated sooner or extended in accordance with the provisions hereof.”

3. **Section 8.12 Shuttle Bus Operators B. Training of Shuttle Bus Operators** is hereby amended by deleting said section in its entirety and substituting in its place the following:

“Section 8.12 Shuttle Bus Drivers B. Training of Shuttle Bus Operators

The Contractor may use the DEN CDL Training Program (“CTP”) to certify drivers, or another driver training program established by the Contractor, approved by DEN. Costs shall be negotiated between the parties and be reflected in Exhibit E. The Contractor shall not use the CTP for training drivers for any other agreements the Contractor may have. DEN reserves the right to suspend the Contractor’s use of the CTP at any time as well as to stop paying costs for Contractor driver training. Guidelines for the program will be outlined in the SOP.”

4. **Section 6.2 H. Next Bus** is hereby amended by deleting said section in its entirety and substituting in its place the following:

“H. GPS

The Contractor shall provide and install a global positioning system (“GPS”), equipment in each shuttle bus operated by the Contractor. The Contractor will share with the City information, reports, and other data produced by the GPS system for the City’s use in operating the Comprehensive Shuttle Bus Service. The Contractor will maintain the GPS system, except for repairs or replacements due to the negligence or intentional actions of the City, its employees, agents, subcontractors or representatives, in which case City shall be responsible for the costs of repair or replacement. Data elements shall be outlined in the SOP.”

5. References to Next Bus in the following sections shall be deleted-

Sections 4.6 B, 7 B, 7.3 (1) & (2), 8.12 (B)

6. **Section 12.1 Wages and Salaries** is amended with the addition of the following-

“G. Market Adjustment Increases

The City may adjust wages to this agreement for fuelers, bus drivers and bus attendants due to market conditions. Any changes to the wages are reimbursable to the contractor based on approval from the Contract Administrator. Wages directly paid to the employee are considered reimbursable. Excluding any driver training programs, any administrative fees incurred by the increase in wages to include but not limited to payroll taxes, workers compensation, etc. will be the responsibility of the contractor. Reimbursement processes shall be reflected in Exhibit E and pay scales must be provided.”

7. Sections **9.1 Annual Budget**, **9.2 Monthly Busing Plan**, and **9.3 Reports** shall be relocated from the main body of the Agreement and placed in Exhibit G Standard

Operating Procedures.

8. **Exhibit B** of the existing agreement is deleted and replaced with the attached **Exhibit B**.
9. Except as otherwise provided herein, all of the terms and conditions of the Existing Agreement shall remain in full force and effect as though set out in full herein.
10. This Third Amendatory Agreement shall not be effective or binding on the City until fully executed by all signatories of the City and County of Denver.

[END OF PAGE]

Contract Control Number: PLANE-202366569-03
Contractor Name: ABM Aviation, 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-202366569-03
ABM Aviation, Inc.

By: DocuSigned by:
Steven Aiello
B51B22F79030430..._____

Name: Steven Aiello
(please print)

Title: Senior Vice-President
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

EXHIBIT B

**CITY AND COUNTY OF DENVER
INSURANCE REQUIREMENTS FOR DEPARTMENT OF AVIATION
GROUND TRANSPORTATION AGREEMENT – GENERAL**

A. Certificate Holder and Submission Instructions

Contractor must provide a Certificate of Insurance as follows:

Certificate Holder: CITY AND COUNTY OF DENVER
Denver International Airport
8500 Peña Boulevard
Denver CO 80249
Attn/Submit to: [\[insert specific DEN email address for the given contract\]](#)

- ACORD Form (or equivalent) certificate is required.
- Electronic submission only, hard copy documents will not be accepted.
- Contractor must be evidenced as a Named Insured party.
- Reference on the certificate must include the City-assigned Contract Number, if applicable.

The City may at any time modify submission requirements, including the use of third-party software and/or services, which may include an additional fee to the Contractor.

B. Defined Terms

1. “Agreement” as used in this exhibit refers to the contractual agreement to which this exhibit is attached, irrespective of any other title or name it may otherwise have.
2. “Contractor” as used in this exhibit refers to the party contracting with the City and County of Denver pursuant to the attached Agreement.

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 \$1,000,000 each occurrence, \$2,000,000 products and completed operations aggregate; if policy contains a general aggregate, a minimum limit of \$2,000,000 annual per location aggregate must be maintained.

- a. Coverage shall include Contractual Liability covering liability assumed under this Agreement (including defense costs assumed under contract) within the scope of coverages provided.

2. Business Automobile Liability:

Contractor shall maintain a minimum limit of \$1,000,000 combined single limit for bodily injury and property damage for all owned, leased, hired and/or non-owned vehicles used in performing services under this Agreement unless a different limit of liability is listed below. Total number of seats includes the driver. Limit requirements listed below are intended to mirror the requirements of the Colorado Public Utilities Commission (PUC) and if the PUC publishes changes, the PUC requirements will govern.

