

**COMMERCIAL GROUND TRANSPORTATION CONCESSION AGREEMENT**

**BETWEEN**

**CITY AND COUNTY OF DENVER**

**AND**

**COLORADO MOUNTAIN EXPRESS, INC.**

**AT**

**DENVER INTERNATIONAL AIRPORT**

**COMMERCIAL GROUND TRANSPORTATION CONCESSION AGREEMENT**  
**DENVER INTERNATIONAL AIRPORT**  
**SUMMARY PAGE**  
**COMPANY NAME**

This Summary Page, consisting of two pages, is attached to and made a part of the Agreement between the City and County of Denver and the Concessionaire listed below.

**CONCESSIONAIRE:**

<b>Name</b>	Colorado Mountain Express, Inc.
Address for Notice	PO BOX 580 Vail, CO 81658 (P) 970-754-3701
Contact	Robert Tschupp
Trade Name	Colorado Mountain Express ("CME")
Entity	Corporation

**CONCESSION LOCATION:**

Concourse/Terminal:	Main Terminal
Address:	R16-1-5-W3-N12-2 R16-1-5-W3-N12-3

**TERM:** 36 Months

Effective Date: June 1, 2014

Expiration Date: May 31, 2017 unless modified by Section 4.01

**PERMITTED USE:** Operation of a Ground Transportation business at Denver International Airport

Concession Category: Ground Transportation

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Brand

Colorado Mountain Express ("CME")

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**HOURS OF OPERATION:**

Not less than 16 hours each day, seven days per week or as provided in Section 6.07

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**INSURANCE POLICY AMOUNTS:**

Comprehensive General Liability:

\$2,000,000 Per Occurrence /\$1,000,000 umbrella  
Per Occurrence

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Automobile/Delivery Vehicle Liability:

\$1,500,000 (up to 15 passengers) \$5,000,000  
(Over 15 Passengers) Non-airside

Workers Compensation:

\$10,000,000 Airside  
Statutory requirements  
(\$100,000/\$500,000/\$100,000)

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**DESCRIPTION OF EXHIBITS AND ADDENDA:**

Exhibit A  
Exhibit C  
Exhibit F  
Exhibit G

Concession Space Plan  
Insurance Certificate  
Performance Bond  
ACDBE Forms

Appendix 1  
Appendix 2

Standard Federal Assurances  
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## STANDARD AGREEMENT

THIS **AGREEMENT**, is made and entered into as of the date stated on the signature page ("Effective Date"), by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado ("City"), Party of the First Part, and **COLORADO MOUNTAIN EXPRESS, INC.**, a Colorado Corporation who is authorized to business in the State of Colorado, ("Concessionaire"), Party of the Second Part:

### SECTION 1 – GENERAL

#### 1.01 CONSIDERATION

The City enters into this Agreement for and in consideration of the payment of compensation by Concessionaire as herein provided, the construction of all improvements by Concessionaire as herein provided and the performance and observance by Concessionaire of the covenants and agreements herein.

#### 1.02 INCORPORATION OF ATTACHED SUMMARY PAGES, EXHIBITS AND ADDENDA

The Summary Pages attached to this Agreement, the Exhibits and Addenda attached to and referred to in this Agreement as described on the Summary Pages and the Airport Rules and Regulations as they may be amended from time to time are intended to be, and hereby are, deemed incorporated in this Agreement.

### SECTION 2 – DEFINITIONS

#### 2.01. AIRPORT

"Airport" or "DIA" shall mean Denver International Airport.

#### 2.02. AIRPORT MASTER PLAN

"Airport Master Plan" or "Master Plan" shall mean the approved master plan for development of Denver International Airport.

#### 2.03. AUDITOR

"Auditor" shall mean the City's Auditor and the Auditor's authorized representative.

#### 2.04. CONCESSION SPACE

"Concession Space" shall mean the Concession Space or Spaces as generally depicted on the Concession Space Plan attached hereto as **Exhibit A**, located within the Terminal and/or the Concourses and containing the number of square feet set forth on the Summary Page. "Concession Space" shall include the plural where applicable. The City and Concessionaire acknowledge and agree that the dimensions of the Concession Space as set forth in **Exhibit A** are approximate and that, following the completion of construction, the precise dimensions and square footage shall be determined by the Manager and a revision to the Summary Page and **Exhibit A** will be made, if necessary, depicting the dimensions and square footage of the Concession Space as actually constructed. The Manager may add or subtract square footage of up to 10% of the Concession Space (without a corresponding adjustment to the MAG) with the prior written consent of the Concessionaire. Each of these actions may be taken without the requirement of a formal amendment to this Agreement.

## **2.05. CONCESSIONAIRE'S EQUIPMENT**

"Concessionaire's Equipment" shall mean all equipment, apparatus, machinery, signs, furnishings, trade fixtures and other non-affixed personal property installed by Concessionaire and used in the operation of the business of Concessionaire (as distinguished from the use and operation of the Concession Space.)

## **2.06. CONCESSIONAIRE'S PROPOSAL**

"Concessionaire's Proposal" shall mean the proposal accepted by City and consisting of Concessionaire's plans for its design and Concessionaire's entire plan of operation.

## **2.07. CONCOURSES**

"Concourses" shall mean Concourses A, B and C located at the Airport but specifically excepts the Terminal as herein defined.

## **2.08 RESERVED**

## **2.09 DEFAULT**

"Default" shall mean Concessionaire's failure to keep, perform and observe any promise or Concessionaire's violation of any term, covenant or condition of this Agreement, including but not limited to the occurrence of any or certain events enumerated in Section 11 of this Agreement.

## **2.10 DIA DESIGN STANDARDS**

"DIA Design Standards" shall mean the design standards and criteria established for Denver International Airport, and as hereafter amended.

## **2.11 DIA ENVIRONMENTAL GUIDELINES**

"DIA Environmental Guidelines" shall mean those portions of the environmental standards and criteria established for non-aviation tenant development and operations at the Airport, as they may hereafter be amended.

## **2.12 DIA TENANT DEVELOPMENT GUIDELINES**

"DIA Tenant Development Guidelines" shall mean the criteria established at DIA for tenants and concessionaires for design, construction, installation, signage and related matters, and as they may hereafter be amended.

## **2.13 EFFECTIVE DATE**

"Effective Date" shall mean the date this Agreement commences and becomes fully effective and binding upon the Parties, which is the date filled in by the City in the first paragraph of this Agreement.

## **2.14 FMCSA**

“FMCSA” shall mean the Federal Motor Carrier Safety Administration, an agency of the United States Department of Transportation, or its successor in function, which regulates intrastate commercial passenger ground transportation carriers.

## **2.15 IMPROVEMENTS**

“Improvements,” which may also be called “Concession Improvements,” or “Tenant Improvements,” shall mean any new construction, equipment, finishes, fixtures, systems, furnishings and furniture installed by Concessionaire, as well as modifications or alterations to existing construction, equipment, finishes, fixtures, systems, furnishings and furniture that conform to drawings and specifications approved in writing by the Manager’s authorized representative.

## **2.16 MANAGER**

“Manager” shall mean the City’s Manager of Aviation or the Manager’s successor in function.

## **2.17 MANAGER’S AUTHORIZED REPRESENTATIVE**

Whenever reference is made herein to the “Manager or the Manager’s authorized representative,” or words of similar import are used, the City’s Deputy Manager of Aviation/Revenue and Business Development shall be such authorized representative of the Manager, unless notice otherwise is given to the Concessionaire by the Manager. The Manager and the Deputy Manager may rescind or amend any such designation of representatives or delegation of City authority upon notice to the Concessionaire.

## **2.18 PAST DUE INTEREST RATE**

“Past Due Interest Rate” shall mean interest accruing at 18% per annum commencing on the fifth business day after the date such amount is due and owing until paid to City.

## **2.19 PRODUCTS**

“Products” shall mean the specific services described on the Summary Page that Concessionaire is authorized to sell at Denver International Airport.

## **2.20 “PUC”**

“PUC” shall mean the Colorado Public Utilities Commission, an agency of the State of Colorado.

## **2.21 RENT COMMENCEMENT DATE**

“Rent Commencement Date” shall mean the earlier to occur of either the date Concessionaire first opens for business in the Concession Space or the Required Opening Date. The Concession Space shall be deemed to be open for business when the following criteria has been met and Concessionaire has (i) delivered documentation satisfactory to the City of completion of construction of the entire (100%) Concession Space; (ii) obtained written permission from the Manager’s authorized representative to and thereafter removed the

construction wall surrounding the Concession Space, and (iii) commenced generating sales and revenue from the entire Concession Space.

## **2.22 TERMINAL**

“Terminal” shall mean the Jeppesen Terminal Building located at the Airport.

### **SECTION 3 – GRANT OF CONCESSION RIGHTS**

#### **3.01. CONCESSION RIGHTS GRANTED**

***Rights Granted.*** Beginning June 1, 2014 the City hereby grants to Concessionaire the right and obligation to occupy, improve and use the space and facilities, shown and described on the attached ***Exhibit A***, which contains approximately the number of square feet of Concession Space listed on the Summary Page, consistent with the City’s vision, Concessionaire’s Proposal and subject to all of the terms, conditions, covenants and provisions of this Agreement.

***Construction Obligation.*** Concessionaire shall have the right and obligation to construct improvements upon the Concession Space for use in its operations in accordance with plans and a Construction Schedule approved, in writing in advance by the Manager’s authorized representative. Concessionaire’s construction obligations are set forth in more detail in Section 6.

***Delay in Delivery.*** If the City cannot deliver possession of the Concession Space to the Concessionaire on the Target Possession Date for any reason, the City shall not be subject to any liability therefor. Such failure of delivery shall not affect the validity of the Agreement or the obligations of the Concessionaire hereunder or extend the Expiration Date. If the City is unable to deliver possession of the Concession Space to the Concessionaire within twelve (12) months after the Target Possession Date for any reason then the City, in its sole and absolute discretion, shall have the option at any time thereafter to notify the Concessionaire of the City’s intent to terminate the Agreement in which event the Agreement shall terminate and both the City and the Concessionaire shall be released from any liability or obligation under the Agreement.

#### **3.02. USE OF CONCESSION SPACE**

Concessionaire may use the Concession Space only for the operation of a non-exclusive concession for providing commercial ground transportation services to the public and for no other purposes, unless explicitly permitted to do so by this Agreement or otherwise authorized in writing by the Manager. Concessionaire shall not sell or offer for sale any service or merchandise not authorized by the Manager, nor shall Concessionaire place, maintain, or use in its operations hereunder, fixtures or furnishings in any areas located outside the Concession Space, regardless of whether such areas are adjacent to the Concession Space. Concessionaire covenants and agrees to operate its Concession in strict conformity with the Permitted Use.

***Express Restrictions.*** Unless otherwise authorized in writing by the Manager, Concessionaire shall not offer for sale items expressly restricted on the Summary Page; nor shall Concessionaire offer for sale any merchandise, services, or engage in any activity not specifically provided for under the terms of this Agreement.

**No Displays Outside the Concession Space.** Concessionaire shall not place, install, maintain or use any racks, stands or other display of merchandise, trade fixtures or furnishings in or upon any areas located outside the Concession Space, regardless of whether such areas are adjacent to the Concession Space.

**No Solicitation Outside the Concession Space.** In no event will Concessionaire engage in any activity on the Airport outside of the Concession Space for the recruitment or solicitation of business.

### **3.03. RIGHTS NOT EXCLUSIVE.**

The City reserves the right to allow others to conduct the operations and/or sell goods and services in other locations at the Airport that are the same or similar to those described on the Summary Page. Concessionaire understands and agrees that its right to conduct operations and/or sell any goods or services at the Airport is not exclusive.

### **3.04. MEANS OF ACCESS**

**Non Exclusive Access.** Concessionaire, its agents, invitees, guests, employees and suppliers have a non-exclusive right of ingress to and egress from the Concession Space by a means of access located outside the boundaries of such space as specified by City. Such access shall, without exception, be in common with such other persons (including, at the option of the City, the general public) as the City may authorize or permit, and the City may at any time close, relocate, reconstruct or modify such means of access, provided that a reasonably convenient and adequate means of ingress and egress is available for the same purpose.

**Subject to Security.** This right of access is subject to the security requirements of the Section herein entitled *Security*. Moreover, without exception, nothing in this Agreement shall be construed to prevent the City from charging the operators of vehicles carrying passengers and property a fee for the privilege of entering upon the Airport or using the roadways in or on the Airport, or soliciting passengers upon the Airport, or otherwise operating on the Airport; and City reserves the right to make such charges provided that they do not discriminate unreasonably against the operators of vehicles used for carrying officers, employees, passengers or property of Concessionaire.

### **3.05. RIGHT OF INSPECTION**

City retains the full right of entry in and to the Concession Space for any purpose necessary, incidental to or in connection with its obligations hereunder, or in the exercise of its governmental functions, or for the purpose of making any inspection it deems necessary, with or without advance notice.

## **SECTION 4 – TERM**

### **4.01. TERM**

This Agreement shall commence and become fully effective and binding upon the Parties as of the Date listed on the Summary Page. “Term” as used herein shall mean the dates listed on the Summary Page (“Expiration Date”), unless sooner terminated pursuant to the provisions of this Agreement or by law. The Term shall be for Thirty-Six Months. Each of these actions may be taken without the requirement of a formal amendment to this Agreement.

Each of these actions may be taken without the requirement of a formal amendment to this Agreement.

#### **4.02. SURRENDER OF CONCESSION SPACE**

**Standard for Surrender.** Upon the expiration or earlier termination of this Agreement or on the date specified in any demand for possession by City after any default by Concessionaire, Concessionaire covenants and agrees to surrender possession of the Concession Space to City in broom clean condition and good state of repair, ordinary wear and tear excepted. Ordinary wear and tear shall not include deterioration that could have been prevented by proper maintenance practices, or by Concessionaire performing all of Concessionaire's obligations under this Agreement. Concessionaire covenants and agrees to cooperate with the City's Termination procedures described herein.

#### **4.03. HOLDING OVER**

**Holding Over.** If Concessionaire holds over after the Expiration Date, any extension thereof, or earlier termination of this Agreement as herein provided, and the City and Concessionaire have not otherwise agreed, in writing, to the terms and provisions of such holding over, thereafter Concessionaire's occupancy shall be deemed by the City to be either a month-to-month holdover tenant, or a tenant at sufferance, at a monthly rental, payable in advance, equal to 150% of the monthly Rent provided in Section 5 of this Agreement ("holdover fee"), and Concessionaire shall remain bound by all terms, conditions, covenants, and agreements hereof.

**Month to Month Tenancy.** If Concessionaire is deemed to be a holdover tenant, Concessionaire and the City agree that: (a) the tenancy shall be month-to-month and may be terminated at any time by thirty (30) days prior written notice from either Party to the other; and (b) the Rent shall continue using the same formula as provided in Section 5.

**Tenant at Sufferance.** In the event that the City deems Concessionaire a tenant at sufferance, all of the provisions of the previous sentence shall apply, except that the City will notify Concessionaire, in writing, that Concessionaire is a tenant at sufferance. Thereafter, the City may take immediate action to evict Concessionaire without further notice and may otherwise exercise any other rights and remedies available to it at law or in equity.

**Holdover Fee Waiver.** Upon expiration of this Agreement, and in the Manager's sole discretion, the holdover fee may be waived in writing to allow Concessionaire to holdover at 100% of the monthly Rent provided in Section 5 of this Agreement.

**No Right to Holdover.** Nothing herein shall be construed to give Concessionaire the right to hold over at any time, and the City (after expiration or termination of this Agreement), as the case may be, may exercise any and all remedies at law or in equity to recover possession of the Concession Space, as well as any damages incurred by City on account of such holding over.

## SECTION 5 – RENT

### 5.01. RENT

Concessionaire covenants and agrees, without offset, deduction or abatement, to pay City as Rent for the rights and privileges herein granted by City the sum of Three Hundred and Twenty Four Thousand Dollars and Zero Cents (\$324,000.00) which amount is reserved to the City for the Term of this Agreement, payable in Thirty Six (36) monthly installments as set forth in Section 5.02. Said obligation to pay compensation shall commence upon the Effective Date of the Term set forth on the Summary Page and continue through the Term hereof.

***Rent Commencement.*** Said obligation to pay Rent shall commence upon the Rent Commencement Date set forth in Section 2.21 herein and continue through the Term hereof.

### 5.02 PAYMENT OF COMPENSATION

A. Monthly Installments. Monthly installments shall be payable by Concessionaire to City in advance and without demand on the first day of the month commencing June 1, 2014, and on the first day of each calendar month thereafter throughout the Term of this Agreement.

A. Additional Rent. In addition to the Compensation payable hereunder,

B. Concessionaire shall pay, as “Additional Rent” (whether or not so designated herein), in a manner and at the place provided in this Agreement, all sums of money required to be paid by Concessionaire under this Agreement. If such amounts or charges are not paid at the time and in the manner as provided in this Agreement, they shall nevertheless be collectible as Additional Rent with the next installment of compensation thereafter falling due, but nothing herein contained shall be deemed to suspend or delay the payment of any amount of money or charge at the time the same becomes due and payable hereunder or to limit any other remedy of the City. All amounts of Compensation and Additional Rent (also collectively referred to in this Agreement as “Rental”) payable in a given month shall be deemed to comprise a single monthly payment obligation of Concessionaire to City.

D. Concessionaire’s Payment Obligations. Concessionaire covenants to pay all compensation and charges under this Agreement independent of any obligation of the City. No breach of this Agreement by the City shall relieve Concessionaire of its obligation and duty to pay all such compensation and charges when due under the terms of this Section 5.

