

**TOWING SERVICES AGREEMENT**

**BETWEEN**

**THE CITY AND COUNTY OF DENVER**

**AND**

**DRAWBAUGH ENTERPRISES, INC.**

## **TOWING SERVICES 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 **DRAWBAUGH ENTERPRISES INC. (DBA MIRAGE RECOVERY SERVICES)**, a Corporation authorized to do business in Colorado, ("Contractor"), Party of the Second Part.

### **WITNESSETH:**

**WHEREAS**, the City owns and operates Denver International Airport ("DEN" or the "Airport"), and

**WHEREAS**, the City desires to obtain towing services ("Towing Services") for DEN; and

**WHEREAS**, the City has solicited and received proposals for such services, and has chosen the proposal submitted by the Contractor; and

**WHEREAS**, the City has determined that the best interest of the public can be served by executing an Agreement with the Contractor for Towing Services at DEN; and

**WHEREAS**, the Contractor is fully qualified and ready, willing and able to provide Towing Services to the City, in accordance with its proposal submitted to the City;

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

### **SECTION 1 - DEFINITIONS**

As used in this Agreement, unless the context requires otherwise:

#### **1.01 AIRPORT; DEN**

"Airport" or "DEN" means Denver International Airport.

#### **1.02 CONTRACT ADMINISTRATOR**

The City's Chief Executive Officer Department of Aviation, his or her designee or successor in function (hereinafter referred to as the "Chief Executive Officer" or "CEO") authorizes all work performed under this Agreement. The CEO hereby delegates his or her authority over the work described herein to the Director Parking and Transportation (hereinafter referred to as

“Director”), as the CEO's authorized representative for the purpose of administering, coordinating and approving work performed by the Contractor under this Agreement. The Director's authorized representative for day-to-day administration of the Contractor's services under this Agreement is the Public Parking Manager. The Contractor shall submit its reports, memoranda, correspondence and submittals to the Public Parking Manager. The CEO and the Director may rescind or amend any such designation of representatives or delegation of authority and the Director may from time to time designate a different individual to act as Public Parking Manager, upon notice to the Contractor.

### **1.03 CONTRACTOR EMPLOYEE; CONTRACTOR PERSONNEL**

“Contractor employee” or “Contractor personnel” shall include employees and personnel of the Contractor and subcontractors, if any.

### **1.04 CHIEF EXECUTIVE OFFICER**

“Chief Executive Officer” or “CEO” means the Chief Executive Officer Department of Aviation.

## **SECTION 2 – SCOPE OF WORK**

### **2.01 SCOPE OF WORK**

The Contractor shall be responsible for Standby and Contingency Towing Services at Denver International Airport as described in **Exhibit A**, “Scope of Work.” The Contractor shall furnish all necessary labor, tools, equipment and supplies to perform the required services except for the equipment and facilities to be provided by the City under the provisions of this Agreement.

### **2.02 STANDARD OPERATING PROCEDURES**

“Standard Operating Procedures”, “SOPs”, or “Operating Procedures” means a document (Exhibit B) issued to the Contractor by the CEO pursuant to this Agreement, which sets forth detailed procedures or requirements for specific aspects of the Contractor's work hereunder. **Exhibit B SOPs** may be amended from time to time if mutually agreed upon by both Parties. Modifications to Exhibit B SOPs shall be accomplished by letter agreement between the parties, which will not require a formal written amendment to this contract.

### **2.03 MANNER OF WORK**

This Agreement, Procedures and all Exhibits to this Agreement show the general outlines and details necessary for a comprehensive understanding of the work encompassed by this Agreement. All work under the Agreement shall be performed in all respects in strict compliance with the requirements of the Agreement Documents. All provisions of the

Agreement Documents are essential parts of the Agreement, and a requirement occurring in one is binding as though occurring in all.

### **SECTION 3 - TERM**

#### **3.01 TERM**

The term of this Contract shall commence at 12:01 a.m. M.S.T. on November 1, 2016 and shall terminate at 12:00 a.m. M.S.T. on October 31, 2019, unless earlier terminated in accordance with the Contract Documents. This contract shall be for a term of three (3) years. It is also a specific provision of this Contract that the CEO in her discretion (or her designee) may renew and continue the Contract under the same terms and conditions as the original contract for two One (1) Year extensions. In addition, the term of this Contract may be extended in the CEO's discretion, by written notice from the City to the Contractor, to allow the completion of any work which has been commenced prior to the date upon which this Agreement otherwise would terminate. However, no extension of the Contract Term shall increase the Maximum Contract Amount stated herein; such amount may be changed only by a duly executed written amendment to this Contract.

### **SECTION 4 – OBLIGATIONS OF CONTRACTOR**

#### **4.01 AIRPORT RULES AND REGULATIONS**

The Contractor and its officers, employees, guests, invitees, and those doing business with the Contractor shall observe and obey all rules and regulations of the City and County of Denver as may be promulgated from time to time, including the Airport Rules and Regulations and Contingency Plans. The Contractor will not use or permit Airport property or facilities to be used for any purpose prohibited by the laws of the United States or the State of Colorado or the Charter and Ordinances of the City and County of Denver. The Contractor will use the roadways and other areas of DEN in accordance with all City rules and regulations.

#### **4.02 AIRPORT SECURITY**

**A.** The Contractor shall comply with all rules, regulations, and written policies and authorized procedures from the City and/or the Federal Aviation Administration with respect to Airport security. The Contractor shall conduct all of its activities at the Airport in compliance with the Airport security program, which is administered by the Security Section of the Airport Operations Division, Department of Aviation.

**B.** The Contractor shall obtain the proper access authorizations for all of its employees, subcontractors (if applicable), and suppliers who will enter the Airport to perform work or make deliveries, and shall be responsible for each such person's compliance with all Airport rules and regulations, including without limitation those pertaining to security. The Contractor shall be

responsible for all costs relating to the security check and the preparation of identification badges for each employee, subcontractor and supplier. The Contractor shall be billed by DEN for such costs, which shall not be Reimbursable Expenses. Any person who violates Airport rules and regulations may be subject to revocation of his access authorization. The failure of the Contractor or any subcontractor to complete any required services hereunder shall not be excused on account of the revocation for good cause of access authorization of any person.

C. The Contractor shall return to the City at the expiration or termination of this Agreement, or upon demand by the City, all access keys issued to it for any area of the Airport, whether or not restricted and all badges issued to its employees, subcontractors and suppliers. If the Contractor fails to do so, the Contractor shall be liable to reimburse the City for all the City's costs for work required to prevent compromise of the Airport security system. The City may withhold funds in the amount of such costs from any amounts due and payable to the Contractor under this Agreement.

#### **4.03 SOLICITING**

No soliciting for any purpose is allowed on Airport premises by the Contractor's employees. The Contractor shall inform its employees of this Agreement requirement prior to the time each such employee shall begin work for the Contractor at Denver International Airport.

#### **4.04 GRATUITIES**

Neither the Contractor nor its employees, officers and agents shall solicit or accept gratuities for any reason whatsoever from any employee of the City or the General Public.

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

The Contractor and Contractor's agents shall cooperate and comply with the provisions of the City and County of Denver Executive Order No. 94 and Attachment A thereto concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City's barring the Contractor and Contractor's agents from City facilities or participating in City operations.

#### **4.06 CITY SMOKING POLICY**

Contractor acknowledges that smoking is not permitted in Airport buildings and facilities except for designated Airport Smoking Concessions, and so agrees that it will prohibit smoking by its employees and the public in indoor areas and within 25 feet of entryways of the Airport Premises, except as may otherwise be permitted by the Colorado Clean Indoor Air Act, C.R.S. §§ 25-14-201 to 209. Contractor and its officers, agents, and employees shall cooperate and comply with the provisions of the Denver Revised Municipal Code, §§ 24-301 to 317 et. seq., the Colorado Clean Indoor Air Act, C.R.S. §§ 25-14-201 to 209, City's Executive Order No. 99 dated December 1, 1993, and Executive Order No. 13 dated July 31, 2002.

## SECTION 5 – COMPENSATION AND PAYMENT

### 5.01 INVOICING

Invoicing will be conducted in accordance with the FEE SCHEDULE section of **Exhibit A** Scope of Work.

### 5.02 TIME OF PAYMENT

The City shall process all invoices for payment received from Contractor on a timely basis in accordance with Section 20-107, et. seq. of the D.R.M.C.