<u>Category</u>	<u>Liability Limit</u>
Couriers	\$ 300,000 combined single limit
Vehicles with 8 seats or less	\$ 500,000 combined single limit
Vehicles with 9-15 seats	\$ 1,500,000 combined single limit
Vehicles with 16-32 seats	\$ 3,000,000 combined single limit
Vehicles with 33 seats or more	\$ 5,000,000 combined single limit

Carriers operating under Federal Authority	
Vehicles with 15 seats or less	\$ 1,500,000 combined single limit
Vehicles with 16 seats or more	\$ 5,000,000 combined single limit
Unescorted Vehicle Operations Airside	\$10,000,000 combined single limit

- a. 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 as an official part of the Certificate of Insurance.
- b. If transporting waste, hazardous material, or regulated substances, Contractor shall carry a Broadened Pollution Endorsement and an MCS 90 endorsement on its policy.
- c. If Contractor does not own any fleet vehicles and Contractor’s owners, officers, directors, and/or employees use their personal vehicles to perform services under this Agreement, Contractor shall ensure that Personal Automobile Liability including a Business Use Endorsement is maintained by the vehicle owner, and if appropriate, Non-Owned Auto Liability by the Contractor. This provision does not apply to persons solely commuting to and from the airport.

3. Workers’ Compensation and Employer’s Liability Insurance:

Contractor shall maintain workers compensation coverage in compliance with the statutory requirements of the state(s) of operation and 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. Colorado Workers’ Compensation Act allows for certain, limited exemptions from Worker’s Compensation insurance coverage requirements. It is the sole responsibility of the Contractor to determine their eligibility for providing this coverage, executing all required documentation with the State of Colorado, and obtaining all necessary approvals. Verification document(s) evidencing exemption status must be submitted with the Certificate of Insurance.

4. Property Insurance

Contractor is solely responsible for any loss or damage to its real or business personal property located on DEN premises including, but not limited to, materials, tools, equipment, vehicles, furnishings, structures and personal property of its employees and subcontractors unless caused by the sole, gross negligence of the City.

5. 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 Name, Title of Agreement and/or Contract Number and description shall be noted on the Certificate of Insurance, if applicable.

E. Additional Insured

For all coverages required under this Agreement (excluding Workers’ Compensation, Employer’s Liability, Professional Liability, and Property, if required), 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 (excluding Professional Liability, if required), 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.

If Contractor will be completing all services to the City under this Agreement remotely and not be traveling to locations under direction of the City to perform services, this requirement will be waived specific to Workers' Compensation coverage.

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 required coverage before the expiration date thereof.

1. Such notice shall reference the DEN assigned contract number related to this Agreement.
2. Such notice shall be sent thirty (30) calendar days prior to such cancellation or non-renewal or reduction in required coverage unless due to non-payment of premiums for which notice shall be sent ten (10) calendar 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 required coverage to the Certificate Holder within three (3) 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.
4. In the event any general aggregate or other aggregate limits are reduced below the required minimum per occurrence limits, Contractor will procure, at its own expense, coverage at the requirement minimum per occurrence limits. If Contractor cannot replenish coverage within ten (10) calendar days, it must notify the City immediately.

H. Cooperation

Contractor agrees to fully cooperate in connection with any investigation or inquiry and accept any formally tendered claim related to this Agreement, whether received from the City or its representative. Contractor's failure to fully cooperate may, as determined in the City's sole discretion, provide cause for default under the Agreement. The City understands acceptance of a tendered claim does not constitute acceptance of liability.

I. Additional Provisions

1. Deductibles or any type of retention 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. Coverage required may not contain an exclusion related to operations on airport premises.
4. A severability of interests or separation of insureds provision (no insured vs. insured exclusion) is included under all policies where Additional Insured status is required.
5. A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City under all policies where Additional Insured status is required.
6. If the Contractor procures or maintains insurance policies with coverages or limits beyond those stated herein, such greater policies will apply to their full effect and not be reduced or limited by the minimum requirements stated herein.
7. All policies shall be written on an occurrence form. If an occurrence form is unavailable or not industry norm for a given policy type, claims-made coverage will 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 reporting period placed for three years (eight years for construction-related agreements) beginning at the time work under this Agreement is completed or the Agreement is terminated, whichever is later.
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 an authorized representative 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 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. All coverage requirements 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.
11. The City shall have the right to verify, at any time, all coverage, information, or representations, and the insured and its insurance representatives shall promptly and fully cooperate in any such audit the City may elect to undertake including provision of copies of insurance policies upon request. In the case of such audit, the City may be subject to a non-disclosure agreement and/or redactions of policy information unrelated to verification of required coverage.
12. No material changes, modifications, or interlineations to required insurance coverage shall be allowed without the review and written approval of DEN Risk Management.
13. Contractor shall be responsible for ensuring the City is provided updated Certificate(s) of Insurance prior to each policy renewal.
14. Contractor's failure to maintain required insurance shall be the basis for immediate suspension and cause for termination of this Agreement, at the City's sole discretion and without penalty to the City.

J. Part 230 and the DEN Airport Rules and Regulations

If the minimum insurance requirements set forth herein differ from the equivalent types of insurance requirements in Part 230 of the DEN Airport Rules and Regulations, the greater and broader insurance requirements shall supersede those lesser requirements, unless expressly excepted in writing by DEN Risk Management. Part 230 applies to Contractor and its subcontractors of any tier.