### 5.03 RESERVED

### 5.04 PLACE AND MANNER OF PAYMENTS

All sums payable to City hereunder shall be made payable to “Airport Revenue Fund” and paid without notice at the following:

Airport Revenue Fund

Denver International Airport  
P.O. Box 492065  
Denver, CO 80249-2065

or at such other place as the Manager or her authorized representative may hereafter designate by notice in writing to Concessionaire. All sums shall be made in legal tender of the United States. Any check given to the City shall be received by it subject to collection, and Concessionaire agrees to pay any charges, fees or costs incurred by the City for such collection, including reasonable attorney's fees.

#### **5.05 APPLICATION OF PAYMENT**

The City may, at its option and its sole discretion, apply any payments received from Concessionaire to any rental, compensation or other charges which are then due and payable. If the City shall not make any specific application of a payment received from Concessionaire, then any payment received from Concessionaire shall be applied first to the other charge, then to compensation which has been overdue for the longest period of time. Payment by Concessionaire or receipt by City of a lesser amount than the compensation or other charges herein stipulated shall be deemed to be on account of the earliest compensation or other charges due from Concessionaire to the City. No designation of any payment by Concessionaire for application to a specific portion of Concessionaire's financial obligations hereunder shall be binding upon the City. No endorsements or statement on any check or any letter accompanying any check or payment as compensation or other charges shall be deemed an accord and satisfaction, and the City shall accept such check or payment without prejudice to the City's right to recover the balance of any and all compensation or other charges due from Concessionaire to the City or to pursue any other remedy provided in this Agreement or in law or equity. Any sums received by the City after termination of this Agreement shall not constitute compensation but shall be received only as reimbursement for use and occupancy of the Concession Space.

#### **5.06 REESTABLISHMENT OF RENTALS, FEES AND CHARGES**

The City, through the Manager, may from time to time, at intervals of not more than annually, at the Manager's sole discretion, and subject to the requirements of any outstanding bond ordinance pertaining to the Airport, reestablish the rentals, fees and charges provided for herein. The City agrees that such reestablished schedule of rentals, fees and charges shall be reasonable in relation to the cost of providing, operating and maintaining property, services and facilities of the airport system.

If the Manager proposes any change in the schedule of rentals, fees and charges, the City will give notice thereof to Concessionaire not less than 90 days before the same is to become effective. Should the proposed rentals, fees and charges result in an increase of more than 5% in the dollar amount of compensation paid by Concessionaire for the prior calendar year, then Concessionaire may decline to pay compensation at the new rate(s). Concessionaire shall promptly advise the Manager (but in no event less than 60 days prior to the proposed effective date of such schedule of rentals, fees and charges) of its intention to cancel and terminate this Agreement. Upon such notice of intent to cancel and terminate, Concessionaire shall surrender the Concession Space upon a date specified by the Manager. Should Concessionaire fail to give such notice of cancellation and termination, then it shall be deemed to have accepted the new rate(s) of compensation as promulgated by the Manager.



No failure by the City to reestablish the rentals, fees and charges at an annual interval date shall constitute a waiver of the City's right to reestablish the rentals, fees and charges at any time thereafter.

#### **5.07 BOOKS OF ACCOUNT AND AUDITING**

Concessionaire agrees to establish and maintain a system of bookkeeping satisfactory to City's Auditor. Such system shall be kept in a manner as to allow each location of the Concessionaire's operations hereunder to be distinguished from all other locations or operations of Concessionaire. Concessionaire shall keep and preserve for at least three years, or until sooner audited by City, all sales slips, cash register tapes, sales books, bank books or duplicate deposit slips, and all other evidence of business transacted for such period. The City's Auditor and Manager and their respective authorized representatives shall have the right at any time to inspect or audit all of the books of account, bank statements, documents, records, returns, papers and files of Concessionaire relating to the business transacted.

Concessionaire, upon written request, shall make all such documents available for examination within the Denver metropolitan area; or shall pay in full, in advance, travel and related expenses of a City representative to travel to any location outside the Denver area for such examination. Following the travel, expenses shall be reconciled, and any difference between the advance payment and the actual expenses shall be paid by or refunded to Concessionaire as appropriate. Such documents shall be available to the City representative within 14 calendar days of the date of the written request. The parties agree that, after execution of this Agreement, any delay in furnishing such records to the City will cause damages to the City which the parties agree are liquidated in the amount of \$350.00 per day for each day the records are unavailable beyond the date established as the City's notice.

Concessionaire agrees that the Manager, the Auditor of the City, or an authorized representative of the Auditor, may inspect any documents, returns, data or reports filed pursuant to Chapter 53 of the Denver Revised Municipal Code by Concessionaire with the City's Manager of Revenue and any related reports, documents, data or other information generated by the City's Manager of Revenue or employees under the control of such Manager of Revenue in connection with any investigation or audit of Concessionaire by the City's Department of Revenue. Concessionaire authorizes and permits the inspection of such documents, data, returns, reports and information by the Manager, Auditor or an authorized representative of the Auditor, and, further, waives any claim of confidentiality that it may have in connection with such documents, returns, data, reports and information.

#### **5.08 PERFORMANCE SURETY MAY BE DRAWN**

If the City has not received the monthly Rent on the date due, the City reserves the right, in addition to all of its other rights as stated herein, to immediately thereafter, and without notice, invoice the Rent to Concessionaire and to draw on the Performance Surety, based on the City's estimate of what is due. Any such draw against the Performance Surety by the City shall not release Concessionaire from the obligation of providing the actual monthly Revenue Statement.

#### **5.09 CONCESSIONAIRE'S PAYMENT OBLIGATIONS**

Concessionaire covenants to pay all Rent and charges under this Agreement independent of any obligation of the City. No breach of this Agreement by the City shall relieve Concessionaire of its obligation and duty to pay all such Rent and charges when due under the terms of this Section 5.

## **5.10 APPLICATION OF PAYMENTS**

The City is entitled to accept, receive and cash, or deposit, any payment made by Concessionaire for any reason or purpose or in any amount whatsoever, and apply the same, in the City's sole option, to any obligation of Concessionaire. Such payment or application shall not constitute payment of any amount owed, except that to which the City has applied the payment. No designation of any payment by Concessionaire for application to a specific portion of Concessionaire's financial obligations hereunder shall be binding upon the City. No endorsements or statement on any check or any letter accompanying any check or payment as compensation or other charges shall be deemed an accord and satisfaction or otherwise recognized for any purpose whatsoever. The acceptance of any such check, payment or partial payment, shall be without prejudice to the City's right to recover the balance of any and all compensation or other charges due from Concessionaire to the City and the City's right to pursue any other remedy provided in this Agreement or in law or equity.

## **5.11 RECOVERY OF CITY EXPENSE TO FULFILL CONCESSIONAIRE'S OBLIGATIONS**

***Concessionaire to Reimburse City.*** If the City has paid any sum or sums or has incurred any obligations or expense for which the Concessionaire has agreed to pay or reimburse the City, or if the City is required or elects to pay any sum or sums or insure any obligations or expense (a) by reason of failure, neglect, or refusal of the Concessionaire to perform or fulfill any one or more of the conditions, covenants, or agreements contained in this Agreement; or (b) as a result of an act of omission of the Concessionaire contrary to the conditions, covenants, and agreements contained in this Agreement, then, after written notice thereof by the City, the Concessionaire agrees to pay to the City the sum or sums so paid or the expenses so incurred, including all interest, costs, damages, and penalties, plus a twenty percent (20%) administrative fee, and each and every part of the same shall be and become Additional Rent, recoverable by the City in the same manner and with like remedies as if it were originally a part of the Rent as set forth herein.

***Evidence of Reasonable Expense.*** For all purposes under this Section 5, and in any suit, action, or proceeding of any kind between the Parties hereto, any receipt showing the payment of any sum or sums by the City for any work done or material furnished shall be prima facie evidence against the Concessionaire that the amount of such payment was necessary and reasonable. In the event the City brings suit to collect any delinquent payments due it by the Concessionaire, the City shall be entitled to recover all court costs and its reasonable attorney fees. Should the City elect to use its own operating and maintenance staff in making any repairs, replacements, and/or alterations and to charge the Concessionaire with the cost of same, any timesheet of any employee of the City showing hour of labor or work allocated to any such repair, replacement, and/or alteration, or any stock requisition of the City showing the issuance of materials for use in the performance thereof, shall be prima facie evidence against the Concessionaire that the amount of such charge was necessary and reasonable.

## **5.12 REMEDIES NON-EXCLUSIVE**

The remedies provided in this Section 5 are in addition to all other rights and remedies that the City may have for a breach or violation of this Agreement. Nothing in this Section shall be deemed to be a waiver by the City of any breach or violation, nor shall it be deemed to stop the City from terminating this Agreement or from asserting any other of its other rights or remedies

under this Agreement, or at law or in equity. Nothing contained herein shall be construed to require the City to accept delinquent Rent, or delinquent Additional Rent. Acceptance of full or partial payment of delinquent Rent, or delinquent Additional Rent, shall not constitute a waiver of any of the City's other rights and remedies under Section 11.

## **SECTION 6 – USE OF CONCESSION SPACE AND AIRPORT PROPERTY**

### **6.01. “AS IS” CONDITION OF CONCESSION SPACE**

Concessionaire accepts the Concession Space in “as is” and “where is” condition with absolutely no warranties as to condition or suitability for use being given by the City. All improvements made to the Concession Space, unless otherwise specified herein, shall be made and maintained by Concessionaire, at Concessionaire's sole cost and expense.

### **6.02 OPENING FOR BUSINESS**

Concessionaire shall open the Concession Space for business to the traveling public no later than the Concession Opening Date set out on the Summary Page. Such period may be extended by the Manager, in writing, if Concessionaire's opening is delayed through no fault of Concessionaire; however, in no event shall such extension affect the date upon which compensation is due.

Concessionaire shall submit to the City for review, at least 10 days prior to the Concession Opening Date, written operating and security procedures for its operations hereunder. Concessionaire shall revise such operating and security procedures as necessary to obtain City approval of them.

At least 10 days prior to the Concession Opening Date, Concessionaire shall submit to the City the Material Safety Data Sheets (MSDS) for all chemicals used in the operation of the concession, including for cleaning and maintenance.

If Concessionaire fails to open for business in the Concession Space within the time specified in this Section 6.01 and any extension granted by the Manager in writing, the parties agree that it is and will be impracticable and extremely difficult to determine the actual damages suffered by the City. Therefore, the parties have agreed that in order to compensate the City for its loss, Concessionaire shall pay to the City as Additional Rent, upon demand, the sum of \$100.00 per day for each day Concessionaire delays its initial opening beyond the time specified herein plus any extension granted by the Manager in writing. This remedy shall be in addition to any other remedies provided in this Agreement or by law to the City in the event of default by Concessionaire. The amount has been determined based upon numerous considerations including the fact that the City has foregone other proposed revenue-producing uses of the Concession Space and expended money in reliance upon Concessionaire opening for business on the intended opening date.

### **6.03 CONSTRUCTION OF IMPROVEMENTS; RESTRICTION ON CHANGES**

The City is providing the Concession Space with improvements, including counter space, in place. Concessionaire is responsible for providing furnishings, telephone equipment and service, other equipment, and signage, as required to operate its ground transportation business under this Agreement.

Concessionaire agrees not to alter, add to, remove or demolish any of the Improvements in the Concession Space without the prior written approval of the Manager. All such alterations or changes shall be made in accordance with DIA Tenant Development Guidelines.

#### **6.04 OPERATIONS**

Concessionaire agrees to conduct its business to accommodate the public using the Airport and to operate the concession in the following manner:

A. Concessionaire shall operate the concession in a first-class manner satisfactory to the Manager or her authorized representative. Customer service shall be prompt, clean, courteous and efficient. Concessionaire shall furnish, comparatively, the highest and best ground transportation service available in the Denver Metropolitan area. Concessionaire will maintain adequate staff and operate its fleet of vehicles in a manner sufficient to meet transportation demand associated with weather delays or emergencies so as to meet the transportation needs of the public.

B. Concessionaire shall maintain all vehicles in good and safe operating order, free from known mechanical defects, and in a clean, neat and attractive condition inside and out.

C. Concessionaire agrees that it will accept at least three (3) nationally recognized credit cards for payment of its ground transportation services.

Concessionaire shall accept, and in accordance with Section 7.08, display its acceptance of gift certificates, airline vouchers, traveler's checks, debit cards and nationally recognized credit cards including, but not limited to, American Express, MasterCard, VISA, Discover and Diner's Club. No minimum credit card or debit card purchase amount is allowed.

D. Concessionaire shall provide a reservation system for its ground transportation services.

E. Concessionaire shall at all times retain at the Concession Space an experienced manager of high quality ground transportation services who is fully authorized to represent and act for it in the operation of the concession and to accept service of all notices provided for herein. At times when this manager is not present at the Airport, Concessionaire shall assign, or cause to be assigned, a qualified subordinate to be in charge of the Concession Space, services and facilities and to be available at the Concession Space to act for such manager.

The manager shall have the authority to make all decisions necessary in the day-to-day operations of the Concession Space, including, without limitation, decisions regarding credits, customer complaints or concerns, and employee conduct. The manager shall be available on-site during the majority of operating hours and when not on the Concession Space, the manager shall appoint an assistant manager, or shift lead, with authority to act on the Manager's behalf, and/or the ability immediately to contact the manager in order to be able to respond promptly to customer or City concerns. Concessionaire may be required to employ more than one (1) manager to meet the requirements set forth herein.

F. During the required hours of operation, Concessionaire shall employ sufficient personnel to staff and meet the reasonable needs or demands of patrons during all hours of operation including, but not limited to, maintenance of the Concession Space as needed. Such personnel shall be qualified, trained, courteous, informative and helpful to the public. Concessionaire shall provide proper training of all employees and for the certification and/or licensing of employees in all areas of service as their duties might practically and legally require. Concessionaire shall ensure that all personnel refrain from any loud, boisterous, offensive or inappropriate conduct, and that they treat all patrons professionally, equally and courteously, including but not limited to forms of address, without regard to race, creed, color, national origin, ethnicity, age, disability, gender or sexual orientation. All employees shall be attired appropriately and professionally in clean identifiable dress and in keeping with attire worn by personnel in similar first-class businesses in the Denver metropolitan area. All employees must at all times properly display the official Airport identification badge and Concessionaire's identification name tag. Concessionaire's identification name tag shall clearly display the name of the Concessionaire. Concessionaire shall use reasonable efforts to employ an adequate number of bilingual personnel to serve non-English-speaking patrons as market demand may warrant.

G. All customers shall receive prompt, attentive and courteous service in accordance with the service standards of a first-class concession. Processing of customer purchases and refunds shall be prompt. Concessionaire shall properly itemize receipts, which shall reflect precisely the actual sale of services and shall present individual prices, totals and taxes, if any.

H. Concessionaire shall have separate counter and vehicle operator staff on duty at the Airport who shall remain in their respective separate operating areas. Only Terminal staff shall be behind the counter, and drivers must stay outside the Terminal building within the commercial vehicle loading and operating areas, except that brief interaction will be allowed. Concessionaire will provide, and its staff will use, two-way radios or cellular telephones for communication between its counter staff and vehicle operators. All base radios used by Concessionaire in the Airport shall be approved in writing by the Manager or her authorized representative prior to such use.

I. Concessionaire's employees and agents shall not engage in "high pressure" sales tactics or unfair or deceptive trade practices in the operation of the concession. Additionally, Concessionaire's employees and agents shall not engage in solicitation for or in connection with any services offered on or about the Airport by Concessionaire or any other party, except for offering Concessionaire's services to persons at the Concession Space. No payment shall be made to individuals, such as skycaps, for the purpose of diverting customers to Concessionaire's counter or vans. Concessionaire will not interfere with the operations of adjoining or other Airport tenants. Without limiting the foregoing, Concessionaire will not attempt to divert passengers who are waiting in line to obtain service from its competitors or who have pre-booked travel arrangements with any other ground transportation company. Failure by Concessionaire to comply with the provisions of this Section 6 shall constitute a material breach of this Agreement.

J. The attire of Concessionaire's personnel shall be neat, clean, and in compliance with § 100.08-8 of the Airport Rules and Regulations. Personnel shall be attired in identifiable dress and at all times display proper Airport identification as well as visible

identification of their name and employer. Concessionaire's employees and agents shall not wear, carry or personally display any signage designed to solicit business.

K. Concessionaire shall receive and take all deliveries of money, coin, supplies, goods and products in such manner and at such times and locations as the Manager or her authorized representative may reasonably approve. Emergency deliveries may be made at other times subject to prior arrangements with the Manager or her authorized representative. Concessionaire shall allow duly authorized representatives of governmental entities access to the Concession Space for inspection purposes.

L. Concessionaire shall comply with all applicable federal, state and local laws and Airport Rules and Regulations in its operations. Concessionaire agrees to obtain at its own expense, and maintain at all times, all licenses, certificates and any other such documents necessary for the operation of its establishment and to comply with all applicable health, safety and sanitary laws, regulations and inspections concerning same.

M. The Manager or her authorized representative shall have the right to make reasonable objections to the quality of services sold, the character of the service rendered the public, and the appearance and condition of the Concession Space. Concessionaire agrees to promptly discontinue or remedy any objectionable practice or condition within five (5) days after written notice by the Manager or her authorized representative.