### 5.03 REIMBURSABLE EXPENSES

The Contractor shall pay all costs and expenses connected with the operations hereunder when due; except as provided elsewhere in this Agreement, no expenses of the Contractor shall be reimbursable hereunder. Any reimbursement of expenses other than as described herein shall require an amendment to this Agreement.

### 5.04 DEDUCTIONS FOR NON-PERFORMANCE OR SUBSTANDARD PERFORMANCE; LIQUIDATED DAMAGES

If the contractor(s) fails to perform the services within the time specified in his/her Contract, or any extension thereof, the actual damages to the City for the delay will be difficult or impossible to determine. Therefore, in lieu of actual damages, the contractor(s) shall pay to the City as a deduction from unpaid billings, and as fixed, agreed and liquidated damages and not as a penalty for each deficiency listed below. The City may terminate this Contract in whole or in part as provided in the "Default" provision. In that event, the contractor(s) shall be liable for such liquidated damages accruing until such time as the City may reasonably obtain delivery or performance of similar supplies and services. The contractor(s) shall not be charged with liquidated damages when the delay arises out of causes beyond the control and without the fault or negligence of the contractor(s).

|    | <b>INCIDENT</b>   | <b>LIQUIDATED DAMAGES</b>                           |
|----|---|---|
| 1. | For failure to provide standby or contingency towing services, as needed, with hours to be assigned by DEN Parking Administration.  | \$300.00 for each occasion service is not provided  |
| 2. | For failure to have required emergency vehicles stationed on Peña Blvd. within 60 minutes of request for same by DEN Parking Administration.  | \$200.00 per occurrence                             |
| 3. | For failure to provide sufficient, qualified personnel to operate towing services as specified; for failure to ensure each driver has an appropriate driver's license issued by the State of Colorado relative to the class of vehicle he/she is to operate and the Identification Card described herein. | \$300.00 per occurrence                             |
| 4. | For failure to maintain vehicles in operating condition as required to adequately and safely perform required services.   | \$200.00 per occurrence                             |
| 5. | For failure to obtain and maintain all licenses, insurances, and permit requirements.   | \$100.00 per occurrence                             |
| 6. | For failure to provide adequate and sufficient equipment, i.e., go-jacks, brooms, shovels, dollies, chains, slings, bumpers and other equipment necessary to prevent damage to towed vehicles.  | \$50.00 for each occasion as deficiency is reported |

|    | <b>INCIDENT</b>  | <b>LIQUIDATED DAMAGES</b> |
|----|--|---------------------------|
| 7. | For failure to record accurate and complete information on tow slips, as required by provisions herein (see Reporting, Section 4.9). | \$25.00 per occurrence    |

Any instance of an imposition of liquidated damages for non-performance or unacceptable performance or delayed performance, as above, shall be prima facie evidence of a deficiency in the Contractor’s performance and authorized personnel of the Denver Police Department and/or DEN Landside Services/Parking shall document the incidents of non-performance or unacceptable performance or delayed performance on a “Vendor Deficiency/Deviation Report” which shall be forwarded to the DEN Parking Office.

**5.05 MAXIMUM LIABILITY**

**A.** Any other provision in this Agreement notwithstanding, in no event shall the City be liable for payment under this Agreement for any amount in excess of **Two Million Five Hundred Thousand Dollars and No Cents** (\$2,500,000.00). All payments under this Agreement shall be paid solely and exclusively from the City’s “City and County of Denver, Airport System and Operation and Maintenance Fund” and from no other fund or source. The City is under no obligation to make any future apportionments or allocations to said fund.

**B.** It is agreed and understood that this Contract is a multi-year agreement with only partial funding authorized at the commencement of the term of this Contract, such partial funding consisting of the approved and/or encumbered amount of **Ninety Three Thousand Dollars and No Cents** (\$93,000.00). The City’s payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by the Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years, and the Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

**SECTION 6 - BOOKS, RECORDS AND ACCOUNTING**

**A.** During the term of this Agreement, upon request of the Contract Administrator, the Contractor shall make available to the Contract Administrator all payroll records, training records, books of account, and other relevant records pertinent to the Agreement for the purposes of inspection and audit of such records at the Contractor’s office located at DEN.

**B.** Contractor shall keep true and complete records and accounts. Such records shall be kept in accordance with generally accepted accounting principles which are acceptable to the City Auditor and shall contain detailed information concerning all personnel, hours worked, and expenses incurred. Contractor shall maintain copies of the Contractor’s invoicing/billing documents submitted for the services provided pursuant to this Contract.

**C.** Such system shall be kept in a manner as to allow Contractor’s operations hereunder to be distinguishable from all other operations of Contractor. The Contractor agrees that the Auditor

of the City or any of his duly authorized representatives shall, until the expiration of three (3) years after the final payment under this agreement, have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor involving transactions related to this agreement. Subject to the prior written approval of the City and County of Denver, upon termination of this Agreement, the Contractor may surrender to the City all records and documents relating to this Agreement.

**D.** In the event such records are not made available in the Denver metropolitan area, Contractor shall pay to the City 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 Contractor as appropriate. Such documents shall be available to the City representative within fourteen (14) calendar days of the date of the written request. The parties agree that 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 Three Hundred and Fifty Dollars (\$350.00) per day for each day the records are unavailable beyond the date established as the City's notice.

## **SECTION 7 – INDEMNITY; INSURANCE; BONDS**

### **7.01 INSURANCE**

**A.** The Contractor shall obtain and keep in force during the entire term of this Agreement, all of the insurance policies described in the City's form of insurance certificate which is attached to this Agreement as **Exhibit C** and incorporated herein. Such insurance coverage includes workers' compensation and employer liability, commercial general liability, business automobile liability, and if appropriate, professional liability. Upon execution of this Agreement, the Contractor shall submit to the City an ACORD form, which specifies the issuing company or companies, policy numbers and policy periods for each required coverage.

**B.** Additionally, the Contractor must maintain On Hook Coverage for physical damage to the vehicle while on hook at no less than \$100,000.00 per occurrence. The City and County of Denver, its officers, officials and employees must be shown as additional insureds. On Hook Coverage is not specified on the City's "Certificate of Insurance" referenced above. Accordingly the Contractor will provide the City with a standard Certificate of Liability Insurance ("ACORD") to document On Hook Insurance coverage. Language in the "Description...Special Items" section of the "ACORD" must indicate the following: "Waiver of subrogation in favor of the City and County of Denver, its officers, officials and employees."

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



**D.** The Contractor shall comply with all conditions and requirements set forth in the insurance certificate for each required coverage during all periods in which coverage is in effect.

**E.** Unless specifically accepted in writing by the City's Risk Management Administrator, the Contractor shall include all sub consultants performing services hereunder as insureds under each required policy or shall furnish a separate certificate for each sub consultant if requested by City. All coverages for sub consultants shall be subject to all of the requirements set forth in the form certificate and the Contractor shall insure that each sub consultant complies with all of the coverage requirements.

**F.** 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.

## **7.02 DEFENSE AND INDEMNIFICATION:**

**A.** Contractor hereby agrees to defend, indemnify, and hold harmless City, its appointed and elected officials, agents and employees against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement ("Claims") including (but not limited to) any 3<sup>rd</sup> party damages resulting from Contractor's actions, 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 Contractor 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.** Contractor'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. Contractor'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.** Contractor 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 Contractor under the terms of this indemnification obligation. The

Contractor 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.

### **7.03 PAYMENT AND PERFORMANCE BOND**

**A.** A Performance, Payment, and Guarantee Bond satisfactory to the City and County of Denver on the form required by the City, in an amount not less than **Fifty Thousand Dollars and Zero Cents** (\$50,000.00) is required of the Contractor to guarantee that it will perform the work in strict accordance with Agreement Documents and shall pay all debts incurred under this Agreement. The Surety named in the Bond must be authorized to do business in the State of Colorado.

**B.** This Bond must be either renewed annually by the Surety named in the Bond or replaced with an identical Bond covering the subsequent year of the Agreement issued by another Surety which has been approved in advance by the CEO. If the CEO does not receive written notice from the Surety in the manner provided in the Bond at least one-hundred and twenty (120) days before it expires or does not receive a substitute Bond in the form required by the City from an approved Surety at least one-hundred and twenty days (120) before the Bond expires, then the Contractor shall be in default of this Agreement and the CEO may immediately terminate this Agreement by giving the Contractor written notice of such default. If the City elects to extend the Agreement for additional periods at the same prices, terms and conditions pursuant to Section 3.01 of this Agreement, the Contractor shall obtain and submit either an extension of the existing Performance, Payment and Guarantee Bond or the an identical Bond from another Surety that is acceptable to the City.

**C.** Under no circumstances shall the City be liable to the Contractor for any costs incurred or payments made by the Contractor to obtain an extension of an existing Bond or a new Bond.

**D.** The only acceptable alternative to a Performance, Payment, and Guarantee Bond is an Irrevocable Unconditional Letter of Credit from a local financial institution acceptable to the City and County of Denver in the amount of Fifty Thousand Dollars and No Cents (\$50,000.00). Renewal of said Irrevocable Unconditional Letter of Credit during the term and any one-year extensions of the Agreement shall be as set out above with respect to the Performance, Payment, and Guarantee Bond.

**E.** The City's forms of Performance, Payment and Guarantee Bond or Irrevocable Unconditional Letter of Credit must be used. Those forms are attached to this Agreement and incorporated herein as **Exhibit D**. Attorneys-in-Fact who sign Performance, Payment, and Guarantee Bonds must file with such Bonds a certified copy of their Power-of-Attorney to sign such Bonds that is certified to include the date of the Bond.

**F.** The CEO, Contract Administrator or the Chief of Police or their authorized representative will decide all questions which may arise as to the quality and acceptability of any work performed under the Contract. If, in the opinion of these officers or their authorized representative performance becomes unsatisfactory, the City shall notify the Contractor.

The Contractor will have three (3) days from the time to correct any specific instances of unsatisfactory performance, and shall respond in to the Vendor Deficiency/Deviation Report in full with a corrective action plan. In the event the unsatisfactory performance is not corrected within this time, the City shall have the immediate right to complete the work to its satisfaction and shall deduct the cost to cover same from the Payment and Performance Bond or the Irrevocable Unconditional Letter of Credit held by the City. Three incidences of unsatisfactory performance may result in cancellation of the agreement for default.

### **8.01 SUBCONTRACTORS**

**A.** This agreement does not allow any subcontracting.

### **8.02 OBLIGATIONS OF CONTRACTOR**

The Contractor shall be responsible for any acts or omissions of its employees, agents, suppliers, and materialmen.

## **SECTION 9 - AGREEMENT ADMINISTRATION**

### **9.01 AUTHORITY OF THE CONTRACT ADMINISTRATOR**

**A.** The day to day administration of this Agreement is vested in the Contract Administrator. The Contract Administrator will decide any and all questions which may arise as to the manner of performance of the work.

**B.** The Contract Administrator may from time to time issue to the Contractor written procedures, which shall provide detailed procedures and/or standards for the performance of specific aspects of the Contractor's work hereunder. The Procedures shall not materially change the specifications or scope of work herein, but shall give guidance to the Contractor's performance of such work which is in accord with then existing conditions. The Contractor shall comply with the Procedures which are in effect at any time. The Contract Administrator may amend or rescind any Procedure by notice in writing to the Contractor.

**C.** In addition to issuing, amending or rescinding Procedures, the Contract Administrator may make changes in the specifications of work performed by the Contractor, if such changes do not alter the general nature of the work being performed. Notice to the Contractor of such changes will be made orally if the duration of such changes is less than one week; otherwise, notice will be given in writing.

**9.02 CONTRACTOR’S PERFORMANCE**

If, in the opinion of the CEO, the Contractor’s performance under this Agreement becomes unsatisfactory, the City shall notify the Contractor in writing, specifying the instances of unsatisfactory performance. The Contractor will have 24 hours from the time of such notice to correct any specific instances of unsatisfactory performance. In the event the unsatisfactory performance is not corrected within the time specified above, the City shall have the immediate right to complete the work to its satisfaction and shall deduct the cost to cover same from any balances due or to become due the Contractor in addition to any liquidated damages as detailed in Section 5.

**9.03 DISPUTE RESOLUTION**

Disputes arising out of this Agreement shall be resolved by administrative hearing before the CEO 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 Section.

**9.04 AGREEMENT DOCUMENTS; ORDER OF PRECEDENCE**

This Agreement consists of Sections 1 through 11 which precede the signature page, and the following attachments which are incorporated herein and made a part hereof by reference:

|                    |   |
|--------------------|---|
| Appendices A and E | Federal Non-Discrimination Assurances           |
| Exhibit A          | Scope of Work and Pricing                       |
| Exhibit B          | Standard Operating Procedures                   |
| Exhibit C          | City and County of Denver Insurance Certificate |
| Exhibit D          | Performance and Payment Bond                    |

In the event of an irreconcilable conflict between (i) a provision of Sections 1 through 11 and any of the listed attachments or (ii) between provisions of any attachments, such that it is impossible to give effect to both, the order of precedence to determine which document shall control to resolve such conflict, is as follows, in descending order:

- Appendices A and E
- Sections 1 through 11 hereof
- Exhibit D
- Exhibit A
- Exhibit B
- Exhibit C

**9.05 LABOR ACTIVITY**

If any strike, boycott, picketing, work stoppage, slowdown, or other labor activity is directed against the Contractor at the Airport which results in the curtailment or discontinuation of

services performed hereunder, the City shall have the right during said period to employ any means legally permissible to have the work performed. This shall include the use of the Contractor's equipment, and the CEO or his authorized representative in his/her sole discretion shall determine the reasonable value of said equipment for purposes of reimbursement to the Contractor.

## **SECTION 10 – DEFAULT, REMEDIES, TERMINATION**

### **10.01 TERMINATION FOR CONVENIENCE OF THE CITY**

The CEO, upon giving a minimum of thirty (30) days written notice may terminate this Agreement, in whole or in part, when it is in the best interest of the City. If this Agreement is so terminated, the City shall be liable only for payment in accordance with the payment provisions of this Agreement for services rendered prior to the effective date of termination.

### **10.02 DEFAULT**

The following are events of default under this Agreement:

- A.** In the opinion of the CEO, the Contractor fails to perform adequately the services required in the Agreement;
- B.** In the opinion of the CEO, the Contractor fails to perform the required work within the time stipulated in the Agreement; or
- C.** The Contractor is in default under any other contract, purchase order, or agreement with the City.
- D.** The Contractor becomes insolvent, or takes the benefit of any present or future insolvency or bankruptcy statute, or makes a general assignment for the benefit of creditors, or consents to the appointment of a receiver, trustee or liquidator of any or substantially all of its property.
- E.** The Contractor 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.
- F.** The Contractor fails to keep, perform and observe any other promise, covenant or agreement set forth in this Agreement, and such failure continues for a period of more than 30 days after delivery by the City of a written notice from the CEO of such breach or default, except where a shorter period is specified herein, or where fulfillment of its obligation requires activity over a period of time and Contractor within 10 days of notice commences in good faith to perform whatever may be required to correct its failure to perform and continues such performance without interruption except for causes beyond its control.

G. The Contractor gives its permission to any person to use for any illegal purpose any portion of the Airport made available to Contractor for its use under this Agreement.

### **10.03 REMEDIES**

A. If Contractor defaults in any of the covenants, terms and conditions herein, the City may exercise any one or more of the following remedies:

B. 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.

C. The City may cancel and terminate this Agreement upon giving 30 days written notice to Contractor of its intention to terminate, at the end of which time all the rights hereunder of the Contractor shall terminate, unless the default, which shall have been stated in such notice, shall have been cured within such 30 days.

D. The City may obtain necessary services in the open market, or otherwise perform or obtain performance of services required, at the expense of the Contractor. The City may recover any actual excess costs by: (1) deduction from an unpaid balance; (2) collection against the Contractor's performance bond; or (3) any combination of the two foregoing methods. Nothing herein shall prevent the City from using any other method of collection available to it.

### **10.04 REMEDIES CUMULATIVE**

The remedies provided in this Agreement shall be cumulative and shall in no way affect any other remedy available to City under law or equity.

## **SECTION 11- MISCELLANEOUS**

### **11.01 BOND ORDINANCES; GOVERNING LAW; VENUE; SERVICE OF PROCESS**

This Agreement shall be deemed to have been made in, and shall be construed in accordance with the laws of, the State of Colorado and the Charter and Ordinances of the City and County of Denver. This Agreement is in all respects subject and subordinate to any and all City bond ordinances applicable to the Denver Municipal Airport System and to any other bond ordinances which amend, supplement, or replace such bond ordinances. Venue for any action hereunder shall be in the City and County of Denver, State of Colorado. The Contractor agrees that any and all notices, pleadings and process may be made by serving two copies of the same upon the Colorado Secretary of State, State Capitol, Denver, Colorado, and by mailing by return mail an additional copy of the same to the Contractor at the address shown herein; that said service shall

be considered as valid personal service, and judgment may be taken if, within the time prescribed by Colorado law or Rules of Civil Procedure, appearance, pleading or answer is not made.