N. Concessionaire agrees that its passengers for whom reservations have not been made for ground transportation services prior to the passenger's entry upon the Airport shall be ticketed only by company representatives who are located within the Concessionaire's counter space and only at such prices and destinations as are authorized by the PUC, the FMCSA, or any successor agency. No random discounts or inflated prices shall be allowed at the Airport unless otherwise authorized by one of the said regulatory commissions. Where such authority has been granted in writing Concessionaire agrees to provide to the City a current copy thereof. In the event Concessionaire's operations are deregulated or partially deregulated, Concessionaire agrees to provide to the City a current copy of its standard and customary rates and charges.

O. Concessionaire will advise all of its on-duty personnel of information relating to current Denver International Airport operating conditions as such information is provided by Airport officials.

P. Concessionaire agrees that it shall transport baggage for its customers only from the Concessionaire's counter space to an authorized commercial vehicle loading area, and that it shall not retrieve baggage from airline baggage carousels or other areas of the Airport for its passengers.

Q. Self service luggage carts located throughout the Airport for use by the traveling public shall not be gathered or retained by Concessionaire for resale or for use in the operation of its business or for any other purpose. Concessionaire shall not contract verbally or in writing with any other parties for the purpose of utilizing self service luggage carts in the operation of its business. Concessionaire agrees that it will report to the Manager of Aviation or the Denver Police Department all persons other than uniformed and badged Airport employees handling self service luggage carts who are

observed retaining, reselling or using carts for business purposes. Concessionaire further agrees that neither it nor its employees shall accept any form of compensation or gratuity for assisting passengers in the use of self service luggage carts.

R. Concessionaire shall not keep passenger baggage, ski equipment or luggage carriers or other paraphernalia stored, or allow such items to accumulate and remain, in front of its counter space. Concessionaire shall utilize Airport baggage storage facilities or place such items behind its counter space so as not to interfere with public passageways. Baggage carts may be placed in front of Concessionaire's counter space during regular business hours but only with the prior written approval of the Manager or her authorized representative.

#### **6.05 COMMERCIAL ROADWAY ACCESS**

A. Concessionaire agrees it shall not operate its commercial vehicles upon Airport premises without first obtaining an Automated Vehicle Identification Tag ("AVI Tag") for each vehicle in its fleet, which AVI Tag shall be affixed to the vehicle and used by Concessionaire when accessing commercial roadways designated for passenger loading and unloading. To obtain AVI Tags, Concessionaire's owners or authorized representatives shall submit an application using the form provided by the City.

B. A refundable deposit, payable by cashier's check or cash, will be assessed by the City for each AVI tag issued to Concessionaire, pursuant to §100.05-1(5) of the Airport Rules and Regulations, as amended. Concessionaire agrees to submit to the City all current applicable state and federal operating authorizations required by Section 3 of this Agreement. Concessionaire further agrees to comply with all applicable substantive and procedural requirements of the Airport Rules and Regulations in connection with its application for and use of AVI Tags, and shall pay the fees and deposits imposed by such Rules and Regulations for AVI Tags. The compensation provided for in Paragraph 4 of this Agreement does not reduce or otherwise affect Concessionaire's liability for its AVI Tag fees and deposits.

C. AVI tags are not transferable to any vehicle other than the ones to which they are originally assigned. Concessionaire agrees that it is solely responsible and accountable for training of its staff and for the distribution and use of all AVI Tags issued to it. Concessionaire agrees that if its AVI Tags are used by some other person, company or entity without authorization, Concessionaire shall be responsible and liable to the City for all fees charged for the use of such AVI Tags for trips of vehicles through the Airport roadway facilities prior to the time Concessionaire notifies the City of the loss or theft of its AVI Tags. Concessionaire further agrees that all AVI Tags issued to it remain the property of the City and that misuse of such AVI Tags constitutes an act of default under this Agreement. If such default is not cured, or of a nature which cannot be cured, such AVI Tags will be deactivated. All such AVI Tags must be returned to the City or the deposit paid thereon will be forfeited by Concessionaire.

## **6.06 SERVICE PLAN; OPERATING AUTHORITIES; TARIFFS**

Concessionaire agrees that prior to engaging in any ground transportation activity requiring authorization by the PUC, FMCSA, or any successor agency, it shall submit to the City current copies of such authorizations, registrations and tariffs issued to it by such agencies, and shall submit to the City all additional information which is required to obtain a commercial ground transportation operating permit under the Airport Rules and Regulations, as they may be amended from time to time. Concessionaire shall not offer any services or engage in any activity not specifically provided for under the terms of this Agreement, unless otherwise authorized in writing by the Manager or her authorized representative.

## **6.07 HOURS OF OPERATION**

A. Continuous Operation. Concessionaire agrees to keep its Concession Space open for business to the public every day, including weekends and holidays, for not less than the number of hours per day stated on the Summary Page. Concessionaire shall be deemed to have abandoned the Concession Space if Concessionaire closes such space to the public for two (2) or more consecutive days, unless such closing is permitted by any other provision of this Agreement. Such abandonment is an event of default under Section 9.

B. Daily Operating Hours. Concessionaire's obligation to remain open for business includes, without limitation, opening for business not more than 15 minutes late, closing the business not more than 15 minutes early, and closing the business for not more than 15 minutes during Concessionaire's business hours. Concessionaire shall use its best efforts to respond to any and all weather emergency and/or flight diversion situations which might require their counter space to open or remain open before or beyond these minimum hours.

C. Exceptions. Exceptions to Concessionaire's obligations under this Section 6.06 may be authorized in advance in writing by the Manager or her authorized representative.

D. Noncompliance. If Concessionaire fails to comply with any of the provisions of this Section 6.07, the City will suffer damages in an amount which is not readily ascertainable and thus City, in any such event, shall have the right, at its option, to collect as liquidated damages, and not as a penalty, in addition to all other charges or compensation payable hereunder, \$100.00 per day for each day in which Concessionaire failed to comply with this Section 6.07. This remedy shall be in addition to any and all other remedies provided in this Agreement or in law or in equity to the City.

## **6.08 SIGNS, COUNTER DISPLAYS, AND ADVERTISING**

A. Except as permitted under this Section 6.08 and the DIA Tenant Development Guidelines, Concessionaire shall not place or cause to be placed, erected or maintained on any exterior door, wall, window or the roof of the Concession Space, or on the interior or exterior surface of the glass of any window or door of the Concession Space, or on any common area, walkway or other location outside the Concession Space, or on or within any counter space in the Concession Space, whether or not there is display window space in the Concession Space, or within any entrance to the Concession



Space, any sign (flashing, moving, hanging, handwritten, or otherwise), decal, placard, decoration, flashing, moving or hanging lights, lettering, or any other advertising matter of any kind or description. However, subject to the prior written approval of the Manager or her authorized representative with respect to size, design and placement, Concessionaire may place decals relating to credit or charge cards accepted on the counter where warranted. No illuminated sign located in the interior of the Concession Space shall be permitted without the prior written approval of the City. All signs located in the interior of the Concession Space shall be in good taste so as not to detract from the general appearance of the Concession Space or the Airport.

B. No symbol, design, name, mark or insignia adopted by the City for the Airport shall be used without the prior written consent of the City.

C. Under no circumstances shall any handwritten or temporary signs or displays be posted or used by Concessionaire, including but not limited to any price lists or employment opportunity signs.

D. Concessionaire shall affix a sign to the exterior wall behind the counter in the Concession Space, subject to the advance approval of the Manager or her authorized representative. Concessionaire shall pay all costs of fabricating, constructing, operating and maintaining such sign including, without limitation, all charges for electricity if not supplied by the City. Concessionaire shall keep said sign well lighted during such hours as the Manager or her authorized representative shall designate, and shall maintain said sign in good condition and repair during the entire Term of this Agreement.

E. In the event Concessionaire shall be in default of this Section 6.07, Concessionaire shall pay as Additional Rent \$100.00 for each day of default in order to reimburse City for the additional administrative expenses resulting therefrom.

F. Permission will not be granted for any advertising which fails to comply with DIA Design Standards or DIA Tenant Development Guidelines, or any advertising material, sign, fixture or equipment which extends beyond the Concession Space.

G. Concessionaire will maintain a file within the Concession Space in which it will store letters of authorization from pre-booked convention customers, stating that the Concessionaire has been chosen as sole or preferred carrier for the conference/meeting/event, and that Concessionaire has permission to place the organization's name on its back wall sign to direct the affected travelers. Concessionaire must be able to produce the letter upon request from Airport personnel. If the name of an organization, convention, conference, meeting or event is displayed on Concessionaire's back wall sign or elsewhere in the Concession Space, and Concessionaire does not produce such an authorization letter, Concessionaire shall immediately remove such name from its sign or other display in the Concession Space. Failure by Concessionaire to do so shall constitute a material breach of this Agreement.

## 6.09 CARE OF AREA

Concessionaire agrees that in accordance with Section 7 it will keep the Concession Space in a neat, clean, safe, sanitary and orderly condition at all times, and further agrees that it will keep such area free at all times of all paper, rubbish, spills, and debris. Concessionaire, at its own expense, shall collect and deposit all trash and refuse at frequent intervals at collection station locations specified by the City. Accumulation of boxes, cartons, barrels or other similar items shall not be permitted within the Concession Space or in any public area in the Airport.

## 6.10 KIOSKS AND VENDING MACHINES

No amusement, kiosks, or vending machines or other machines operated by coins, tokens or credit cards shall be installed or maintained in or upon the Concession Space except with the written permission of the Manager or her authorized representative. The Manager or her authorized representative is under no obligation to approve any proposal set forth by the concessionaire to make use of a kiosk or vending machine. This prohibition includes, but not by way of limitation, sales from vending machines of such items as cigarettes, candy, maps, coffee, soft drinks, newspapers, stamps and insurance policies; telephones; trip tickets; dispensation of cash, money orders and checks; and operation of mechanical or electronic game devices, electronic video games, and entertainment devices.

If approved by the Manager or her authorized representative, a monthly fee to be determined shall be assessed for the privilege of operating the kiosk or vending machine. The Manager or her authorized representative will determine what products may be sold via kiosk or vending machine.

## 6.11 COMPLIANCE WITH ALL LAWS AND REGULATIONS

A. Illegal Use. Concessionaire agrees not to use or permit the Concession Space to be used for any purpose prohibited by the laws of the United States or the State of Colorado or the ordinances or Charter of the City and County of Denver. Concessionaire further agrees that it will use the Concession Space in accordance with all applicable federal, state, and local laws and will observe and comply with all general rules, regulations, standards, and guidelines adopted by the City or the Manager for the management, operation, and control of the Airport, either promulgated by the City on its own initiative or in compliance with regulations or actions of the Federal Aviation Administration or other authorized federal agency, as they may be amended from time to time ("Airport Rules and Regulations"). Concessionaire's failure to keep and observe said rules and regulations shall constitute a breach of the terms of this Agreement in the manner as if the same were contained herein as covenants. Concessionaire agrees to comply with Federal, State and Local Disadvantaged Business programs as more fully set forth in ***Exhibit B, Disadvantaged Business Enterprise Participation***; and ***Exhibit G, ACDBE Commitment Form***. Concessionaire further agrees to submit any report(s) or information that the City is required by law or regulation to obtain from Concessionaire or which the Manager may request relating to Concessionaire's operations.

B. Americans with Disabilities Act. Without limiting the foregoing, Concessionaire shall determine and assess the requirements to design, construct, and operate and shall at all times maintain the Concession Space in accordance with and in compliance with the requirements of the Americans with Disabilities Act ("ADA"), 42 USC §12,000 et seq., including the ADA Accessibility Guidelines and all federal regulations adopted pursuant to the ADA. In the event that compliance cannot be achieved, Concessionaire shall proceed formally to the federal agency having jurisdiction for a waiver of compliance. In order to comply with any requirements of the ADA or any other laws, codes, or regulations, the City may demand that Concessionaire

reimburse the City for costs incurred by the City to make any additions, alterations, or improvements to any part of the Airport to effect such compliance if Concessionaire uses, occupies, or makes any alterations, additions, or improvements to the Concession Space in a manner that makes the Concession Space non-compliant.

#### **6.12 COMPLIANCE WITH ENVIRONMENTAL REGULATIONS**

Concessionaire, in conducting any activity on the Concession Space or commons areas, shall comply with all applicable local, state or federal environmental rules, regulations, statutes, laws or orders (collectively "Environmental Requirements"). Concessionaire shall acquire and comply with all necessary federal, state and local environmental permits and requirements.

Concessionaire shall maintain copies of Material Safety Data Sheets (MSDS) for all chemicals used in the operation of the concession, including for cleaning and maintenance. This obligation is continuing for the term of this Agreement and Concessionaire shall make this documentation available for inspection by DIA upon request.

Concessionaire agrees to ensure that its Concession Space is designed, constructed, operated and maintained in a manner that minimizes environmental impact through appropriate preventive measures and complies with all federal, state and local environmental requirements. Concessionaire agrees to evaluate methods to reduce the generation and disposal of waste materials. Wastewater from maintenance or operational activities shall be pretreated with sand and grease traps.

In the case of a release, spill or leak as a result of Concessionaire's construction, operation or maintenance activities, Concessionaire shall immediately control and remediate the contaminated media to applicable federal, state and local standards. Concessionaire shall reimburse the City for any penalties and all cost and expense, including without limitation attorney's fees, incurred by the City as a result of the release or disposal by Concessionaire of any pollutant or hazardous material on the Airport.

#### **6.13 WASTE OR IMPAIRMENT OF VALUE**

Concessionaire agrees that nothing shall be done or kept in the Concession Space which might impair the value of the City's property or which would constitute waste.

#### **6.14 HAZARDOUS USE**

Concessionaire agrees that nothing shall be done or kept in the Concession Space and no improvements, changes, alterations, additions, maintenance or repairs shall be made to the Concession Space which might be unsafe or hazardous to any person or property. Further, Concessionaire shall not do or permit to be done any act or thing upon the Concession Space which will invalidate, suspend or increase the rate of any fire insurance policy required under this Agreement, or carried by the City, covering the Concession Space or the buildings in which the Concession Space is located or which, in the opinion of the Manager or her authorized representative, may constitute a hazardous condition that will increase the risks normally attendant upon the operations contemplated under this Agreement. If, by reason of any failure by Concessionaire to comply with the provisions of this section, after receipt of notice in writing from the City, any fire insurance rate on the Concession Space or on the buildings in which the same is located, shall at any time be higher than it normally would be, then Concessionaire shall pay the City, on demand, that part of all fire insurance premiums paid by the City which have been charged because of such violation or failure of Concessionaire; provided, that nothing

herein shall preclude Concessionaire from bringing, keeping or using on or about the Concession Space such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its business, or from carrying on the normal operations contemplated herein.

#### **6.15 STRUCTURAL, ELECTRICAL OR SYSTEM OVERLOADING**

Concessionaire agrees that nothing shall be done or kept on the Concession Space and no improvements, changes, alterations, additions, maintenance or repairs shall be made to the Concession Space which might impair the structural soundness of the building, result in an overload of utility, plumbing, or HVAC systems serving the Terminal and/or Concourses or interfere with electric, electronic or other equipment at the Airport. In the event of violations hereof, Concessionaire agrees immediately to remedy the violation at Concessionaire's expense.

#### **6.16 NOISE, ODORS, VIBRATIONS AND ANNOYANCES**

Concessionaire shall conduct its operations in an orderly and proper manner so as not to commit any nuisance in the Concession Space or annoy, disturb or be offensive to others in the Terminal or Concourses and shall take all reasonable measures, using the latest known and practicable devices and means, to eliminate any unusual, nauseous or objectionable noise, gases, vapors, odors and vibrations and to maintain the lowest possible sound level in its operations.

#### **6.17 ACCESS TO FACILITY AND SYSTEMS**

Concessionaire shall not do or permit to be done anything which might interfere with the effectiveness or accessibility of utility, heating, ventilating or air conditioning systems or portions thereof on the Concession Space or elsewhere on the Airport, nor do or permit to be done anything which may interfere with free access and passage in the Concession Space or the public areas adjacent thereto, or hinder police, firefighting or other emergency personnel in the discharge of their duties. Further, Concessionaire shall not do or permit to be done anything which might interfere with the effectiveness or accessibility of elevators or escalators in or adjacent to the Concession Space, including lines, pipes, wires, conduits and equipment connected with or appurtenant thereto.

Concessionaire shall not place any additional lock of any kind upon any window or interior or exterior door in the Concession Space, or make any change in any existing door or window lock or the mechanism thereof, unless a key therefor is maintained on the Concession Space, nor refuse, upon the expiration or sooner termination of this Agreement, to surrender to the City any and all keys to the interior or exterior doors on the Concession Space, whether said keys were furnished to or otherwise procured by Concessionaire. If any keys furnished to Concessionaire by City are lost, Concessionaire shall pay the City, on demand, the cost for replacement thereof.

#### **6.18 NO AUCTION**

Concessionaire agrees not to allow or permit any sale by auction or hawking on the Concession Space or elsewhere on the Airport.

## **6.19 TITLE TO IMPROVEMENTS**

Concessionaire agrees that all improvements to the Concession Space, including approved changes and renovations, which are affixed to the realty, shall become the property of the City upon their completion and acceptance by the City.

## **6.20 REMOVAL OF CONCESSIONAIRE'S EQUIPMENT**

Concessionaire shall retain title to and shall remove, at its sole cost, prior to the expiration or termination of this Agreement, all of Concessionaire's Equipment, as hereinafter defined. "Concessionaire's Equipment" shall mean all equipment, apparatus, machinery, signs, furnishings, trade fixtures and personal property installed by Concessionaire and used in the operation of the business of Concessionaire (as distinguished from the use and operation of the Concession Space) which is listed on an annual inventory list submitted by Concessionaire and approved by the City and maintained in the City's Airport Property Management Section. If such removal shall injure or damage the Concession Space, Concessionaire agrees, at its sole cost, at or prior to the expiration or termination of this Agreement, to repair such injury or damage in good and workmanlike fashion and to place the Concession Space in the same condition as the Concession Space would have been if such Concessionaire's Equipment had not been installed. If Concessionaire fails to remove any of Concessionaire's Equipment by the expiration or termination of this Agreement, City may, at its option, keep and retain any such Concessionaire's Equipment or dispose of the same and retain any proceeds therefrom, and City shall be entitled to recover from Concessionaire any costs of City in removing the same and in restoring the Concession Space in excess of the actual proceeds, if any, received by City from disposition thereof.