#### **11.02 NO DISCRIMINATION IN EMPLOYMENT**

In connection with the performance of work under this Agreement, the Contractor 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, gender variance, marital status, or physical or mental disability; and the Contractor further agrees to insert the foregoing provision in all subcontracts hereunder.

#### **11.03 ASSIGNMENT OF AGREEMENT**

The Contractor may not assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written approval of the CEO. If the Contractor attempts to assign or transfer any of its rights or obligations hereunder without obtaining the prior written consent of the CEO, the CEO may elect to terminate this Agreement. The CEO has the sole and absolute discretion to grant or deny any transfer or assignment request.

#### **11.04 NO THIRD PARTY BENEFICIARIES**

This Agreement does not, and shall not be deemed or construed to confer upon or grant to any third party or parties any right to claim damages or to bring any suit, action or other proceeding against either the City or the Contractor because of any breach hereof or because of any of the terms, covenants, agreements and conditions herein contained. Any person other than the City or the Contractor receiving any benefit hereunder shall be deemed to be an incidental beneficiary only.

#### **11.05 PATENTS AND TRADEMARKS**

**A.** The Contractor covenants that it is the owner of or fully authorized to use any and all services, processes, machines, articles, marks, names or slogans to be used by it in its operations under or in any way connected with this Agreement. The Contractor agrees to save and hold the City, its officers, employees, agents and representatives free and harmless of and from any loss, liability, expenses, cost, 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 the Contractor under or in any way connected with this Agreement.

**B.** The Contractor agrees that it will not engage in or allow its employees, subcontractors or agents to engage in, any unauthorized use or infringement of any trademark or copyright registered or owned by the City, including the City's DEN registered trademark. The Contractor agrees to save and hold the City free and harmless of and from any loss, liability, expenses, cost,

suit or claim for damages in connection with any infringement by the Contractor or its officers, employees, subcontractors, agents or representatives, of any of the City's trademarks or copyrights, arising out of the operations of the Contractor under or in any way connected with this Agreement.

**11.06 MASTER PLAN**

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 plan for the development of expansion of DEN and the Contractor waives any right to claim damages or other consideration arising therefrom.

**11.07 STATUS OF CONTRACTOR AS INDEPENDENT CONTRACTOR**

It is understood and agreed by and between the parties that the status of the Contractor shall be that of an independent contractor retained on a contractual basis to perform professional or technical services for limited periods of time as described in Section 9.1.1.E(x) of the Charter of the City, and it is not intended nor shall it be construed that the Contractor, its employees, or its subcontractors are employees or officers of the City under Chapter 18 of the Revised Municipal Code or for any purpose whatsoever.

**11.08 NO WAIVER OF RIGHTS**

No assent, expressed or implied, to any breach of any one or more of the covenants, provisions and agreements of this Agreement shall be deemed or taken to be by the City a waiver of any succeeding or other breach.

**11.09 NOTICES**

Notices concerning termination of this Agreement, notices of default, notices of violations of the terms or conditions of this Agreement, and other notices of similar importance shall be made:

By Contractor to: CEO  
Airport Office Building, 9<sup>th</sup> Floor  
Denver International Airport  
8500 Peña Boulevard  
Denver, CO 80249

By City to: Drawbaugh Enterprises Inc.  
DBA Mirage Recovery Service  
8051 Rosemary Street  
Commerce City CO 80022



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.

## **11.10 FEDERAL PROVISIONS**

This Agreement is subject and subordinate to the terms, reservations, restrictions and conditions of any existing or future agreements between the City and the United States, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to the City for airport purposes, and the expenditure of federal funds for the extension, expansion or development of Denver International Airport. The provisions of the attached Appendices are incorporated herein by reference.

### **A. FAIR LABOR STANDARDS ACT**

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.

The Contractor has full responsibility to monitor compliance to the referenced statute or regulation. The Contractor must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

### **B. OCCUPATIONAL SAFETY AND HEALTH**

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Contractor retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Contractor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

## **11.11 ESTIMATED QUANTITIES**

The approximate service and personnel needs outlined herein are estimated as closely as possible. However, the City neither states nor implies any guarantee that actual service and/or personnel utilization will equal the estimate. It is the intent of this Agreement that the City will be supplied with more or less of the services outlined herein according to actual needs.

#### **11.12 EMERGENCY PURCHASES**

The City and County of Denver reserves the right to purchase from other sources those services required herein which are required on an emergency basis and cannot be supplied immediately by the contractor(s).

#### **11.13 TIME IS OF THE ESSENCE**

In the performance of this Agreement by the Contractor, time is of the essence.

#### **11.14 CONFLICT OF INTEREST**

The Contractor represents and warrants that it is under no obligation or restriction, nor will the Contractor assume any obligation, which would in any way interfere or be inconsistent with the services to be furnished by the Contractor under this Agreement.

#### **11.15 ADVERTISING AND PUBLIC DISCLOSURES**

The Contractor shall not include any reference to this Agreement or to work performed hereunder in any of its advertising or public relations materials without first obtaining the written approval of the CEO, which will not be unreasonably withheld. Nothing herein, however, shall preclude the transmittal of any information to officials of the City, including without limitation, the Mayor, the CEO, member or members of City Council, or the Auditor.

#### **11.16 SEVERABILITY**

If any of the provisions of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the remaining provisions herein which are severable shall not be affected.

#### **11.17 ENTIRE AGREEMENT**

The parties acknowledge and agree that the provisions contained herein constitute the entire agreement between the parties as to the subject matter hereof, 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 to this Agreement, except those which are expressly reserved herein to the CEO, shall be valid unless they are contained in an instrument which is executed by all the parties with the same formality as this Agreement.

#### **11.18 PROVISION FOR PROFESSIONAL/TECHNICAL SERVICES AGREEMENTS (CONTRACTORS) UNDER §8-17.5-101 – 102, C.R.S. AND D.R.M.C. §20-90**

No Employment of Illegal Aliens to Perform Work Under the Agreement.

(a) The Agreement is subject to Article 17.5 of Title 8, Colorado Revised Statutes, and Den. Rev. Mun. Code 20-90 and the Contractor is liable for any violations as provided in said statute and ordinance.

(b) The Contractor certifies that:

(1) At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.

(2) It will participate in the E-Verify Program, as defined in § 8 17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

(c) The Contractor also agrees and represents that:

(1) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(2) It shall not enter into a contract with a subcontractor or sub consultant that fails to certify to the Contractor that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(3) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the E-Verify Program.

(4) It is prohibited from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and it has complied with all federal requirements regarding the use of the E-Verify program, including, by way of example, requirements related to employee notification and preservation of employee rights.

(5) If it obtains actual knowledge that a subcontractor or sub consultant performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subcontractor and the City within three days. The Contractor will also then terminate such subcontractor or sub consultant if within three days after such notice the subcontractor or sub consultant does not stop employing or contracting with the illegal alien, unless during such three day period the subcontractor or subcontractor provides information to establish that the subcontractor or sub consultant has not knowingly employed or contracted with an illegal alien.

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

## **11.19 COLORADO OPEN RECORDS ACT**

The Contractor acknowledges that the City is subject to the provisions of the Colorado Open Records Act, Colorado Revised Statutes §24-72-201 et seq., and all documents prepared or provided by Contractor under this Agreement may be subject to the provisions of the Colorado

Open Records Act. Any other provision of this Agreement notwithstanding, including exhibits, attachments and other documents incorporated into this Agreement by reference, all materials, records and information provided by the Contractor to the City shall be considered confidential by the City only to the extent provided in the Open Records Act and the Contractor 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. The Contractor agrees that it will fully cooperate with the City in the event of a request for disclosure of such documents or a lawsuit arising under such act for the disclosure of any documents or information, which the Contractor asserts, is confidential and exempt from disclosure.

In the event of a request to the City for disclosure of such information, time and circumstances permitting, the City will make a good faith effort to advise the Contractor of such request in order to give the Contractor the opportunity to object to the disclosure of any of material the Contractor may consider confidential, proprietary or otherwise exempt from disclosure. In the event of the filing of a lawsuit to compel disclosure, the City will tender all such material to the court for judicial determination of the issue of disclosure and the Contractor agrees it will either intervene in such lawsuit to protect materials the Contractor does not wish disclosed, or waive any claim of privilege or confidentiality. If the Contractor chooses to intervene in such a lawsuit and oppose disclosure of any materials, the Contractor agrees to defend, indemnify, and save and hold harmless the City, its officers, agents, and employees, from any claim, damages, expense, loss or costs arising out of the Contractor's intervention including, but not limited to, prompt reimbursement to the City of all reasonable attorney fees, costs and damages that the City may incur directly or may be ordered to pay by such court.

#### **11.20 ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:**

Contractor consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

#### **11.21 TAXES, CHARGES, PENALTIES**

The City shall not be liable for the payment of taxes, late charges or penalties of any nature, except as required by Denver's Revised Municipal Code.

#### **11.22 CITY EXECUTION OF AGREEMENT**

This Agreement is expressly subject to, and shall not become effective or binding on the City, until it is 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-201630771-00

**Contractor Name:** DRAWBAUGH ENTERPRISES INC

By: 

Name: MATT WTCEN  
(please print)

Title: General Manager  
(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 \_\_\_\_\_



## EXHIBIT A

### SECTION B: SCOPE OF WORK AND TECHNICAL REQUIREMENTS

#### B.1 SCOPE OF SERVICES:

This Agreement is for standby and contingency towing services, on an as needed basis at Denver International Airport (DEN), and for emergency towing services, on an as needed basis along Pena Boulevard.

#### B.3 REQUIRED SERVICES:

1) Standby Services: Contractor shall provide one (1) standby, light-duty tow vehicle and a qualified driver on-site at DEN twenty-four (24) hours per day, seven (7) days per week, though hours may be subject to adjustment by DEN Parking Administration.

2) Contingency Services: Contractor shall provide additional, light-duty tow vehicles and qualified drivers, if required, on-site at DIA, with the hours assigned at the sole discretion of DEN Parking Administration, that includes any and all events of intensified airport security levels, construction-related needs or as otherwise mandated.

- If a substantial number of vehicles require towing, additional Contractor tow vehicles and qualified drivers may be requested for service, within the hours assigned by DEN Parking Administration.

- The need for a second tow vehicle and qualified driver or for additional tow vehicles and qualified drivers is on a contingency basis, and may require towing services sporadically, for short periods or up to twenty-four (24) hours per day. Any and all contingency required service timeframes shall be at the sole discretion of the DEN Parking Administration.

- Contractor shall also provide, as required, a medium-duty 10-ton tow truck equipped with a 6,500 lb. wheel-lift and which can accommodate and clear height restrictions of 8' in order to safely and efficiently tow shuttle buses, very large SUVs, oversized pick-up trucks or similar vehicles located within DEN parking structures.

3) Emergency Services: Contractor shall, at the direction of DEN Parking Administration, provide emergency towing services for Pena Blvd. (e.g., resulting from weather conditions, security or civil emergencies, etc.). When required to provide emergency towing services, Contractor shall be required to station up to six (6) tow vehicles (flatbeds) and one 30-ton tandem-axle tow unit and/or any other units as requested by DEN, along Pena Blvd. with hours assigned by DEN Parking Administration.



- 4) Contractor shall provide services that include, but are not limited to, tows (e.g. accidents, relocations, abandoned vehicles, etc.) and services (e.g. tire inflations, tire changes, jumpstarts, lockouts, etc.) at the request of the Denver Police Department and/or DEN Parking Administration.
- 5) Contractor shall clean up debris at accident sites where Contractor provides tows (all prices entered shall include the sweeping, cleaning and removal of debris and spilled fluids caused by accidents prior to the tow operator's departure from the accident scene).
- 6) Contractor tow vehicles shall be positioned on-site at DEN at the discretion and direction of DEN Parking Administration.
  - o At no time while servicing this Agreement shall Contractor tow operator(s) stationed at DEN be engaged in any additional or alternate tow operations other than as directed by the Denver Police Department and/or DEN Parking Administration.
- 7) Contractor shall tow to the designated airport impound facility or to the 5160 York Street, Denver Sheriff Vehicle Impound Facility or as directed by the Denver Police Department and/or authorized DEN personnel.
  - o Reasons include, but may not be limited to: vehicles parked illegally, vehicles left unattended in the "curbside" levels of terminal, vehicles exceeding the time limit in abbreviated parking time zones, abandoned vehicles, tows for safety considerations, construction relocates, etc.
- 8) Contractor standby and contingency tow operators shall be required to sign in and out per each assigned shift at the Parking Permit Sales Office, Terminal Level 6, NW side of terminal.
- 9) Contractor shall immediately acknowledge requests for emergency services, AND have requested vehicles stationed appropriately on Pena Blvd. within sixty (60) minutes from time of request by DEN Parking Administration.
  - o When possible, Contractor will be advised in advance if emergency services will be anticipated for Pena Blvd. (e.g., when a weather bulletin is issued regarding the likelihood of a severe snowstorm on a specific date), and a specific time for tow trucks to be in place will be indicated.
  - o If emergency services are requested, one employee of the Contractor shall be required to obtain radios and sign in/sign out all drivers on sheet provided at the Parking Contractor's Office, Level 1, West. (NOTE: Radios are to be returned to Parking Contractor's Office upon completion of emergency services. Contractor shall be liable for cost of replacement of lost or broken radio units while in their possession.)

10) Contractor shall complete a tow receipt for each tow or service, including during emergency services.

11) In the event that a motor vehicle accident or mishap occurs near airport toll booths or in any area adjacent to DEN that poses an immediate safety hazard or otherwise impedes traffic flow, Contractor may be requested to tow vehicle or vehicles involved.

Proposers are advised that hours for standby and contingency vehicles, the 10-ton unit, and emergency vehicles for Pena Blvd. are assigned at the discretion of DEN Parking Administration. While DEN Parking Administration endeavors to anticipate needs and to communicate this information to the Contractor, Proposers should be aware that assigned hours may vary widely from several hours per day per unit up to twenty-four (24) hours per day per unit.

New or revised regulations approved by the Denver City Council acting by ordinance with relation to Wrecker or Towing Services within the City and County of Denver shall be applicable upon their enactment or a date certain as indicated in the ordinance. Said new or revised regulations shall not be cause for the City to approve nor shall the Contractor request adjustments to proposal pricing offered herein as a result of same. New or revised regulations approved by the Denver City Council which materially affect the services to be provided hereunder and that materially enlarge or decrease the scope of the services to be provided herein shall be cause for the City to issue a new Proposal for the services required. If a new Proposal is, therefore, necessary at any time during the course of this Agreement, the Contractor shall be given no less than sixty (60) days' notice that a new Proposal is required.

#### **B.4 RESPONSE:**

Contractor tow driver(s) on standby, contingency or emergency duty at DEN shall respond immediately to orders from DEN dispatcher(s). If the tow driver is occupied with a tow or other service, he/she shall communicate this information to the dispatcher, and provide the dispatcher with an estimated time of response to the pending tow or service request.

#### **B.5 OPERATIONAL REQUIREMENTS:**

- a. Contractor shall be in operation twenty-four (24) hours per day, seven days per week. Contractor shall provide a single telephone number to the City which shall require staffing twenty-four (24) hours per day, seven (7) days per week. The use of answering machines or answering services shall not be permitted.