## **SECTION 7 – UTILITIES AND SERVICES**

### **7.01 UTILITIES**

Most concession areas in the Terminal and Concourses have services of adequate capacity to supply reasonable amounts of hot or chilled water, gas, electricity, potable water, fire protection, and storm sewer capacity to serve the concession areas. The Concessionaire shall verify capacity of all systems, in the Concession Space and shall be responsible for all utility system upgrades that are necessary for their concession build out. As of the date of actual possession, Concessionaire shall be responsible for the payment of all utilities required for operations in the Concession Space.

At its option, the City may bill Concessionaire its pro-rata share of certain utilities consumed or estimated to be consumed. In such case, the City will charge a rate no higher than that which would allow the City recover the cost of providing the service, which will include but not be limited to standard rates, fees and charges established by the Airport.

### **7.02 HEATING AND AIR CONDITIONING (HVAC)**

Concessionaire shall, at its expense, furnish, install and maintain any ductwork and other connections within or leading into its Concession Space required to connect and complete the HVAC from the Airport's central system for the Concession Space.

City shall, at its expense, furnish normal and reasonable quantities of central air from the central HVAC system to the Concession Space and all necessary power and electricity for such central

air circulation. Subject to conditions beyond its control, the City shall maintain under normal conditions a temperature adequate for comfortable occupancy according to the season; provided, that Concessionaire properly maintains the ductwork and other connections within or leading into its Concession Space and complies with the recommendations of the City's engineer regarding reasonable occupancy and use of the Concession Space.

### **7.03 WATER SERVICE**

Concessionaire shall, at its expense, furnish, install and maintain a water meter for the Concession Space at a location and of a type specified by the City and shall pay all costs for water used within the Concession Space. Concessionaire shall be responsible for all water hook-up of its equipment.

City shall furnish water from the central water source in reasonable quantities; provided that Concessionaire complies with all water conservation programs in effect or as adopted.

### **7.04 ELECTRICITY AND NATURAL GAS**

Concessionaire shall, at its expense, furnish, install and maintain an electric meter and a gas meter if required, at a location and of a type specified by the City, and shall pay all costs for electricity and gas used within the Concession Space. Concessionaire shall furnish, install and maintain all power circuits and connections required for equipment and mechanical systems used in the Concession Space. Any bills by the City for such costs shall be due within 30 days and shall accrue interest at the Past Due Interest Rate if not paid when due.

City will provide a premises wiring system to the Concession Space which will handle electronic information such as telephone and telecommunications equipment. Concessionaire shall be responsible for any extension of the wiring and connection of any terminals and devices in accordance with City requirements, and shall pay for telephone service to the Concession Space.

### **7.05 LIGHTING**

Concessionaire shall, at its expense, furnish, install and maintain all lighting fixtures and wiring for general illumination of the Concession Space. Levels of illumination and wattage requirements shall be subject to approval by City.

### **7.06 JANITORIAL SERVICES AND MAINTENANCE**

Concessionaire shall, at its expense, be responsible for janitorial services for the Concession Space. Concessionaire shall, at its expense, maintain the premises in a first-class condition, as conditions and the Manager or her authorized representative may require, including but not limited to redecoration, painting, repair and replacement of damaged or worn furnishings and equipment, and maintenance, repair and replacement of life safety, fire detection, fire suppression and fire monitoring systems.

Concessionaire covenants and agrees that all maintenance, repair and replacement shall be completed with due diligence and in a good and workmanlike fashion and in compliance with all conditions imposed by City and all applicable permits, authorizations, laws, ordinances, orders, rules and regulations of governmental authorities having jurisdiction and that the costs and expenses with respect to such maintenance, repair and replacement shall be paid promptly

when due and that the maintenance, repair and replacement shall be accomplished free of liens of mechanics and materialmen. Concessionaire further covenants and agrees that the costs and expenses for any maintenance, repair and replacement to the Concession Space required as a result of a failure of Concessionaire to perform such maintenance, repair or replacement plus 20% of such costs and expenses for overhead expenses shall be reimbursed by Concessionaire to City upon City's written demand.

#### **7.07 WINDOW WASHING AND STRUCTURAL MAINTENANCE**

City shall, at its expense, provide exterior window washing and maintain all structural parts of the Terminal and Concourses, including exterior glass, walls and roof but specifically excluding Concession Improvements made by Concessionaire.

#### **7.08 COMMON USE SERVICES**

The Manager may establish common use services at the Airport, including but not limited to trash and refuse removal, deliveries, industrial waste handling, recycling and security guards. The Manager reserves the right to establish charges for common use services based upon documented actual costs. Trash, sewer and deliveries will be common use services which Concessionaire may be required to use and pay its prorata actual share; however, other common use services may be utilized at Concessionaire's option. Concessionaire agrees to pay the charges for those common use services which are utilized by Concessionaire.

#### **7.09 INTERRUPTION OF SERVICES**

Concessionaire agrees that City shall not be liable for failure to supply any utility services. City reserves the right to temporarily discontinue utility services at such time as may be necessary by reason of accident, unavailability of employees, repairs, alterations or improvements or whenever by reason of strikes, lockouts, riots, acts of God or any other happenings beyond the control of the City, the City is unable to furnish such utility services. The City shall not be liable for damages to persons or property for any such discontinuance, nor shall such discontinuance in any way be construed as cause for abatement of compensation or operate to release the Concessionaire from any of its obligations hereunder, except as otherwise provided in the section entitled "Damage, Destruction or Loss."

#### **7.10 WASTE OR IMPAIRMENT OF VALUE**

Concessionaire agrees that nothing shall be done or kept in the Concession Space which might impair the value of the City's property or which would constitute waste.

#### **7.11 HAZARDOUS USE**

Concessionaire agrees that nothing shall be done or kept in the Concession Space and no improvements, changes, alterations, additions, maintenance or repairs shall be made to the Concession Space which might be unsafe or hazardous to any person or property. Further, Concessionaire shall not do or permit to be done any act or thing upon the Concession Space which will invalidate, suspend or increase the rate of any fire insurance policy required under this Agreement, or carried by the City, covering the Concession Space or the buildings in which the Concession Space is located or which, in the opinion of the Manager or the Manager's authorized representative, may constitute a hazardous condition that will increase the risks normally attendant upon the operations contemplated under this Agreement. If, by reason of

any failure by Concessionaire to comply with the provisions of this Section, after receipt of notice in writing from the City, any fire insurance rate on the Concession Space or on the buildings in which the same is located, shall at any time be higher than it normally would be, then Concessionaire shall pay the City, on demand, that part of all fire insurance premiums paid by the City which have been charged because of such violation or failure of Concessionaire; provided, that nothing herein shall preclude Concessionaire from bringing, keeping or using on or about the Concession Space such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its business, or from carrying on the normal operations contemplated herein.

Any nuisance, annoyance or hazardous or potentially hazardous condition, on or emanating from the Concession Space, shall be corrected immediately upon Concessionaire's actual knowledge of the condition, or receipt of oral or written notice from the City. If, in the City's sole discretion, a hazard or potentially hazardous condition presents an unreasonable and imminent risk of bodily injury, the City may require Concessionaire to close its business without compensation and bar the public from the Concession Space until the hazard or potentially hazardous condition has been abated. Nothing in this Section shall be deemed to preclude the City from pursuing any available remedy for Default of this Agreement. Concessionaire's failure to correct promptly a nuisance, annoyance or hazardous or potentially hazardous condition under this Section shall be a material breach of this Agreement.

#### **7.12 WASTE DISPOSAL AND RECYCLING**

***Waste Disposal and Recycling.*** Concessionaire shall gather, sort, and transport all garbage, refuse and recyclable materials daily to the City's designated holding area. Garbage, refuse and other debris shall be placed in non-broken, non-punctured, new 3-mil trash bags or such other garbage containers as may be required by the City suitable for transportation to a designated bin or compactor in the manner and at the time and places specified by the City. Concessionaire shall participate in the Airport's waste recycling program. Concessionaire shall place all garbage, refuse and recyclable materials in the appropriate containers at the City designated holding area, taking all reasonable measures to reduce the amount of waste it generates by requiring suppliers to remove nonessential over wrap, containers and other packaging, and to use recyclable materials for essential packaging whenever possible. The City currently provides containers for recycling the following: (a) corrugated cardboard; (b) magazines; (c) newspapers; (d) tin and steel cans; (e) glass that is clear, brown, or green; (f) batteries, and (g) high grade office paper, including letterhead, typing paper, colored paper, photocopy paper, and computer paper. Recyclable materials, including food waste, should be placed into the appropriate containers. Except for the recycling of batteries, Concessionaire shall ensure that the following materials are not deposited in City recycling containers: (i) Hazardous Substances, (ii) cans or other containers used to store paint, oil, solvent, cleaning fluids, or other Hazardous Substances; and (iii) unclean paper, including paper that is soiled with food, paper with plastic covers or windows and wax coated paper. In addition, the City may establish other specific requirements concerning the storage and transport of waste and recyclables in the Airport's Rules and Regulations.

#### **7.13 SANITATION, HYGIENE AND CLEANLINESS.**

***Sanitation, Hygiene and Cleanliness.*** Concessionaire shall keep the Concession Space free of debris, trash, and hazardous conditions, shall keep public areas around



the Concession Space free of hazardous conditions originating from Concessionaire's operations and shall orally notify the City promptly of other hazardous conditions in the public areas outside the Concession Space upon actual knowledge of any such hazardous condition. Concessionaire shall provide a proper arrangement for the adequate sanitary disposal of all trash and other refuse on the Concession Space and shall provide for its timely removal to a central collection point provided by the City. Concessionaire shall take appropriate action in the handling of waste materials to prevent the presence of rodents and other vermin. Concessionaire shall keep all garbage materials in durable, fly-proof and rodent-proof, fireproof containers that are easily cleaned. The containers shall have tight-fitting lids, doors or covers, and shall be kept tightly covered when material is not being deposited in them. Concessionaire shall clean the containers, as necessary, to prevent odors. Concessionaire shall not allow boxes, cartons, barrels, or other similar items to remain within view of Public Areas. The City shall be responsible for handling and removal of trash and other refuse deposited by the public in Public Areas. Concessionaire shall not deposit any of its trash or other refuse in any containers except those designated for Concessionaire's trash, as provided in Section 7.14.

#### **7.14 MAINTENANCE OF CONCESSION SPACE BY CONCESSIONAIRE**

***No City Responsibility to Maintain Concession Space.*** The Concessionaire shall bear all costs of operating Concessionaire's business on the Concession Space and the City shall have no responsibility to maintain, repair or replace any portion of the Concession Space,

***Maintenance.*** Concessionaire shall, at all times and at Concessionaire's sole expense, maintain the Concession Space in a first-class condition, in good repair, ordinary wear and tear excepted, and keep it in a clean and orderly condition and appearance, as conditions and the Manager's authorized representative may require, including but not limited to all Improvements located on and within the Concession Space, whether installed by Concessionaire or by the City, redecoration, painting and repair and replacement of damaged or worn furnishings and equipment, and maintenance, repair and replacement of life safety, fire detection, fire suppression and fire monitoring systems. The City shall be the sole judge of the quality of such maintenance.

***Repairs, Replacements and Remodeling.*** Concessionaire shall make all necessary and appropriate repairs, replacements and remodeling to the business promptly. All repairs, replacements, or remodeling to the Concession Space done by or on behalf of Concessionaire shall be completed with due diligence and in a good and workmanlike fashion, shall be of first-class quality in both materials and workmanship, and shall be equal to or better than the original in materials and workmanship and in compliance with all conditions imposed by City and all applicable permits, authorizations, laws, ordinances, orders, rules and regulations of governmental authorities having jurisdiction.

Except for repairs costing less than Two Thousand Dollars (\$2,000), all repairs must have the prior written approval of the City. The City shall be the sole judge of the quality of the repairs, replacements, or remodeling performed. Prior to beginning any repair, replacement or remodeling work, except for the above-described repairs costing less than Two Thousand Dollars (\$2,000), Concessionaire shall notify the City in advance of what type of repairs, replacements, or remodeling work it intends to do and must secure written City approval of the same before beginning any such work. In the event of an

emergency repair situation, Concessionaire must notify the City of the repair as soon as possible. Following such notice, the City may inspect the repair work and require alterations if the repair is not satisfactory to the City. The foregoing notwithstanding, all repairs requiring shutdown of any Airport system require prior written approval of the Manager's authorized representative.

Costs and expenses with respect to such maintenance, repair and replacement shall be paid promptly when due and the maintenance, repair and replacement shall be accomplished free of liens of mechanics and materialmen.

Concessionaire shall repaint, refinish and maintain, at Concessionaire's own cost, high traffic areas within the Concession Space subject to greater than-normal wear on a schedule to be specified by Concessionaire, or as may be directed by the City, if Concessionaire fails to specify a reasonable refurbishment schedule. All Improvements that become worn, chipped, dented, gouged or otherwise damaged, shall be repaired or replaced by Concessionaire, at Concessionaire's sole expense as soon as reasonably possible.

***Failure to Maintain or Repair.*** If Concessionaire refuses or neglects to undertake the prompt maintenance or repair, which is Concessionaire's responsibility under this Agreement, the City shall have the right to have such work done on behalf of and for Concessionaire. Such work shall be paid for by Concessionaire within ten (10) calendar days following written demand by the City for said payment at the City's standard rates, plus a twenty percent (20%) administrative fee. If the work is performed by a contractor hired by the City, the City shall be reimbursed the City's actual cost, plus a twenty percent (20%) administrative fee upon City's written demand.

***Damage Caused to Other Property.*** Any damage caused by Concessionaire to the Airport or any City property or operations, or the property of any other tenant, person or entity, either by act or omission, or as a result of the operations of Concessionaire, shall be the responsibility of Concessionaire. Concessionaire shall reimburse the City or the tenant or other party for any such damage within thirty (30) days of written demand by the City, plus a twenty percent (20%) administrative fee. If the same type of damage is caused by the Concessionaire more than once, such as a water leakage, electrical service interruption or other damage, then the City must review and approve Concessionaire's plan of repair and, if such plan is unsatisfactory in the sole determination of the City, the City shall have the right to require that Concessionaire allow the City to make the repair and then reimburse the City for the cost of such repair, plus a twenty percent (20%) administrative fee.

## **7.15 QUALITY ASSURANCE**

***Quality Assurance Inspections.*** The City or its agents may, in its discretion and at any time, inspect, monitor and test Concessionaire's operations for quality assurance ("Quality Assurance Inspections") to ensure compliance with all of Concessionaire's operating obligations set forth in this Section 7. All Quality Assurance Inspections shall be conducted so as not to interfere with Concessionaire's operations and shall, at a minimum, focus on, but not be limited to, the following:

- Concession Space: General upkeep, signage, maintenance, equipment and cleanliness
- Products: Delivered as represented
- Personnel: Professionalism, appearance, customer service, receipts provided and activity

The City shall provide Concessionaire with written results of the Quality Assurance Inspections. Concessionaire agrees to promptly correct all deficiencies noted in Concessionaire's performance. Concessionaire shall promptly notify the City of the corrections as completed, or request additional time to correct outstanding items where the City determines progress has been made by Concessionaire to correct such deficiencies. In the event that Concessionaire fails to correct in a timely manner the deficiencies noted, the City may elect to impose Sanctions as per Section 10 and/or declare an Event of Default.

#### **7.16 CITY'S RIGHT OF ACCESS.**

Without limiting the City's right of inspection set forth in Section 3.05, the City, or its agents and employees, shall have the right to enter the Concession Space, from time to time, to examine the Concession Space, and to make such repairs, alterations, improvements, or additions as the City is required or authorized to make under this Agreement. During the last six (6) months of the term of this Agreement, the City may show the Concession Space to prospective tenants. In addition, during any emergency, the City, or its agents, may enter the Concession Space forcibly, if necessary, without liability, and without in any manner affecting Concessionaire's obligations under this Agreement. Nothing herein contained, however, shall be deemed to impose upon the City any obligation, responsibility, or liability whatsoever, for any care, maintenance, or repair, except as otherwise expressly provided for in this Agreement. The City shall also have the right, at all times during this Agreement, to enter the Concession Space in order to determine whether Concessionaire has complied with the terms and conditions of this Agreement. The City shall have the right to enter the Concession Space to cure any breach that remains uncured by Concessionaire after reasonable notice and opportunity to cure have been given to Concessionaire.

### **SECTION 8 – RESERVED**

### **SECTION 9 – INDEMNITY, INSURANCE AND GUARANTEES**

#### **9.01. INDEMNITY**

- (a) Concessionaire hereby agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to, directly or indirectly, its operations in connection herewith work performed under this Agreement, its construction of the Concession Improvements, or its use or occupancy of any portion of the Airport and including acts and omissions of officers, employees, representatives, suppliers, invitees, contractors, subcontractors, and agents of the Concessionaire; ("Claims"), unless such Claims have been specifically determined by the trier of fact to

be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Concessionaire or its subcontractors either passive or active, irrespective of fault, including City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

- (b) Concessionaire's duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Concessionaire's duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City's negligence or willful misconduct was the sole cause of claimant's damages.
- (c) Concessionaire 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 Concessionaire under the terms of this indemnification obligation. The Concessionaire 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.