- b. Contractor shall ensure that tow drivers respond immediately to radio calls. Tow drivers shall inform DEN personnel of their whereabouts and operations, as requested, and are to notify the Dispatch Office if they are going “off-line” to fuel.
- c. Each vehicle to be used under this Agreement is to be equipped with signage permanently affixed and displayed on each door or side panel listing the trade name of the tow company and the PUC license number in clearly defined, legible lettering.
- d. Contractor shall furnish all necessary labor, tools, equipment and supplies to perform the required towing services at Denver International Airport.
- e. Contractor shall carry in each truck, at all times, vehicle registration documents and proof of all required insurances.
- f. Contractor shall carry in each truck, at all times, sufficient clean-up equipment and supplies (e.g. broom, shovel, 5-gallon bucket of floor dry, fire extinguisher, etc.) necessary to remove debris and spills from accident sites.
- g. Contractor shall obey all lawful orders given by any law enforcement officer from the Airport Security Office, Transportation Security Administration and by authorized DEN Parking Administration personnel.
- h. Contractor shall be responsible for the contents of the vehicle while unit is in the Contractor’s possession (e.g., tools, spare tires, personal items, electronics and other items of intrinsic value).
- i. Contractor shall ensure that tow drivers do not examine or unnecessarily disturb the contents (property, valuables, documents, etc.), of any serviced vehicles or allow any unauthorized persons into serviced vehicles unless directed to do so and accompanied by authorized DEN personnel.
- j. Contractor shall not attach to a vehicle which, by its size and/or weight, would make towing the vehicle an unsafe movement. A tow truck and its load should never exceed the capabilities of the towing vehicle to safely accelerate, stop or maneuver. The manufacturer's gross vehicle weight rating or the manufacturer's rated capacity shall not be exceeded at any time.
- k. All lighting equipment (headlights, brake lights, lightbars, flashlights or lanterns and any flares or reflectors) installed on the tow truck shall be in

good working condition. The vehicle towed must have affixed on each side near the rear all necessary stop, brake and tail lights; these stop, brake and tail lights shall operate when those of the tow truck are activated.

l. All components such as winches, cables, clamps, thimbles, sheaves, guides, controls, blocks, slings, dolly wheels, chocks, chains, fire extinguishers, hooks and hydraulic components are to be assembled in accordance with factory recommendations and specifications for vehicle sizes, and all components are to be in good and operable conditions and the tow truck contains all necessary equipment. Features and equipment appropriate to manufacturer's specifications and recommendations and for the safe operation of light duty, rollback, heavy trucks, tractor and trailer are required.

m. Contractor shall not perform any additional services unrelated to the requirements of this Agreement and for which payment is expected without specific approval of the airport police or DEN Parking Administration.

#### **B.6 SPECIFIC EXCLUSIONS:**

a. Services to be provided under this proposal are limited to Denver International Airport (DEN) and emergency towing services on Pena Blvd.

b. Tows and services are requested solely by the Denver Police Department and DEN Parking Administration, and involve privately-owned vehicles being towed to a designated storage area on-site at DEN (generally , the Denver Sheriff Vehicle Impound Facility (5160 York St.) or as directed, only.

c. This DEN standby/contingency/emergency towing service Agreement is separate from the "City Towing Services" and "On-Call Towing Services" Agreements.

d. This DEN standby/contingency/emergency towing service Agreement is not applicable to City owned vehicles.

e. This DEN standby/contingency towing service Agreement is not applicable to vehicular accidents at areas adjacent to DEN or accidents on Pena Blvd. that are unrelated to events involving "emergency towing services" specifically ordered for Pena Blvd., unless otherwise directed by authorized DEN personnel.

f. DEN shall **NOT** consider any joint ventures for the term of this towing service agreement.

## **B.7 EQUIPMENT LIST:**

Contractor shall have the capability to provide a minimum of four (4) light-duty tow trucks (equipped with go-jacks) which can accommodate tows in DEN parking garages with height restrictions of 8'; six (6) flatbed tow trucks with wheel-lifts; one (1) tandem-axle tow truck with a manufacturer rating of 30 tons and one (1) medium-duty 10-ton tow truck equipped with a 6,500 lb. wheel-lift which can accommodate and clear height restrictions of 8'.

Each tow truck shall be fully equipped with the proper complement of dollies, chains, slings and bumpers necessary to prevent damage to vehicles (i.e., cars, trucks, motorcycles, scooters or any other vehicle or parts thereof). Each tow truck will have sufficient brooms, shovels and equipment to clear a site of debris caused by an accident. Contractor shall comply with Section 55-177 of Article VI of the City and County of Denver Revised Municipal Code and Rule 4 CCR 723-6 of the PUC Rules, Regulations, and Civil Penalties Governing Towing Carriers by Motor Vehicle relating to required equipment and accessories for tow vehicles.

Each vehicle shall be equipped with a 2-way radio in a working condition with constant contact to a 24hour dispatch office.

The Contractor shall indicate company name and phone number in prominent lettering on either door of each tow truck.

Under no circumstances will the Contractor be allowed to "piggy-back" or tow more than one vehicle at a time. Roll-backs and flatbeds are accepted.

Contractor shall not have equipment that is dual-branded. Firm brand name shall be clearly marked on each vehicle with no obstruction.

Proposal No. 0856A (2016)  
TOWING SERVICES FOR DENVER INTERNATIONAL AIRPORT (DEN)

Details of each unit must be submitted with this proposal per the following. Please include year, make, model and VIN.

**Please note: Photocopies of registrations for the vehicles listed below MUST accompany the proposal.**

1. 2007 Ford F450 1FDXF46YX7EA40595

Light-Duty Tow Truck (can clear height restrictions of 8')

2. 2014 Dodge Ram 5500 3C7WRNEL8EG219374

Light-Duty Tow Truck (can clear height restrictions of 8')

3. 2014 Dodge Ram 3500 3C7WRTAL0EG317955

Light-Duty Tow Truck (can clear height restrictions of 8')

4. 2012 Ford F450 1FDUF4G43CEC73813

Light-Duty Tow Truck (can clear height restrictions of 8')

5. 2016 Freightliner M2 1FVACWDT5GHHC6471

Flatbed Tow Truck w/wheel-lift

6. 2016 Freightliner M2 1FVACWDTXGHHC6434

Flatbed Tow Truck w/wheel-lift

7. 2009 Ford F750 3FRXF75G59V236367

Flatbed Tow Truck w/wheel-lift

8. 2010 Hino 268 5PVNJ8JN8A4S50320

Flatbed Tow Truck w/wheel-lift

9. 2016 Dodge Ram 5500 3C7WRNDL7GG205776

Flatbed Tow Truck w/wheel-lift

10. 2008 Hino 258 5PVND8JN282S50049

Flatbed Tow Truck w/wheel-lift

11. 2013 Kenworth T800 50 ton 1NK0X4EX50J339104

30-Ton Tandem Axle Tow Truck

12. 2006 International 4700 1HTMMAAM36H230271

Medium-Duty 10-Ton Tow Truck with 6,500 lb. Wheel-Lift (can clear height restrictions of 8')

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**B.8 VEHICLE INSPECTIONS:**

The Director of Excise and Licenses, any peace officer or the Manager of Safety or their designee(s) may conduct an inspection of any tow truck being utilized under the Agreement without notice to determine compliance with the requirements set out herein.

If, at any time, a tow truck (or any equipment attached to or carried by same) being utilized to provide services required under this Agreement is found by the aforementioned officials or their designee(s) to be in need of repair or does not meet the minimum requirements set out herein, the Contractor shall be required to cease use of and replace that tow truck until such repairs are completed.

**B.9 PERSONNEL:**

The successful proposer(s) shall have available sufficient qualified personnel to operate all specified tow trucks at all times. Each driver/operator shall have a valid Colorado Driver's License.

All drivers shall operate the tow trucks in a safe and prudent manner and shall refrain from using profane or vulgar language or being under the influence of alcohol or drugs while performing work under this Agreement. Executive Order No. 94, which deals with the use of drugs or alcohol, shall be applicable to every Contractor providing services pursuant to this proposal.

Tow drivers shall not, under any circumstances, carry upon their person or within or upon the tow vehicle any dangerous or deadly weapon as defined in the Denver Revised Municipal Code.

Tow vehicle drivers shall be employees of the Contractor(s); therefore, Workers' Compensation Insurance must be carried on all tow vehicle drivers by the Contractor.

Tow vehicle drivers are to be clean, neat and professional in appearance, wear a name tag, wear a company uniform shirt with logo (when possible) and communicate courteously with the public and DEN personnel.

## **B.10 DEN SECURITY PROVISIONS:**

### **B.10.a AIRPORT RULES AND REGULATIONS:**

The Contractor and its officers, employees, guests, invitees, and those doing business with the Contractor shall observe and obey all rules and regulations of the City and County of Denver as may be promulgated from time to time, including the Airport Rules and Regulations and Contingency Plans. The Contractor will not use or permit Airport property or facilities to be used for any purpose prohibited by the laws of the United States or the State of Colorado or the Charter and Ordinances of the City and County of Denver. The Contractor will use the roadways and other areas of DEN in accordance with all City rules and regulations.