## 9.02 INSURANCE

**Required Insurance.** Concessionaire agrees to secure at its own expense and to keep in force at all times during the Term hereof, the types and amounts of insurance coverage specified in the attached **Exhibit C**. Insurance requirements set forth on **Exhibit C** do not limit in any way the amount or scope of liability of Concessionaire under this Agreement. The amounts listed indicate only the minimum amounts of insurance coverage that the City is willing to accept to help insure full performance of all terms and conditions of this Agreement. All insurance required by Concessionaire under this Agreement shall meet the following minimum requirements.

**City as Additional Insured.** The City shall be named as an additional insured in each general liability policy and as an additional insured and loss payee in each property insurance policy. Such insurance shall provide cross-liability coverage equivalent to the standard Separation of Insureds clause published by the Insurance Services Offices or a successor organization. Concessionaire shall supply the City with certification from the insurance carrier that the City is so named. Each such policy or certificate shall further provide that any coverage afforded the City as additional insured shall apply as primary insurance and other insurance issued to the City shall apply as excess and non-contributing insurance, and will not require any contribution from any insurance or self-insurance carried by the City.

**Waiver of Subrogation.** Concessionaire and the City waive any right of action that they and/or their insurance carriers might have against each other (including their respective employees, officers, commissioners, or agents) or against other tenants of the Airport for any loss, cost, damage, or expense (collectively "Loss") to the extent that such loss or damage is covered by any property insurance policy or policies maintained or required to be maintained pursuant to this Agreement and to the extent that such proceeds (which proceeds are free and clear of any interest of third parties) are received by the party claiming the Loss. Concessionaire also waives any right of action it and/or its insurance carrier might have against the City (including its respective employees, officers, commissioners or agents) for any Loss described in Section 12, whether or not such Loss is insured. If any of Concessionaire's applicable insurance policies do not allow the insured to waive the insurer's rights of subrogation prior to a Loss, Concessionaire shall cause it to be endorsed with a waiver of subrogation that allows the waivers of subrogation required by this Section.

**Forty-Five Day Cancellation.** Each such policy or certificate shall contain a valid provision or endorsement that "This policy will not be canceled, or materially changed or altered, without first giving 45 days prior written notice, or 10 days notice for nonpayment of premium, to the City's Manager of Aviation, Denver International Airport, 8500 Peña Boulevard, Denver, Colorado 80249-6340, sent by certified mail, return receipt requested."

**Company Ratings.** Policies of insurance must be written by companies having an A.M. Best rating of "A-" or better or equivalent.

**Certificates; 45-Day Cancellation.** On or before the execution of this Agreement and throughout this Agreement term, Concessionaire shall provide the City with current certificates of insurance establishing the existence of all insurance policies required under this **Section**. The City shall be given no less than forty-five (45) days prior written notice of cancellation, non-renewal or material change in any policy. Insurance must be maintained without any lapse in coverage during the entire term of this Agreement. Insurance canceled without City consent shall be deemed an immediate Event of Default under this Agreement. The City shall also be given certified copies of Concessionaire's policies of insurance, upon request. Failure of the City to demand such certificate or other evidence of full compliance with these insurance requirements, or failure of the City to identify a deficiency from the evidence provided, shall not be construed as a waiver of Concessionaire's obligations to maintain the insurance required by this Agreement.

**Deductibles and Retentions.** Any deductible or self-insured retention exceeding fifteen percent (15%) of the per-occurrence or per-accident limit of a required policy is subject to approval by the City.

A renewal certificate shall be delivered to the Airport Landside Services Section at least 10 days prior to a policy's Expiration Date, except for any policy expiring after the Expiration Date of this Agreement or any extension thereof.

Certificates evidencing the existence of the policies, in such form as the Manager may require, shall be delivered to the Airport Property Management Section prior to the Target Possession Date. Upon request by the Manager, Concessionaire agrees to

furnish to Airport Concessions Management Section at any time thereafter during the Term of this Agreement the original or a certified copy of said policy or policies.

**Concessionaire's Risk.** Concessionaire shall be responsible for obtaining any insurance it deems necessary to cover its own risks. In no event shall the City be liable for any: (a) business interruption or other consequential damages sustained by Concessionaire; (b) damage, theft or destruction of Concessionaire's inventory, Improvements, or property of any kind; or (c) damage, theft or destruction of an automobile, whether or not insured. If at any time any of the insurance policies shall be or become unsatisfactory to the City as to form or substance, or if any of the carriers issuing such policies shall be or become unsatisfactory to the City, Concessionaire shall promptly obtain a new and satisfactory replacement policy and give the City an updated certificate of insurance that complies with the new insurance requirements of the City.

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

### **9.03 PERFORMANCE GUARANTEE**

Upon execution of this Agreement, Concessionaire shall deliver to the Manager, and maintain in effect at all times throughout the Term and for six months after the expiration or termination of this Agreement, an irrevocable letter of credit or such other acceptable surety as first approved in writing by City, in the amount of **Fifty Thousand Dollars and No Cents (\$50,000 Dollars and 00/100) (EXHIBIT F)** which amount is subject to increase by the Manager. Such guarantee shall be payable without condition to the City and guarantee to the City full and faithful performance of (i) all of the terms and provisions of this Agreement by Concessionaire, as said Agreement may be amended, substituted, supplemented or extended, and (ii) all obligations and duties under all general rules and regulations adopted by the City or the Manager for the management, operation and control of the Airport as amended or supplemented. All irrevocable letters of credit shall be in a form, and issued by a bank, acceptable to the City.

Notwithstanding the foregoing, if at any time during the term hereof, the Manager deems the amount of the surety insufficient to properly protect the City from loss hereunder because Concessionaire is or has been in arrears with respect to such obligations or because Concessionaire has, in the opinion of the Manager, violated other terms of this Agreement, Concessionaire agrees that it will, after receipt of notice, increase the surety to an amount required by the Manager; provided however, the percentage increase in the amount of surety shall not exceed the annual percentage increase that has occurred with respect to Concessionaire's Minimum Annual Guarantees in effect under this Agreement.

Whether in the form of a surety bond or Irrevocable Letter of Credit, the surety may be issued for a one (1) year period, provided, however, that evidence of renewal or replacement of the surety must be submitted annually by Concessionaire to the City at least sixty (60) days prior to the Expiration Date of the instrument. The surety shall contain language that the surety company shall notify the City in writing within forty-five (45) days of a determination that the surety is to be terminated, or is not going to be renewed. The surety bond must be executed by Concessionaire and by a surety meeting the qualifications set forth below.

If, following an Event of Default, the City chooses to draw upon the performance surety; it shall be the obligation of Concessionaire to replenish the performance surety to the originally contracted level within 30 days of such draw down by the City. Failure to do so shall constitute a Default under this Agreement.

#### **9.04 NO PERSONAL LIABILITY**

No director, officer or employee of either party hereto shall be held personally liable under this Agreement or because of its execution or attempted execution.

#### **9.05 LICENSES, FEES, TAXES AND, LIENS**

Concessionaire agrees to promptly pay all taxes, excises, license fees and permit fees of whatever nature applicable to its operations hereunder and to take out and keep current all municipal, state or federal licenses required for the conduct of its business at and upon the Concession Space, and maintain and keep current all registrations and certificates of authority from the PUC, the FMCSA, or both, required for the conduct of Concessionaire's commercial ground transportation business. Concessionaire further agrees not to permit any of said registrations, certificates, taxes, excises, license fees or permit fees to become delinquent. Concessionaire also agrees not to permit any mechanic's or materialman's or any other lien to become attached or be foreclosed upon the Concession Space or improvements thereto, or attached to any lease agreement with the City, or any part or parcel thereof, by reason of any work or labor performed or materials furnished by any mechanic or materialman. Concessionaire agrees to furnish to the Manager, upon request, duplicate receipts or other satisfactory evidence showing the prompt payment by it of Social Security, unemployment insurance and worker's compensation insurance, and all required licenses and all taxes. Concessionaire further agrees to promptly pay when due all bills, debts and obligations incurred by it in connection with its operations hereunder and not to permit the same to become delinquent and to suffer no lien, mortgage, judgment or execution to be filed against the Concession Space or improvements thereon which will in any way impair the rights of the City under this Agreement.

**Fees.** Concessionaire agrees to promptly pay all excises, license fees and permit fees of whatever nature applicable to its operations hereunder and to take out and keep current all municipal, state or federal licenses required for the conduct of its business at and upon the Concession Space and further agrees not to permit any of said excises, license fees or permit fees to become delinquent.

**Taxes and Assessments.** The Concessionaire shall pay all taxes and assessments of whatever character that may be levied, assessed, or charged upon the property, possessory interest, personal, occupied, used, or owned by the Concessionaire, or upon the rights of the Concessionaire to occupy the Concession Space, or upon the Concessionaire's Tenant Improvements and any other property thereon, or upon the Concessionaire's rights or operations hereunder. The Concessionaire shall have the right at its sole cost or expense to contest such taxes as may have been or may be levied, assessed or charged.

**Liens.** Concessionaire also shall not create, permit, or suffer to be created or to remain, not to permit any mechanic's or materialman's or any other lien to become attached or be foreclosed upon the Concession Space or improvements thereto, or any part or parcel thereof, or any lease entered into with the City, by reason of any construction,

services, work or labor performed or materials furnished by any mechanic or material man. If any such lien shall at any time be filed, Concessionaire may contest the same in good faith. Notwithstanding such contest, Concessionaire shall, within fifteen (15) calendar days after the filing thereof, cause such lien to be released of record by payment, bond, or order of a court of competent jurisdiction. In the event Concessionaire fails to clear the record of any such lien within the aforesaid period, the City may remove said lien by paying the full amount thereof, or by bonding, or in any other manner the City deems appropriate, without investigating the validity thereof, and irrespective of the fact that Concessionaire may contest the propriety or the amount thereof. Thereafter Concessionaire shall, upon demand, pay the City the amount paid by the City in connection with the discharge of said lien, plus a twenty percent (20%) administrative fee, and all reasonable expenses incurred in connection therewith, including reasonable attorneys' fees, which amounts are due and payable to the City as Additional Rent on the first (1st) day of the month following payment by the City. Nothing contained in this Agreement shall be construed as consent on the part of the City to subject the Concession Space to any lien or liability.

**Prompt Payment.** Concessionaire agrees to furnish to the Manager, upon request, duplicate receipts or other satisfactory evidence showing the prompt payment by it of Social Security, unemployment insurance and worker's compensation insurance, and all required licenses and all taxes. Concessionaire further agrees to promptly pay when due all bills, debts and obligations incurred by it in connection with its operations hereunder and not to permit the same to become delinquent and to suffer no mortgage, judgment or execution to be filed against the Concession Space or improvements thereon which will in any way impair the rights of the City under this Agreement.

## **SECTION 10 –NON COMPLIANCE AND VIOLATIONS**

### **10.01. NONCOMPLIANCE**

**Manager's Objections.** The Manager or the Manager's authorized representative shall have the right to make reasonable objections to Concessionaire's failure to create and maintain a vibrant first-class concession at the Airport as provided in Sections 5 and 7 and operate its business in a manner satisfactory to the Manager or the Manager's authorized representative. Concessionaire agrees to promptly discontinue or remedy any objectionable practice or condition within the cure period stated in any written notice issued by the Manager or Manager's authorized representative.

### **10.02. CUMULATIVE OR CONTINUOUS VIOLATIONS**

Should Concessionaire violate the provisions of Sections 5, 6, or 7 of this Agreement, the City may place the Concessionaire on notice to cure said violation or violations without declaring the violation a default, and in addition, collect liquidated damages as provided below.

With each notice, whether verbal or in writing, Concessionaire will be given a cure period in which to remedy the violation without further consequence. Concessionaire will be allowed two written notices cumulatively in each calendar year before imposition of liquidated damages. Beginning with the third written notice, and any written notices thereafter, liquidated damages may be assessed should Concessionaire fail to remedy the violation before the expiration of the cure period.



## Concessionaire's Performance Obligations as Described in Sections 5 and 7

Form of notice	Consequence
Pre-written Notice(s)	Verbal notification(s) issued by City to Concessionaire (cure period allowed)
1 <sup>st</sup> Written Notice	First written notice issued by City to Concessionaire (cure period allowed)
2 <sup>nd</sup> Written Notice	Second written notice issued by City to Concessionaire (cure period allowed)
3 <sup>rd</sup> Written Notice and thereafter	Third written notice by City to Concessionaire (cure period allowed).  After the cure period Concessionaire shall be assessed \$100 per day as liquidated damages for each whole or partial day until the violation is cured.

For the purposes of this Section 10 only, the following definitions shall apply:

**Cure Period.** An amount of time required to become compliant with the Agreement for violations stated in pre-written or written notices issued by the City to the Concessionaire, either as mutually agreed between City and Concessionaire or in City's sole reasonable judgment taking into account the specific circumstances of the violation or violations and/or time allowed under previous verbal and written notices concerning the same or similar violations.

**Pre-written Notice(s).** Oral notifications of a Section 5 or Section 7 violation at the premises delivered by the City to Concessionaire's ownership, management or its premises on-site management or staff. Pre-written notices may be in person or via telephone.

**Written Notice.** Notice of a Section 5 or Section 7 violation at the premises delivered by the City to Concessionaire's ownership, management or its premises on-site management or staff via letter, email or by some other form as may be adopted from time to time by the City and delivered to Concessionaire at the notice address for Concessionaire specified in this Agreement.

**Liquidated Damages.** Concessionaire's failure to adhere to the operating requirements set forth in this Agreement are reasonably anticipated to result in significant inconvenience to the public, adversely affect the overall business of the Airport, and reduce the amount of Rent to be paid to the City. Additionally, City resources will be expended in dealing with violations of this Agreement by Concessionaire. The Parties

hereby agree that total damages sustained by the City for violations of the Sections of this Agreement listed below could be significant, but would be difficult to determine and to track. Therefore, the liquidated damages set forth below for violation of Concessionaire's performance obligations are agreed to between the Concessionaire and the City to be reasonable amounts and reasonable estimates of the loss anticipated to be suffered or incurred by the City. Concessionaire, therefore, hereby agrees that imposition of these liquidated damages is fair and reasonable and Concessionaire agrees to pay to the City the specified liquidated damage amounts immediately upon demand by the City, in accordance with the above procedures. Liquidated damages relating to this Section 10 shall be \$100 per each full and each partial day for which the violation remains uncured beyond the cure date stated in third and subsequent written notices.

Imposition of any of these pre-written notices, written notices and any liquidated damages assessed or collected shall not constitute a waiver of any other remedies available to the City due to Concessionaire's failure to maintain Concessionaire's performance obligations as provided in Sections 5 and 7 of this Agreement.

**Remedies Non-Exclusive.** The City reserves the right, in the Manager's sole and absolute discretion, not to impose the Sanction of Liquidated Damages and instead to seek any other remedy available to the City as an Event of Default under Section 11, including termination of this Agreement.

The remedies provided in this Section 10 are in addition to all other rights and remedies that the City may have for a breach or violation of this Agreement. Nothing in this Section 10 shall be deemed to be a waiver by the City of any breach or violation of this Agreement, nor shall imposition of any of these sanctions be deemed to stop the City from terminating this Agreement or from asserting any other of its other rights or remedies under this Agreement, or at law or in equity. If any or all of these Sanctions are found to be unenforceable, then the unenforceable Sanction(s) will be discontinued, but the violations shall continue to be immediately covered by Section 11 and the remedies shall be as provided in Section 11.

## SECTION 11 –DEFAULT, REMEDIES AND TERMINATION

### 11.01 DEFAULT

Concessionaire's failure to keep, perform and observe any promise or Concessionaire's violation of any term, covenant or condition of this Agreement, including but not limited to the occurrence of any one or more of the following events shall constitute a default under this Agreement ("default"):

- a. **Failure to Pay Rent.** A default shall occur if the Concessionaire fails to pay timely any Rent or Additional Rent when due and such failure or violation (sometimes referred to as delinquency) is not cured within thirty days (30) thereafter.
- b. **Cross-Default.** The occurrence of any default by Concessionaire under any other Airport agreement shall constitute a default under this Agreement.
- c. **Bankruptcy/Insolvency.** The insolvency of Concessionaire shall be a default for which no notice or opportunity to cure need be given. For purposes of this

Agreement, and to the extent permitted by the United States Bankruptcy Code, "Insolvency" shall be deemed to include (1) an assignment by Concessionaire for the benefit of Creditors; (2) the filing by Concessionaire of a voluntary petition in bankruptcy; (3) dissolution; (4) the appointment of a receiver, trustee or liquidator of any or substantially all of the properties of Concessionaire and the receiver, trustee or liquidator is not discharged within forty-five (45) days; and (5) the filing of an involuntary petition of bankruptcy and failure of Concessionaire to secure a dismissal of the petition within sixty (60) days after filing; and (6) attachment of, or the levying of execution on this Concessionaire's interest, and failure of Concessionaire to secure discharge of the attachment or release of the levy of execution within forty-five (45) days.

- d. ***Unapproved Transfers.*** A default shall occur if Concessionaire transfers its interest under this Agreement, without the prior written approval of the City, by reason of death, operation of law, assignment, sublease or otherwise, to any other person, entity or corporation.
- e. ***Failure of Concessionaire's Obligation to Construct and/or Use Concession Space.*** A default shall occur if Concessionaire fails to timely submit plans and specifications, bonds and other preconstruction submittals, fails to promptly begin or timely complete construction of Improvements, fails to open for business to the public when construction is completed, or fails to occupy and use the Concession Space after construction is completed or fails to operate the concession.
- f. ***Illegal Use.*** A default shall occur if Concessionaire uses, or gives its permission to any person to use for any illegal purpose any portion of the Airport made available to Concessionaire for its use under this Agreement.
- g. ***Abandonment.*** A default, for which no notice or opportunity to cure need be given, shall occur if City has discovered that Concessionaire has abandoned, deserted or vacated the Concession Space.
- h. ***Liens against City Property.*** A default shall occur if Concessionaire suffers any lien or attachment adverse to the interest of the City, including but not limited to mechanic's or materialman's liens to be filed against the Concession Space or this agreement or this lease, or any lien or attachment to be filed against the Airport or this lease or the City's property because of any act or omission of Concessionaire. Concessionaire shall have a ten (10) day grace period to have such lien or attachment discharged or released against said property at the Airport or said lease.
- i. ***Material Misrepresentations.*** A default shall occur if the City discovers that Concessionaire made a material misrepresentation to the City that induced the City to enter into this Agreement.
- j. ***Operating Authority.*** A default shall occur if the Concessionaire loses its operating authority and thus the ability to serve the Airport.
- k. ***Default in Other Covenants.*** A default shall occur if Concessionaire fails to keep, perform or observe any other promise or violates any term, covenant or condition of this Agreement.

## 11.02 CITY'S REMEDIES

Immediately upon the occurrence of a default, the City, at its discretion, may exercise any of the following rights and remedies, in addition to any other rights and remedies provided elsewhere in this Agreement or otherwise in law or at equity by providing written notice to Concessionaire:

- a. **City's Right to Draw Performance Surety.** If Concessionaire is in default of any term of this Agreement, the City reserves the right, in addition to all other rights as stated herein, to immediately after such default, give Concessionaire and its surety, if any, written notice of said default and that after ten (10) days of such notice, to draw on the Performance Surety an amount based on City's reasonable estimate of the amount due for such default. Any such draw against the Performance Surety shall not release the Concessionaire for any of its obligations under this Agreement including the requirement set forth in Section 9.
- b. **Right to Cure Concessionaire's Default.** If Concessionaire causes default under this Agreement, the City, may, without waiving any of its remedies pursuant to this Agreement, but shall not be obligated to, perform the same for the account of, and at the expense of Concessionaire, without notice in a case of emergency, and in any other cases, at any time after the date of the default, cure the default by either drawing upon the Performance Surety or using City's own funds, upon giving Concessionaire 10 days written Notice of its intent to do so. The City shall not be liable to Concessionaire or its surety for any claim for damages resulting from such action by the City. In the event that City uses its own funds Concessionaire agrees to reimburse City, upon demand, for any amounts the City may spend in complying with the terms of this Agreement on behalf of Concessionaire, plus a twenty percent (20%) administrative fee.
- c. **Elect to Continue and Enforce Agreement.** The City may elect to allow this Agreement to continue in full force and effect and to enforce all of City's rights and remedies hereunder, including without limitation the right to collect compensation as it becomes due together with Past Due Interest.
- e. **Termination of Agreement.** Subject to Concessionaire's right to cure, if any, the City may terminate this Agreement and Concessionaire's right to possession immediately upon the occurrence of a default. Any notice to terminate may be given before or within the applicable cure period and may be included in a notice to Concessionaire of its failure to keep, perform and observe any promise or of Concessionaire's violation of any term, covenant or condition of this Agreement of compliance. The City may cancel and terminate this Agreement and repossess the Concession Space, remove therefrom all property of the Concessionaire and store the same at the expense of the Concessionaire, with or without process of law, and without liability for so doing, upon giving 30 days written notice to Concessionaire of its intent to terminate, at the end of which time all rights hereunder of the Concessionaire shall terminate, unless the default, which shall have been stated in such notice, is by its nature curable and shall have been cured within 30 days of the date of default.
- f. **Damages upon Termination.** If City elects to terminate, Concessionaire shall be liable to city for all amounts owing at the time of termination, including but not limited to compensation due plus interest thereon at the Past Due Interest Rate together with any other amount to fully compensate City for all loss of compensation, damages, costs and attorney fees, caused by Concessionaire's failure to perform its obligations hereunder, or

which in the ordinary course would likely result therefrom. Nothing in this Section shall be construed to grant a right to Concessionaire to cure a default, which by its nature is not capable of being cured.

- g. **Re-Entry.** Without accepting surrender and without prejudice to any remedies for damages or breach, the City may elect to reenter and take possession of the Concession Space or Airport Property or any part thereof, by suitable action or proceeding at law, or by force or otherwise, without being liable for indictment, prosecution or damages therefore, and may expel Concessionaire or any person claiming under Concessionaire, and remove all effects as may be necessary, to the end that City may have, hold and enjoy the Concession Space or other Airport Property. Such reentry shall not be construed as termination of this Agreement unless written notice specifically so states; however, the City reserves the right to terminate the Agreement at any time after reentry.

Notwithstanding re-entry by the City, Concessionaire shall continue to be liable for all amounts due as compensation under this Agreement, on the dates specified and in such amounts as would be payable if default had not occurred. Upon expiration of the Term, or any other earlier termination of the Agreement by the City, the City, having credited to the account of Concessionaire any amounts recovered through reletting, shall refund without interest, any amount that exceeds the compensation, damages and costs payable by Concessionaire under this Agreement.

- g. **Reletting.** Following re-entry, the City may relet the whole or any part of the Concession Space from time to time, either in the name of the City or otherwise, to such tenants, for such terms ending before, on or after the Expiration Date of this Agreement, at such rentals and upon such conditions (including financial concessions and free rent periods) as the City may determine to be appropriate. To the extent allowed under Colorado law, the City shall not be liable for refusal to relet the Concession Space, or, in the event of any such reletting, for failure to collect any Rent due upon such reletting; and no such failure shall operate to relieve Concessionaire of any liability under this Agreement or otherwise affect any such liability. The City may make such physical changes to the Concession Space as the City considers advisable or necessary in connection with any such reletting or proposed reletting, without relieving Concessionaire of any liability under this Agreement or otherwise affecting Concessionaire's liability. If the City has other vacant space, the City shall have no obligation to attempt to relet the Concession Space prior to leasing such other vacant space. The City shall not be required to attempt to relet the Concession Space to a potential lessee with whom the City has been negotiating for other space owned by the City or to whom the City has shown other space owned by the City. If the City has relet all or any part of the Concession Space for the period which otherwise would have constituted all, or any part, of the unexpired portion of the term of this Agreement, the amount of Rent reserved on such reletting shall be deemed, prima facie, to be the fair and reasonable rental value for the part, or the whole, of the Concession Space so relet during the term of the reletting. Acts of maintenance, or preservation, or efforts to relet the Concession Space, or the appointment of a receiver upon initiative of the City to protect the City's interest under this Agreement, shall not constitute a termination of this Agreement or an acceptance of surrender of this Agreement.
- h. **Damages upon Re-Entry.** Whether or not the City retakes possession or relets the Concession Space, the City shall have the right to recover damages immediately, without waiting until the due date of any future Rent or until the date fixed for expiration

of this Agreement, which damages, shall include, but not be limited to the following: ( a) all Rents lost, calculated through the Expiration Date, subject only to the statutory requirements to mitigate damages, if any; (b) all legal expenses and other related costs incurred by the City as a result of Concessionaire's default; (c) all costs incurred by the City in restoring the Concession Space (or other damaged City property where damage was caused by Concessionaire) to good order and condition, or in remodeling, renovating or otherwise preparing the Concession Space for reletting, including, without limitation, removal and disposal of Concessionaire's Improvements or other property; (d) all taxes due or to become due under this Agreement; and, (e) all costs incurred by the City in reletting the Concession Space, including, without limitation, any advertising costs, brokerage commissions and the value of the City's staff time expended as a result of the default. The present value of future amounts will be computed using a discount rate equal to the prime loan rate of major Colorado banks in effect on the date of trial.

### **11.03 RIGHT TO CURE**

Concessionaire shall have the right to cure any default under this Agreement within 30 days of written notice of such default, except a default occurring due to Insolvency, Bankruptcy, Illegal Use, Abandonment or Material Misrepresentation. Such right to cure exists for only thirty days after the date of said written notice, except that if the violation is of such a nature that it cannot be completely cured within the thirty (30) day period, this provision shall be complied with if Concessionaire begins to perform whatever may be required to correct its failure to perform its obligation or to correct the violation within such thirty (30) day period, and thereafter proceeds in good faith and continues such performance with all due diligence and without interruption, except for causes beyond its control, to effect the cure as soon as practical. The reference to written notice in this Section 11 means any written document that describes Concessionaire's failure to keep, perform and observe any promise or Concessionaire's violation of any term, covenant or condition of this Agreement, which is delivered to Concessionaire in accordance with and at the address for Concessionaire specified in the notices section of this Agreement.

### **11.04 REMEDIES CUMULATIVE**

***Remedies Cumulative and Nonexclusive.*** Each right and remedy in this Agreement shall be deemed cumulative and will be in addition to every other right or remedy in this Agreement, or existing at law or in equity, including, without limitation, suits for injunctive relief and specific performance. Such rights and remedies shall not be in lieu of or exclusive of each other and shall in no way affect any other remedy available to the City under law or equity. The exercise or beginning of the exercise, by the City of any such rights or remedies will not preclude the simultaneous or later exercise by the City of any other such rights or remedies. All such rights and remedies are nonexclusive. Nothing contained herein shall be construed to require the City to accept delinquent Rent, or delinquent Additional Rent. Acceptance of full or partial payment of delinquent Rent, or delinquent Additional Rent, shall not constitute a waiver of any of the City's other rights and remedies under this Section 11. The City may sue periodically to recover damages during the period corresponding to the remainder of the term of this Agreement, and no action for damages shall bar a later action for damages subsequently accruing.

### **11.05 ADMINISTRATIVE HEARING**

Disputes arising out of this Agreement shall be resolved by administrative hearing before the Manager following the procedures outlined in Denver Revised Municipal Code Section 5-17; provided, that City shall retain its right to obtain an order of eviction in accordance with

applicable state law. It is further agreed that no cause of action shall be brought against the City until there has been full compliance with the terms of this paragraph.

#### **11.06 WAIVERS**

***Non-Waiver of Rights – Default.*** No waiver of default or violation of this Agreement by the City of any of the terms, covenants, and conditions hereof to be performed, kept, and observed by the Concessionaire shall be construed as, or shall operate as, a waiver of any subsequent default or violation of any of the terms, covenants, or conditions herein contained, to be performed, kept, and observed by the Concessionaire.

***Non-Waiver of Rights – Partial Payment.*** No failure of City to insist upon the strict performance of a term, covenant or agreement contained in this Agreement, no failure by City to exercise any right or remedy under this Agreement, and no acceptance of full or partial payment during the continuance of any default by Concessionaire shall constitute a waiver of any such term, covenant or agreement or a waiver of any such right or remedy or a waiver of any default by Concessionaire.

### **SECTION 12 – DAMAGE, DESTRUCTION OR LOSS**

#### **12.01. DAMAGE TO OR DESTRUCTION OF CONCESSION SPACE**

If Concessionaire's Improvements, or any portion thereof, are destroyed or damaged by fire, the elements or otherwise, the Concessionaire shall promptly remove all debris resulting from such damage to the Improvements and shall at its sole cost and expense repair and/or reconstruct the Improvements with due diligence whether or not the damage or destruction is covered by insurance in accordance with the plans and specifications for the Concession Space as they existed prior to such damage or according to the current needs of the Concessionaire as approved by the City. If Concessionaire fails to repair or replace damaged Improvements in accordance with a schedule agreed to by the City and Concessionaire, and provided that this Agreement has not been canceled, the City may make such repairs or replacement and recover from Concessionaire the direct cost and expense of such repair or replacement, plus a twenty (20%) percent administrative overhead fee.

If the Concession Space, or any portion thereof, is destroyed or damaged by fire or otherwise to an extent which renders it unusable, City may rebuild or repair any portions of the building structure destroyed or damaged, and, if the cause was beyond the control of Concessionaire, the obligation of Concessionaire to pay the compensation hereunder shall abate as to such damaged or destroyed portions during the time they are unusable. If the City elects not to proceed with the rebuilding or repair of the building structure, it shall give notice of its intent within 90 days after the destruction or damage which the City will promptly provide to Concessionaire. Concessionaire may then, at its option, cancel and terminate this Agreement.

#### **12.02. COOPERATION IN THE EVENT OF LOSS**

If the City elects to rebuild, Concessionaire must replace all Concession Improvements at its sole cost and in accordance with the Required Minimum Investment in April 2014 dollars, subject to escalation according to the Engineering News Record Building Cost Index for the Denver, Colorado area, and performance standards as set forth in ***Exhibit X***. City and Concessionaire shall cooperate with each other in the collection of any insurance proceeds which may be payable in the event of any loss or damage.

### **12.03. LOSS OR DAMAGE TO PROPERTY**

The City shall not be liable for any loss of property by theft or burglary from the Airport or for any damage to person or property on the Airport resulting from operating the elevators, or electric lighting, or water, rain or snow, which may come into or issue or flow from any part of the Airport, or from the pipes, plumbing, wiring, gas or sprinklers thereof or that may be caused by the City's employees or any other cause, and Concessionaire agrees to make no claim for any such loss or damage at any time, except for any abatement of compensation or right to insurance proceeds provided for in this Section.

### **12.04. MUTUAL WAIVER; INSURANCE COVERAGE**

City and Concessionaire each waive any and every claim for recovery from the other for any and all loss of or damage to the Concession Space or to the contents thereof, which loss or damage is covered by valid and collectible fire and extended insurance policies, to the extent that such loss or damage is recoverable under such insurance policies. Since this mutual waiver will preclude the assignment of any such claim by subrogation or otherwise to an insurance company or any other person, Concessionaire agrees to give to each insurance company which has issued, or may issue, to the Concessionaire policies of fire and extended coverage insurance, written notice of the terms of this mutual waiver, and to have such insurance policies properly endorsed, if necessary, to prevent the invalidation of the insurance coverage by reason of this waiver.

***Concessionaire Caused Damage.*** If Concessionaire caused the damage described in this Section 12, Concessionaire shall pay for all of the full rebuilding costs, except to the extent of the waiver of subrogation set forth in this Section and Rent shall not be reduced.

***Limits of the City's Obligations Defined.*** It is understood that, in the application of this Section 12, the City's obligations shall be limited to the repair or reconstruction of the Concession Space to a condition with utilities stubbed to the Concession Space suitable for Concessionaire to re-build. Redecoration, Improvements, Trade Fixtures, inventory and replacement of all of Concessionaire's furniture, equipment, inventory and supplies shall be the sole responsibility of Concessionaire and any such redecoration and refurbishing/re-equipping shall be of equivalent quality to that originally installed under the terms of this Agreement.

***No Duty to Protect.*** Protection against loss by fire or other casualty to any of the contents of the Concession Space shall not, at any time, be an obligation of the City.

### **12.05. RELEASE**

Concessionaire agrees that the City shall not be liable to Concessionaire for any injury to or death of any of the Concessionaire's agents, representatives or employees or of any other person or for any damage to any of Concessionaire's property or loss of revenue caused by any third person in the maintenance, construction, or operation of facilities at the Airport, or caused by any third person using the Airport, or caused by any third person navigating any aircraft on or over the Airport, whether such injury, death or damage is due to negligence or otherwise.



## **SECTION 13 – MISCELLANEOUS PROVISIONS**

### **13.01 AGREEMENT BINDING UPON SUCCESSORS**

This Agreement, subject to the provisions of the Section entitled "Assignment ," shall be binding upon and shall inure to the heirs, personal representatives, successors and assigns of the City and Concessionaire where permitted by this Agreement. The term "Concessionaire" shall include an assignee or sublessee from the Concessionaire on any assignment or sublease approved by the City, but no such assignment or sublease shall be approved or shall have any effect unless the Concessionaire and its proposed assignees or sublessee shall thereafter be jointly bound thereby as the Concessionaire hereunder. However, in the event the Concessionaire is authorized to assign, or sublet to, or contract with, a third party to perform or provide any service or sell any product, the term Gross Revenues as used herein shall include the total Gross Revenues generated by the performance of or sale of product by such third party, and not the amount received by the Concessionaire from such third party.

### **13.02 AGREEMENT MADE IN COLORADO**

This Agreement shall be deemed to have been made in and shall be construed in accordance with the laws of the State of Colorado.

### **13.03 AGREEMENTS WITH THE UNITED STATES**

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 development of the Airport or airport system.

### **13.04 RIGHT TO DEVELOP AIRPORT**

Concessionaire agrees that the City reserves the right to further develop or improve the Airport and all landing areas and taxiways as the City may see fit, regardless of the desires or views of Concessionaire and without any interference or hindrances from Concessionaire.

### **13.05 AGREEMENT SUBJECT TO AVIATION PRIORITY**

Concessionaire's right to use the Concession Space for the purposes as set forth in this Agreement shall be secondary to, and subordinate to, the operation of the Airport. Concessionaire acknowledges that because of the location of the Concession Space at the Airport, noise, vibrations, fumes, debris and other interference with the Permitted Use will be caused by Airport operations. Concessionaire hereby waives any and all rights or remedies against the City arising out of any noise, vibration, fumes, debris and/or interference that is caused by the operation of the Airport. The City specifically reserves for itself, and for the public, a right of flight for the passage of aircraft in the airspace above the surface of the Airport together with the right to cause in said airspace such noise, vibration, fumes, debris, and other interference as may be inherent in the present and future operation of aircraft.