### **B.10.b AIRPORT SECURITY:**

A. The Contractor shall comply with all rules, regulations, written policies and authorized procedures from the City and/or the Transportation Security Administration with respect to Airport security. The Contractor shall conduct all of its activities at the Airport in compliance with the Airport Security Program, which is administered by the Security Section of the Airport Operations Division, Department of Aviation.

B. The Contractor shall obtain the proper access authorizations for all of its employees, subcontractors, and suppliers who will enter the Airport to perform work or make deliveries, and shall be responsible for each such person's compliance with all Airport rules and regulations, including without limitation those pertaining to security. The Contractor shall be responsible for all costs relating to the security check and the preparation of identification badges for each employee, subcontractor and supplier. The Contractor shall be billed by DEN for such costs, which shall not be Reimbursable Expenses. Any person who violates Airport rules and regulations may be subject to revocation of his access authorization. The failure of the Contractor or any subcontractor to complete any required services hereunder shall not be excused on account of the revocation for good cause of access authorization of any person.

C. The Contractor shall return to the City at the expiration or termination of the Agreement, or upon demand by the City, all access keys issued to it for any area of the Airport, whether or not restricted and all badges issued to its employees, subcontractors and suppliers. If the Contractor fails to do so, the Contractor shall be liable to reimburse the City for all the City's costs for work required to prevent compromise of the Airport security system. The City may withhold funds in the



amount of such costs from any amounts due and payable to the Contractor under the Agreement.

#### **B.11 CONTRACTUAL DEFICIENCIES:**

Specific operational standards subject to classification as contractual deficiencies are as follows, and failure to comply with these standards may be determined by authorized City personnel:

1. If Contractor fails to comply with the ETA (estimated time of arrival) requirements or otherwise fails to provide tow services as needed.
2. Failure to maintain accurate, precise records of specific towing or services provided per this Agreement.
3. Incidents of overcharging as may be determined by authorized City personnel.
4. Failure to provide a sufficient number of tow vehicles to service this Agreement.
5. Failure to provide adequate and sufficient equipment on the tow vehicles (i.e., brooms, shovels, dollies, chains, lights and other equipment) necessary to perform a tow, prevent damage to towed vehicles or provide clean-up at tow sites.
6. Failure to provide sufficient, qualified personnel to operate towing services as required.
7. Failure to sweep and clear tow site of debris, as required.
8. Failure to maintain each tow vehicle in operating condition.
9. Failure to comply with all rules, regulations, written policies and authorized procedures from the

City and/or the Transportation Security Administration with respect to Airport security

#### **B.12 VENDOR DEFICIENCY REPORT:**

The successful Proposer shall respond in full with a corrective action plan to a Vendor Deficiency/Deviation Report sent by the City and County of Denver within three (3) working days.

#### **B.13 MINIMUM QUALIFICATIONS:**

##### **B.13.a Required Experience**

Proposer shall have a minimum of five (5) year's experience in the Towing Services industry.

(Each Proposer MUST submit a copy of their current PUC License for the State of Colorado with their Proposal.)

**B.14 NON-EXCLUSIVE CONTRACT:**

This is a non-exclusive Contractual Agreement. In the City's best interests, the City reserves the right to solicit and purchase third party logistics and towing management services at a future date. This solicitation would be designed to coincide with the end of the term of any contract resulting from this procurement.

**C.4 PRICING:**

All prices quoted shall be firm and fixed for the specified contract period.

**C.5 PROPOSAL ITEMS:**

| PRICING ITEM   | HOURLY RATE                  |
|--|------------------------------|
| PRICING ITEM 1:<br>Rate for single, standby, light-duty tow vehicle and operator (up to 24 hours per day, as assigned)                                     | <u>43<sup>00</sup></u> /Hr.  |
| PRICING ITEM 2:<br>Rate for each contingency light-duty vehicle and operator (up to 24 hours per day, as assigned)   | <u>43<sup>00</sup></u> /Hr.  |
| PRICING ITEM 3:<br>Rate for single, contingency, medium-duty, 10ton tow vehicle w/ 6,500 lb. wheel-lift and operator (up to 24 hours per day, as assigned) | <u>53<sup>00</sup></u> /Hr.  |
| PRICING ITEM 4:<br>Rate for each emergency flatbed vehicle and operator (up to 24 hours per day, as assigned to Pena Blvd)                                 | <u>75<sup>00</sup></u> /Hr.  |
| PRICING ITEM 5:<br>Rate for single, emergency, 30-ton tow vehicle and operator (up to 24 hours per day, as assigned to Pena Blvd)                          | <u>125<sup>00</sup></u> /Hr. |

**EXHIBIT B**

**DENVER INTERNATIONAL AIRPORT**

**TOWING SERVICES AGREEMENT**

**STANDARD OPERATING PROCEDURES**

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November 1, 2016

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## Hours of Operation and Staffing

1. Contractor will provide one curbside tow truck twenty- four (24) hours a day seven (7) days per week.
2. Requestors of service may be the Denver Police Department (DPD) and Parking and Transportation, which includes Ground Transportation (GT) and Parking Administration
3. Contractor will provide a monthly schedule to Contract Administrator. If adjustments or changes are made, updates are to be sent to Contract Administrator.
4. Time keeping will be maintained at the Ground Transportation Holding Lot through electronic access cards (credentials).
5. All tow operators will present themselves in a professional manner, with clean and appropriate City approved uniforms, to include name tags, company logo, safety vests and personal protective equipment.
6. The curbside tow unit will be staged at the Ground Transportation Holding Lot, while not performing duties. If the tow needs to go out of service, fuel, break, etc., it will be reported to the Communication Center, along with the estimated return to service.
7. A tow service provider representative will be required to attend the contractor meeting at least once a month. The meetings are held bi-weekly.

## Emergency Hours of Operation

1. At the request of the City, the following number of additional tow trucks will be required:
  - a. **Snow Events**

|                                |                       |
|--------------------------------|-----------------------|
| ▪ <b>Cautionary Snow Alert</b> | no additional request |
| ▪ <b>Level A</b>               | 1 large tow truck     |
| ▪ <b>Level B</b>               | 1 small tow truck     |
|                                | 1 large tow truck     |
| ▪ <b>Snow Emergency</b>        | 6 small tow trucks    |
|                                | 1 Large tow truck     |
  - b. **Other Emergency Events**
2. At the request of the City, additional tow equipment may be requested at any time, not related to a weather event.
3. The staging/location of additional vehicles will be at the discretion of DPD or Parking Administration.
4. All tow operators on duty will be required to have a hand held radio provided by the City, and must be available via radio for the entirety of his/her shift.

## Services Provided

1. Services provided as outlined in the Contract are as follows:
  - a. **Standby Services**
  - b. **Contingency Services**
  - c. **Emergency Services**

2. Additional services include, tire inflation, tire changes, jumps starts, lockouts, relocations, fuel replacement, etc., or as requested by DPD, GT or Parking Administration.

**NOTE:** (Fuel replacement is a courtesy, and will encompass taking customer to Final Approach gas station and taking customer back to vehicle. The purchase of fuel is at the customer's expense).

3. Tow Operators will respond to calls from DPD, GT and Parking Administration.
4. Once task is completed, the tow operator will inform the Communication Center they are "cleared" to respond to future calls.
5. There may be situations, where the tow operator is assisting customers without being notified. It is the responsibility of the tow operator to contact DPD to inform of the task being performed, with the understanding that if DPD, GT or Parking Administration calls, they may need to interrupt the service being provided and to respond to that call.

## Removal of Vehicles from Revenue Area

1. Anytime a vehicle is removed or relocated, a Parking LSA's presence should be requested.
2. At the request of DPD or Parking Administration, the curbside tow may be requested to remove a vehicle out of the Revenue Area.
3. The curbside tow cannot take the vehicle out of the revenue area without approval from Parking Administration. Upon approval, the curbside tow may take a vehicle out of the revenue area, and onto the roadway before the exit gates, for another company to take off premises.
4. All parking fees for towed vehicle are due at exit from the revenue area, unless directed by DPD.
5. Relocated vehicles will be placed in the same revenue area, unless directed otherwise by DPD, GT or Parking Administration.