### **13.06 MODIFICATIONS REQUIRED BY FAA**

In the event that the FAA or its successors requires modifications or changes in this Agreement as a condition precedent to the granting of funds for the improvement of the Airport, or otherwise, Concessionaire agrees to consent to such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this Agreement as may be reasonably required to satisfy the FAA requirements, subject to the provisions of this Agreement.

### **13.07 ASSIGNMENT AND SUBLEASE**

Concessionaire shall not assign, transfer, sublease, pledge, hypothecate, surrender, or otherwise encumber (collectively "Transfer"), or dispose of this Agreement or any interest created by this Agreement, or any interest in any portion of the same, nor grant any license or concession hereunder, or permit any other person or persons, company or corporation to occupy the Concession Space, without first obtaining the written consent of the Manager, which consent may be granted or denied in the sole and absolute discretion of the Manager. Any attempt by the Concessionaire to in any way Transfer its interest in this Agreement, in whole or in part, directly or indirectly (including any attempt to transfer the ownership of the equity or voting interest in the stock if Concessionaire is a corporate entity or the ownership interest in such other entity or control of Concessionaire or Concessionaire's operations through sale, exchange, merger, consolidation or other such Transfer), without the prior written consent of the Manager shall, at the option of said Manager, automatically terminate this Agreement and all rights of the Concessionaire hereunder. These restrictions on Transfer shall also apply to assignment of activities, uses, privileges, and obligations authorized under this Agreement.

The City's consent to a Transfer shall not include consent to enlarge the Term or modify other material provisions of this Agreement. The City's consent to a Transfer shall not constitute a release of liability of Concessionaire pursuant to the requested Transfer. The City's consent to one such Transfer shall not be deemed a consent to subsequent Transfers.

### **13.08 BOND ORDINANCES**

This Agreement is in all respects subject and subordinate to any and all City bond ordinances applicable to the Airport and airport system and to any other bond ordinances, which should amend, supplement or replace such bond ordinances. The Parties to this Agreement acknowledge and agree that all property subject to this Agreement which was financed by the net proceeds of tax-exempt bonds is owned by the City, and Concessionaire agrees not to take any action that would impair, or omit to take any action required to confirm, the treatment of such property as owned by the City for purposes of Section 142(b) of the Internal Revenue Code of 1986, as amended. In particular, the Concessionaire agrees to make, and hereby makes, an irrevocable election (binding on itself and all successors in interest under this Agreement) not to claim depreciation or an investment credit with respect to any property subject to this Agreement which was financed by the net proceeds of tax-exempt bonds and shall execute such forms and take such other action as the City may request in order to implement such election.

### **13.09 FORCE MAJEURE**

Neither Party hereto shall be liable to the other for any failure, delay or interruption in the performance of any of the terms, covenants or conditions of this Agreement due to causes beyond the control of that party, including without limitation strikes, boycotts, labor disputes,

embargoes, shortages of materials, acts of God, acts of the public enemy, acts of superior governmental City authority, weather conditions, floods, riots, rebellion, sabotage or any other circumstance for which such Party is not responsible or which is not in its power to control, but in no event shall this paragraph be construed so as to allow Concessionaire to reduce or abate its obligation to pay the MAG or Percentage Compensation Fee herein, or any other compensation due hereunder.

### **13.10 INCONVENIENCES DURING CONSTRUCTION**

Concessionaire recognizes that from time to time during the Term of this Agreement, it may be necessary for City to commence or complete extensive programs of construction, expansion, relocation, maintenance and repair in order that the Airport and its facilities may be maintained, improved, and operated in accordance with any present or future master layout plan, and that such construction, expansion, relocation, maintenance and repair may inconvenience the Concessionaire in its operation at the Airport. Concessionaire agrees that no liability shall attach to City, its officers, agents, employees, contractors, subcontractors and representatives by way of such inconveniences, and Concessionaire waives any right to claim damages or other consideration therefrom.

### **13.11 MASTER PLAN**

Concessionaire agrees that no liability shall attach to the City, its officers, agents and employees by reason of any efforts or action toward implementation of any present or future master layout plan for the Airport, and waives any right to claim damages or other consideration arising therefrom.

### **13.12 CONCESSIONS MASTER PLANNING**

Concessionaire agrees that no liability shall attach to the City, its officers, agents and employees by reason of any efforts or action toward implementation of any present or future master planning for the Airport's concessions program, and waives any right to claim damages or other consideration arising therefrom.

### **13.13 NONDISCRIMINATION**

In connection with the performance of work under this Agreement, Concessionaire agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability, and Concessionaire further agrees to insert the foregoing provision in all subcontracts hereunder.

### **13.14 NOT PARTNERSHIP**

Notwithstanding the provisions herein for payment by Concessionaire to City of sums based upon a percentage of Gross Revenues, it is expressly understood and agreed that the City shall not be construed by a third party or held by Concessionaire to be a partner, associate or joint venturer of Concessionaire in the conduct of its business. Concessionaire shall at all times have the status of an independent contractor without the right or City authority to impose tort or contractual liability upon the City.

### **13.15 NOTICES**

All notices required to be given to the City or Concessionaire hereunder shall be in writing and sent by certified mail, return receipt requested, as follows:

to City:	Manager of Aviation Denver International Airport Airport Office Building, 9th Floor 8500 Peña Boulevard Denver, CO 80249-6340
with a copy to:	Deputy Manager of Aviation, Commercial Denver International Airport Airport Office Building, 9th Floor 8500 Peña Boulevard Denver, CO 80249-6340
to Concessionaire:	At the address and to the attention of the person so designated on the Summary Page.

Either Party hereto may designate in writing from time to time the address of substitute or supplementary persons within the State of Colorado to receive such notices. The effective date of service of any such notice shall be the date such notice is mailed or delivered to the intended Party.

### **13.16 PARAGRAPH HEADINGS**

The paragraph headings herein are for convenience in reference only and are not intended to define or limit the scope of any provision of this Agreement.

### **13.17 PATENTS AND TRADEMARKS**

Concessionaire represents that it is the owner of or fully authorized to use any and all services, processes, machines, articles, marks, names or slogans used by it in its operations under this Agreement. Concessionaire will not utilize any protected patent, trademark or copyright, including any patents, trademarks or copyrights owned by the City, in its operations under this Agreement unless it has obtained proper permission and all releases and other necessary documents. Concessionaire agrees to save and hold harmless the City, its officers, employees, agents and representatives from any loss, liability, expense, suit or claim for damages in connection with any actual or alleged infringement of any patent, trademark or copyright arising from any alleged or actual unfair competition or other similar claim arising out of the operations of Concessionaire under this Agreement.

### **13.18 SECURITY**

Concessionaire shall cause its officers, contractors, agents and employees to comply with any and all existing and future security regulations adopted by the City or the Transportation Security Administration (TSA), including 49 CFR Subtitle B, Chapter XII, as amended from time to time. Concessionaire understands and acknowledges that its ability to remain open and sell the Products it is authorized to sell under this Agreement is subject to changes in alert status as determined by TSA. Failure by Concessionaire to adhere to security regulations affecting the

Airport shall constitute a material breach of this Agreement. Concessionaire will reimburse the City, in full, for any fines or penalties levied against the City for security violations as a result of any actions on the part of Concessionaire, its agents, contractors, suppliers or employees and for any attorney fees or related costs paid by the City as a result of any such violation.

### **13.19 SEVERABILITY**

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the validity of other provisions herein, which are severable, shall be unaffected.

### **13.20 THIRD PARTIES**

This Agreement does not, and shall not be deemed or construed to, confer upon or grant to any third party or parties (except Parties to whom the Concessionaire may assign this Agreement in accordance with the terms hereof, and except any successor to the City) any right to claim damages or to bring any suit, action or other proceeding against either the City or the Concessionaire because of any breach hereof or because of any failure to comply with of any of the terms, covenants, agreements and conditions herein.

### **13.21 USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS**

Concessionaire, its officers, agents and employees shall cooperate and comply with the provisions of the Federal Drug-Free Workplace Act of 1988 and Denver Executive Order No. 94, or any successor thereto, concerning the use, possession or sale of alcohol or drugs. Except as otherwise may be provided herein, Concessionaire shall also prohibit consumption of alcohol within the Concession Space. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City's barring Concessionaire from City facilities or participating in City operations.

### **13.22 CITY SMOKING POLICY**

Concessionaire agrees that it will prohibit smoking by its employees and the public in the Concession Space and will not sell or advertise tobacco products. Concessionaire acknowledges that smoking is not permitted in Airport buildings and facilities except for designated smoking lounges. Concessionaire and its officers, agents and employees shall cooperate and comply with the provisions of the City's Executive Order No. 99 dated December 1, 1993, Executive Order No. 13 dated July 31, 2002, the provisions of Denver Revised Municipal Code, §§ 24-301 to 317 et. seq., and the Colorado Clean Indoor Air Act, C.R.S. §§ 25-14-201 et. seq.

### **13.23 WAIVER OF CLAIMS**

Concessionaire hereby waives any claim against the City for loss of anticipated profits caused by any suit or proceedings attacking the validity of this Agreement, or any part of this Agreement, or by any judgment or award in any suit declaring this Agreement null, void, or voidable, or delaying this Agreement or any part of it being carried out.

### **13.24 INTERPRETATION OF AGREEMENT**

This Agreement is the result of arms length negotiations between the City and Concessionaire, and therefore any ambiguity in this Agreement shall not be construed against the City by reason of its preparation of this Agreement.

### **13.25 NUMBER OR GENDER**

The use herein of a singular term shall include the plural, and use of the masculine, feminine, or neutral genders shall include all others.

### **13.26 JOINT AND SEVERAL LIABILITY**

If Concessionaire is a partnership or other business organization, the members of which are subject to personal liability, the liability of each such member shall be deemed to be joint and several.

### **13.27 BROKER'S COMMISSION**

Concessionaire represents and warrants that it has not caused nor incurred any claims for brokerage commissions or finder's fees in connection with the execution of this Agreement, and Concessionaire shall indemnify and hold the City harmless against and from all liabilities arising from any such claims caused or incurred by it (including without limitation, the cost of attorney fees in connection therewith).

### **13.28 NO LIMIT ON CITY'S POWERS**

Nothing in this Agreement shall limit, in any way, the power and right of the City to exercise its governmental rights and powers, including its powers of eminent domain.

### **13.29 COLORADO OPEN RECORDS ACT**

The Concessionaire acknowledges that the City is subject to the provisions of the Colorado Open Records Act, Colorado Revised Statutes 24-72-201 et seq., and the Concessionaire agrees that it will fully cooperate with the City in an event of a request or a lawsuit arising under such act for the disclosure of any materials or information which the Concessionaire asserts is confidential and exempt from disclosure. Any other provision of this Agreement notwithstanding, including exhibits, attachments, or other documents incorporated into this Agreement by reference, all materials, records and information provided by the Concessionaire to the City shall be considered confidential by the City only to the extent provided in the Open Records Act, and the Concessionaire agrees that any disclosure of information by the City consistent with the provisions of the Open Records Act shall result in no liability of the City.

### **13.30 WAR OR NATIONAL EMERGENCY**

During the time of war or national emergency, the City shall have the right to lease the Airport or any part thereof to the United States Government for military use, and if any such lease is executed, the provisions of this Agreement insofar as they are inconsistent with this Agreement to the Government shall be suspended, and in that event, a just proportionate part of the MAG hereunder shall be abated.

### **13.31 SURVIVAL OF INDEMNITIES**

The indemnity agreements set forth in this Agreement shall survive the expiration or earlier termination of this Agreement and be fully enforceable thereafter.

### **13.32 CAPACITY TO EXECUTE**

The individuals executing this Agreement warrant that they have full authority to execute this Agreement on behalf of the entity for whom they purport to be acting.

### **13.33 ENTIRE AGREEMENT**

The City and Concessionaire each warrant and represent to each other that this Agreement constitutes their legal, valid and binding obligation and that the provisions herein including all Exhibits and other documents incorporated by reference, contains the entire agreement between the City and Concessionaire as to this Agreement. It is further understood and agreed by Concessionaire that the City and the City's agents and employees have made no representations or promises with respect to this Agreement or the making or entry into this Agreement, except as in this Agreement expressly set forth, and that all representations made by any officer, agent or employee of the respective Parties unless included herein are null and void and of no effect. No alterations, amendments, changes or modifications, unless expressly reserved to the Manager herein, shall be valid or effective unless mutually agreed upon in writing and an amendment to this Agreement is executed by an instrument in writing by the Parties with the same formality as this Agreement.

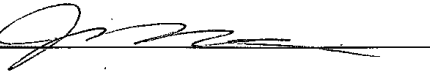
### **13.34 FINAL APPROVAL**

This Agreement is expressly subject to, and shall not be or become effective or binding on the City until approved by the City Council, and fully executed by all signatories of the City and County of Denver.

**[SIGNATURE PAGE FOLLOWS]**

Contract Control Number: PLANE-201415109-00

Contractor Name: Colorado Mountain Express, Inc.

By: 

Name: James O'Donnell  
(please print)

Title: COO  
(please print)

ATTEST: [if required]

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)





**Contract Control Number:**

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

SEAL

**CITY AND COUNTY OF DENVER**

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



## STANDARD FEDERAL ASSURANCES APPENDIX 1

NOTE: As used below the term "contractor" shall mean and include the second party, and the term "sponsor" shall mean the "City".

During the term of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. Compliance with Regulations. The contractor shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter "DOT") Title 49, Code of Federal Regulations, Part 21, and Title 14, CFR, Part 152, Subpart E, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

2. Nondiscrimination. The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, creed, color, national origin, or sex in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Title 49, Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

3. Solicitations for Subcontractors, Including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

4. Information and Reports. The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the sponsor of the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance. In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the sponsor shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:

- a. Withholding of payments to the contractor under the contract until the contractor complies, and/or
- b. Cancellation, termination, or suspension of the contract, in whole or in part.

6. Incorporation of Provisions. The contractor shall include the provisions of paragraphs 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

7. The Contractor for itself, representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this agreement for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, the Contractor shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

8. The Contractor for itself, representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land: (1) that no person on the grounds of race, color, sex, creed or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, sex, creed or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Contractor shall use the premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

#### **9. NONDISCRIMINATION IN AIRPORT EMPLOYMENT OPPORTUNITIES**

The Contractor assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.

It is unlawful for airport operators and their lessees, tenants, concessionaires and contractors to discriminate against any person because of race, color, national origin, sex, creed, or handicap in public services and employment opportunities.

## APPENDIX NO. 2

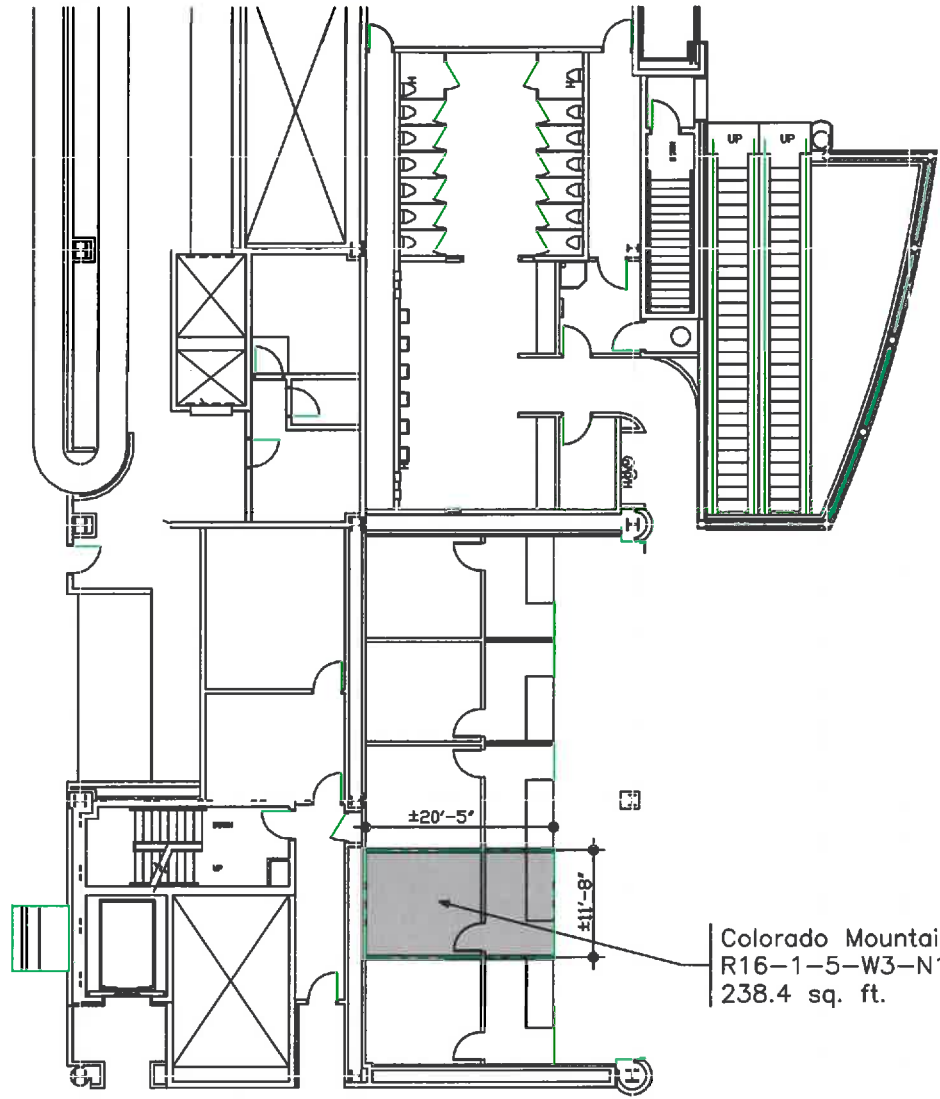
### DISADVANTAGED BUSINESS ENTERPRISES - REQUIRED STATEMENTS

Policy. It is the policy of the Department of Transportation that disadvantaged business enterprises as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 26 apply to this Agreement.

DBE Obligation. The City and its contractors agree to ensure that disadvantaged business enterprises as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds provided under this agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. The City and its contractors shall not discriminate on the basis of race, color, sex, creed or national origin in the award and performance of DOT-assisted contracts.

49 CFR 26.5 defines a DOT-assisted contract as “any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees.” “Contractor” means one who participates through a contract or subcontract (at any tier) in a DOT-assisted highway, transit, or airport program

V5 V4 V3 V2.5 V2



N5.4  
N5  
N4  
N3  
N2

Colorado Mountain Express, Inc.  
R16-1-5-W3-N12-3  
238.4 sq. ft.

CONC. WALL (BY CITY)  
STUD/GYPSUM WALL (BY CITY)  
GLASS WALL (BY CITY)  
TENANT LEASE LINE

(H) (C) COLUMNS  
NIC = Not Included  
(In Lease or Sq. Ft. Calc.)



SCALE 1" = 20.00'

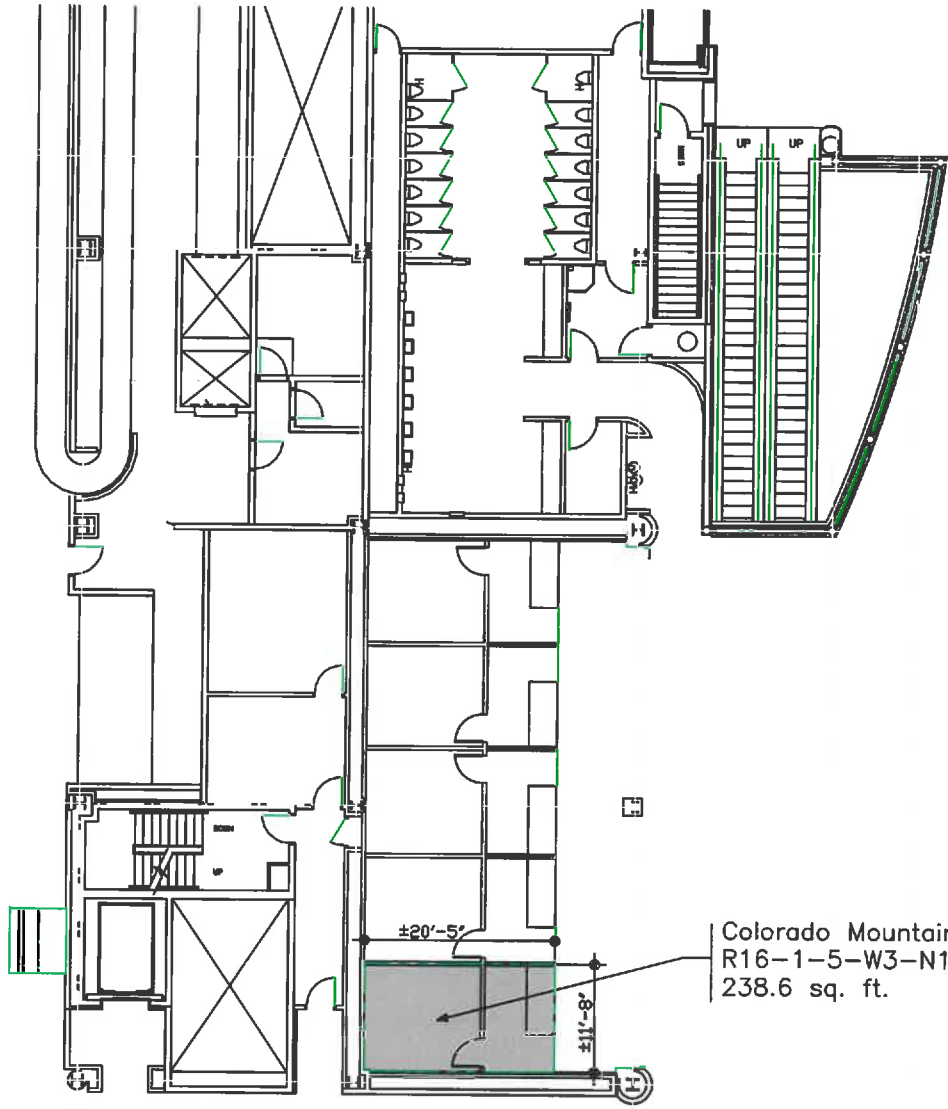


**NOTE:**  
This exhibit depicts only approximate dimensions and square footage of leased area based upon planning data and is not intended to show dimensions for construction details.

*[Signature]*  
MANAGER OF DESIGN

<p>KEY PLAN TERMINAL AREA</p>		REVISED	DENVER INTERNATIONAL AIRPORT
			EXHIBIT A Terminal Level 5 Colorado Mountain Express, Inc.
		CC#:	DATE: 02/12/14

V5 V4 V3 V25 V2



N15.4  
N15  
N14  
N13  
N12

CONC. WALL (BY CITY)  
STUD/GYPSUM WALL (BY CITY)  
GLASS WALL (BY CITY)  
TENANT LEASE LINE

(H) (I) COLUMNS  
NIC = Not Included  
(In Lease or Sq. Ft. Calc.)



SCALE 1" = 20.00'



**NOTE:**  
This exhibit depicts only approximate dimensions and square footage of leased area based upon planning data and is not intended to show dimensions for construction details.

*Finell Lam*  
MANAGER OF DESIGN

<p>KEY PLAN TERMINAL AREA</p>		REVISED	DENVER INTERNATIONAL AIRPORT
			EXHIBIT A Terminal Level 5 Colorado Mountain Express, Inc.
		CC#:	DATE: 02/12/14

**PERFORMANCE BOND**

**KNOW ALL MEN BY THESE PRESENTS**, that we, the undersigned [Bidder name], a corporation organized under the laws of the State of [Bidder state], hereinafter referred to as the "Contractor" and [Bond issuer], a corporation organized under the laws of the State of [Bond company state], and authorized to transact business in the State of Colorado, hereinafter referred to as Surety, are held and firmly bound unto the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado, hereinafter referred to as the "CITY", in the penal sum of [Bid amount text] Dollars (\$[Bid amount numbers]), lawful money of the United States of America, for the payment of which sum the Contractor and Surety bind themselves and their heirs, executors, administrators, successors and assigns, jointly and severally by these presents.

**WHEREAS**, the above Contractor has entered into a written contract with the City for furnishing all labor, materials, equipment, tools, superintendence, and other facilities and accessories for the construction of Contract No. **Error! Reference source not found., Error! Reference source not found.**, Denver International Airport, in accordance with the Technical Specifications, Contract Drawings and all other Contract Documents therefor which are incorporated herein by reference and made a part hereof, and are herein referred to as the Contract.

**NOW, THEREFORE**, the condition of this performance bond is such that if the Contractor:

1. Promptly and faithfully observes, abides by and performs each and every covenant, condition and part of said Contract, including, but not limited to, its warranty provisions, in the time and manner prescribed in the Contract, and
2. Pays the City all losses, damages (liquidated or actual, including, but not limited to, damages caused by delays in the performance of the Contract), expenses, costs and attorneys' fees, that the City sustains resulting from any breach or default by the Contractor under the Contract, then this bond is void; otherwise, it shall remain in full force and effect.

**IN ADDITION**, if said Contractor fails to duly pay for any labor, materials, team hire, sustenance, provisions, provender, or any other supplies used or consumed by said Contractor or its subcontractors in its performance of the work contracted to be done or fails to pay any person who supplies rental machinery, tools, or equipment, all amounts due as the result of the use of such machinery, tools, or equipment in the prosecution of the work, the Surety shall pay the same in an amount not exceeding the amount of this obligation, together with interest as provided by law.

**PROVIDED FURTHER**, that the said Surety, for value received, hereby stipulates and agrees that any and all changes in the Contract or compliance or noncompliance with the formalities in the Contract for making such changes shall not affect the Surety's obligations under this bond and the Surety hereby waives notice of any such changes.

(End of Page)

**IN WITNESS WHEREOF**, said Contractor and said Surety have executed these presents as of this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
CONTRACTOR

By: \_\_\_\_\_  
President

\_\_\_\_\_  
SURETY

By: \_\_\_\_\_  
Attorney-in-Fact

(Accompany this bond with Attorney-in-Fact's authority from the Surety to execute bond, certified to include the date of the bond.)

**CITY AND COUNTY OF DENVER**

By: \_\_\_\_\_  
MAYOR

By: \_\_\_\_\_  
Manager of Aviation

**APPROVED AS TO FORM:**

D. SCOTT MARTINEZ, Attorney for the  
City and County of Denver

By: \_\_\_\_\_  
Assistant City Attorney





**EXHIBIT G**



**DENVER INTERNATIONAL AIRPORT  
CONCESSIONS PROGRAM  
REVIEW OF ACDBE PARTICIPATION (during RFP process)  
AND  
ASSIGNMENT OF PROPOSERS ACDBE PERCENTAGE PARTICIPATION**

Date: 12/17/2013

Project Manager: Gerard Stafford

<b>Revenue Procurement</b>	Title of Bid Process:	<b>Ground Transportation Counters (6 Counters)</b>	
	Date Bid Issued:	9/30/2013	
	RFP Goal Assigned:	10%	
	Proposer:	Colorado Mountain Express, Inc.	
	Address:	PO Box 580, Vail, CO 81658	
	Bid on Which Counter:	#HH	
	Proposed Sales:	\$17,404,973	
	Proposed MAG:	\$108,000	
	Percentage Compensation to the City:	N/A	
<b>DSBO</b>	<b>Internal Use Only:</b>		
	Request received on: 12/17/13	Analyst: VP	
	<input checked="" type="checkbox"/> Responsive Rationale: 2% participation via agreement with Go Alpine (transportation of disable passengers) with sufficient GFE for remainder		
	<input type="checkbox"/> Non-Responsive Rationale:		
	Proposer's ACDBE Participation Percentage:	2%	
	Name ACBDE provider: (if participation is < 100%)	Go Alpine	
	Means of Participation:	<input checked="" type="checkbox"/> Race Conscious <input type="checkbox"/> Race Neutral <input type="checkbox"/> None	

  
 Director Division Small Business Opportunity

5/21/14

Date

**Awarded**

**Not Awarded**



## ACDBE COMMITMENT FORM

### DENVER INTERNATIONAL AIRPORT CITY AND COUNTY OF DENVER DIVISION OF SMALL BUSINESS OPPORTUNITY

---

Proposal for: Airport Ticket Counter Concession

#### SECTION A – PROPOSER INFORMATION

Name of Firm: Colorado Mountain Express, Inc.

Address: PO Box 580

City: Vail State: CO Zip: 81658

Contact Person: Robert C. Tschupp Telephone: 970-754-3701

Email: rtschupp@ridecme.com

Is your firm ACDBE Certified: Yes  No

#### SECTION B – ACDBE COMMITMENT

The ACDBE goal on this concession is **10%**.

*NOTE: The DSBO will only credit ACDBE participation that is certified as such by the City and County of Denver, Division of Small Business Opportunity (DSBO) or the Colorado Department of Transportation.*

1. The undersigned proposer/concessionaire has satisfied the ACDBE concession requirements in the following manner (please check the appropriate space).

The proposer is committed to a minimum of 10% ACDBE utilization on this concession contract, which meets or exceeds the ACDBE goal on this concession opportunity. The amount and type of participation proposed will become a firm commitment in the Lease Agreement.

The proposer, unable to meet the ACDBE goal, is committed to a minimum of 3.5% ACDBE utilization on this concession contract and submits its documentation demonstrating good faith efforts. The amount and type of participation proposed will become a firm commitment in the Lease Agreement.

The proposer is unable to meet the ACDBE goal and submits documentation demonstrating good faith efforts.

2. Identify ACDBE sub-concessionaire, ACDBE joint venture partner, ACDBE equity partnership or other legal ACDBE business arrangement that meets ACDBE goal and eligibility standards in 49 CFR Part 23.



Name & Address ACDBE Firm	Scope of Work to be Performed/Provided	% Level of Participation on Concession
Royal Merchandising LLC, dba Doc Popcorn PO Box 892, Denver 80201	CME to purchase bottled water that is provided free to guests who use our Premier private car service. Also to purchase various promotional items aka "shwag"	50%
Alpine Taxi/Limo, dba Go Alpine PO Box 775066 Steamboat, CO 80477	CME to use GO Alpine to fulfill guest requests for wheelchair equipped vehicles to satisfy ADA service requirements	50%

**ACDBE UTILIZATION – SUBCONTRACTOR AND/OR VENDOR/SUPPLIERS OPPORTUNITIES**

List all actual *and* anticipated subcontractors and/or major vendors/suppliers; include **both** ACDBE *and* non-ACDBE, to be utilized on the concession (use additional sheets if necessary). Examples: Janitorial services, accounting services, HR services, etc.

**NOTE: The DSBO will only credit ACDBE participation that is certified as such by the City and County of Denver, Division of Small Business Opportunity (DSBO) or the Colorado Department of Transportation.**

**\*\*An ACDBE Letter of Intent (Attachment A) must be submitted for all ACDBEs listed below and attach copy of ACDBE Certification Letter for each ACDBE.\*\***

Name and Address of Company	Business Area	Scope of Work/Supplies to be Performed	Estimated Amount (\$)	Identify Sub/Supplier	ACDBE		Attach "ACDBE Letter of Intent" and copy of Certification Letter
					Yes (√)	No (√)	
Royal Merchandising	F&B and Promotional items	Water and marketing materials	\$20,000		Y		On file
Go Alpine	Transportation	ADA Mobility Transfers	\$25,000			N	Certification in process



## SECTION C – GOOD FAITH EFFORTS

**NOTE: Fill out only, if the ACDBE goal was not achieved.**

The following items are minimally considered as good faith efforts and demonstrate specific initiatives made in attempting to achieve the concession specific ACDBE goal. Proposers are not limited to these particular areas and may include other efforts deemed appropriate. Please feel free to elaborate on any question below.

**Proposers submitting a Good Faith Effort in lieu of ACDBE participation, for all or any part of the ACDBE goal, must contact the DSBO office prior to submission of proposal to ensure that all GFE requirements are met and that all necessary documentation is submitted. Failure to do so could result in the GFE being found non-responsive.**

GOOD FAITH EFFORT QUESTIONS	Yes (✓)	No (✓)
1. If applicable, did you attend pre-proposal conference?	Yes	
2. Did your firm request and obtain a copy of the certified ACDBE firms?	Yes	
3. Were ACDBE firms contacted or solicited for concession participation?	Yes	
4. Provide listing of solicited ACDBE firms with whom contact was made? Please identify name of company, contact person, date, phone number and briefly describe nature of solicitation. <ul style="list-style-type: none"> <li>■ <b>Royal Merchandising</b></li> <li>■ <b>GO Alpine</b></li> <li>■ <b>JME Group, Mr. Jayed Edwards via email on 5/5 – no response</b></li> </ul>	Yes	
5. Was direct contact made with the City's DSBO office? If yes, please identify date/person contacted and assistance sought. <ul style="list-style-type: none"> <li>■ <b>Vicki Padilla, Div. of Small Business Opportunity at DIA, ongoing support</b></li> </ul>	Yes	
6. Identify all ACDBE support agencies/associations contacted for ACDBE assistance or solicitation (Minority Chambers of Commerce, purchasing councils, contractor groups, etc.). <ul style="list-style-type: none"> <li>■ <b>Due to the limited nature of the goods &amp; services that CME can use via the Ticket Counter Concession at DIA, no outreach was performed.</b></li> </ul>		None
7. Were concession-related opportunities to this project advertised in minority/women newspapers and trade journals? <ul style="list-style-type: none"> <li>■ <b>Due to the limited nature of the goods &amp; services that CME can use via the Ticket Counter Concession at DIA, no outreach was performed.</b></li> </ul>		No



8. Were copies of concession RFP furnished to any ACDBEs?		Not required
9. Identify efforts made to assist interested ACDBEs in obtaining bonding, insurance, or line of credit.		N/A
10. Discuss efforts made to define additional elements of the work proposed to be performed by ACDBEs in order to increase the likelihood of achieving the ACDBE goal.		N/A
11. List all ACDBE negotiations and/or bids received but rejected. Identify company name, contact person, telephone number, date, trade area and the reason for rejecting the proposal or bid. <b>-- <i>Mobility Transportation Services – rejected because the owner, Mr. Magdy Behkit was deemed not be a member of a minority.</i></b>	Yes	
12. Discuss any other effort(s) aimed at involving ACDBEs (a) Identify any specific efforts to divide work, in accordance with normal industry practices, to allow maximum ACBE participation. (b) Discuss joint ventures initiatives, requesting second-tier ACDBE subcontracting, etc., if any. (c) List all other good faith efforts employed, please elaborate.		N/A

#### SECTION D - AFFIRMATION

*I HEREBY AFFIRM THAT THE ABOVE INFORMATION IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE. I FURHTER UNDERSTAND AND AGREE THAT THIS DOCUMENT SHALL BE ATTACHED THERTO AND BECOME A BINDING PART OF THE CONCESSION CONTRACT.*

NAME AND TITLE OF AUTHORIZED OFFICIAL:

Robert C. Tschupp, Vice President & General Manager

SIGNATURE: *Robert C. Tschupp*

DATE: May 28, 2014