## Equipment

1. Vehicles will have adequate and sufficient equipment, as outlined in the Contract, to perform duties safely and successfully. Replacement equipment will be provided within sixty (60) minutes.
2. Hand held Radios are provided by the City, and all Tow Operators are required to have the City provided radio while on duty with the appropriate channel to communicate with DPD Dispatch and Parking and Transportation.
3. Hand held radios will be checked out and checked in at the GT Holding lot. Additional radios and batteries will be located at the Parking contractor's offices, for 24 hour access. The Parking contractor's offices are located on Level 1, West Garage by doors 104-106.
4. This equipment will also be checked out and checked in. During an emergency, one tow operator may check out and in radios for all tow operators on site.
5. It is the responsibility of the tow operator to notify the Contract Administrator or designee when City provided equipment is faulty or not working. Contractor may be responsible for cost of repairs or replacement due to damage to City equipment caused by carelessness or negligence.

## Safety and Security

1. Operators are not permitted to operate equipment for more than twelve (12) consecutive hours without a six (6) hour rest period between shifts, unless approved by the Contract Administrator.

## Access

1. All tow trucks will be equipped with an Automatic Vehicle Identification device (AVI tag). This device is used to access the revenue control area in the parking facilities and other areas within DEN. It is not permissible to use the AVI tag to gain personal access to the revenue control area.
2. The AVI is used ONLY to provide service at the requests of Parking and Transportation or DPD.
3. The Short Term parking facilities do not have the AVI equipment for access.
  - a. The tow operator will be required to pull a parking ticket and exit out of the AVI exit.
  - b. At the end of shift, the ticket will need to be turned into the Ground Transportation Holding Lot for delivery to the Parking Administration office.

## Time Keeping

1. All Operators will be required to clock in at the beginning of shift and clock out at the end of their shift. The time keeping equipment is located outside, at the entrance and exit of the GT Holding Lot.
2. It is the individual operator's responsibility to ensure compliance with time keeping procedures.
3. Using another tow operators credentials is not acceptable.

## Tow Tickets

1. All Tow tickets are to be filled out in their entirety; if there is missing information, the notation of why must be noted, i.e. no visible VIN number, unable to read, etc. The tow ticket must be written legibly.
2. Tow tickets are turned in at the GT Holding lot at the end of shift to be delivered to the Parking Administration office.



**CITY AND COUNTY OF DENVER  
DEPARTMENT OF AVIATION**

**PERFORMANCE AND PAYMENT BOND**

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned \_\_\_\_\_

\_\_\_\_\_ ,  
a corporation organized and existing under and by virtue of the laws of the State of \_\_\_\_\_ ,  
hereafter referred to as the "Contractor", and \_\_\_\_\_ ,

\_\_\_\_\_ ,  
a corporation organized and existing under and by virtue of the laws of the State of \_\_\_\_\_ ,

and authorized to transact business in the State of Colorado, as Surety, are held and firmly bound unto the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado, hereafter referred to as the "City", in the penal sum of **FIFTY THOUSAND DOLLARS AND ZERO CENTS (\$50,000.00)**, lawful money of the United States of America, for the payment of which sum, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents;

**THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:**

WHEREAS, the above bounden Contractor has entered into a written contract with the City for furnishing all labor and tools, supplies, equipment, superintendence, materials and everything necessary for and required to do, perform and complete **CONTRACT NO. 201630771 TOWING SERVICES**, Denver, Colorado, and has bound itself to complete the project within the time or times specified or pay liquidated damages, all as designated, defined and described in the said Contract and Conditions thereof, and in accordance with the Plans and Technical Specifications therefore, a copy of said Contract being made a part hereof;

NOW, THEREFORE, if the said Contractor shall and will, in all particulars well and truly and faithfully observe, perform and abide by each and every Covenant, Condition and part of said Contract, and the Conditions, Technical Specifications, Plans, and other Contract Documents thereto attached, or by reference made a part thereof and any alterations in and additions thereto, according to the true intent and meaning in such case, then this obligation shall be and become null and void; otherwise, it shall remain in full force and effect;

PROVIDED FURTHER, that if the said Contractor shall satisfy all claims and demands incurred by the Contractor in the performance of said Contract, and shall fully indemnify and save harmless the City from all damages (liquidated or actual, including, but not limited to, damages caused by delays in the performance of the Contract), claims, demands, expense and charge of every kind (including claims of patent infringement) arising from any act, omission, or neglect of said Contractor, its agents, or employees with relation to said work; and shall fully reimburse and repay to the City all costs, damages, losses and expenses which it may incur in making good any breach or default based upon the failure of the Contractor to fulfill its obligation to furnish maintenance, repairs, services, or replacements for the full guarantee period provided in the Contract Documents, then this obligation shall be null and void; otherwise it shall remain in full force and effect;

PROVIDED FURTHER, that if said Contractor shall at all times promptly make payments of all amounts lawfully due to all persons supplying or furnishing it or its subcontractors with labor and materials, rental machinery, tools or equipment used or performed in the prosecution of work provided for in the above Contract and that if the Contractor will indemnify and save harmless the City for the extent of any and all payments in connection with the carrying out of such Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect;

PROVIDED FURTHER, that if the said Contractor fails to duly pay for any labor, materials, team hire, sustenance, provisions, provender, gasoline, lubricating oils, fuel oils, grease, coal, or any other supplies or materials used or consumed by said Contractor or its subcontractors in 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 will pay the same in any 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 no change, extension of time, alteration or addition to the terms of the Contract, or to contracts with others in connection with this project, or the work to be performed thereunder, or the Technical Specifications and Plans accompanying the same, shall in any way affect its obligation on this bond and it does hereby waive notice of any change, extension of time, alteration or addition to the terms of the Contract, or contracts, or to the work, or to the Technical Specifications and Plans.

IN WITNESS WHEREOF, said Contractor and said Surety have executed these presents as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Attest:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
**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).

APPROVED AS TO FORM:

**CRISTAL M. TORRES DEHERRERA,**  
Interim Attorney for the City and  
County of Denver

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

APPROVED FOR THE CITY AND COUNTY  
OF DENVER

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

By: \_\_\_\_\_  
**CEO DEPARTMENT OF AVIATION**

**PERFORMANCE AND PAYMENT BOND  
SURETY AUTHORIZATION  
(SAMPLE)**

FAX NUMBER: 303-342-2552  
TELEPHONE NUMBER: 303-342-2540

Assistant City Attorney  
Airport Office Building  
8500 Pena Blvd. #9810  
Denver, CO 80249-6340

RE: (Company name)

Contract No: «Contract\_No»  
Project Name: «Project\_Name»  
Contract Amount:  
Performance and Payment Bond No.:

Dear Assistant City Attorney,

The Performance and Payment Bonds covering the above captioned project were executed by this agency, through

\_\_\_\_\_ insurance  
company, on \_\_\_\_\_, 20\_\_.

We hereby authorize the City and County of Denver, Department of Aviation, to date all bonds and powers of attorney to coincide with the date of the contract.

If you should have any additional questions or concerns, please don't hesitate to give me a call at \_\_\_\_\_.

Thank you.

Sincerely,

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

Certificate Holder Information:

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

**CONTRACT NAME & NUMBER TO WHICH THIS INSURANCE APPLIES: 201630771 – Towing Services**

**I. MANDATORY COVERAGE**

**Colorado Workers' Compensation and Employer Liability**

**Minimum Limits of Liability (In Thousands)** \$100, \$500, \$100

1. Contractor expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of the Contractor's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement. Any such rejections previously effected, must have been revoked as of the date Contractor executes this Agreement.
2. If the contractor/consultant is a sole proprietor, Workers' Compensation is waived per State of Colorado law.

**Commercial General Liability**

**Minimum Limits of Liability (In Thousands):**

|  |         |
|--|---------|
| Each Occurrence:                               | \$1,000 |
| General Aggregate Limit:                       | \$2,000 |
| Products-Completed Operations Aggregate Limit: | \$2,000 |
| Personal & Advertising Injury:                 | \$1,000 |

The policy must provide the following:

1. That this Agreement is an Insured Contract under the policy.
2. Defense costs are outside the limits of liability.
3. A severability of interests or separation of insureds provision (no insured vs. insured exclusion).
4. A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.
5. The full limits of coverage must be dedicated to apply to each project/location.
6. If liquor is to be sold or distributed, then Liquor Liability, (\$1,000,000 per claim and \$1,000,000 policy aggregate limit) with the City as an additional insured is required.

**Business Automobile Liability**

**Minimum Limits of Liability (In Thousands):**

|                                |         |
|--------------------------------|---------|
| Combined Single Limit          | \$1,000 |
| Garage Keepers Legal Liability | \$ 500  |
| On The Hook Coverage           | \$ 100  |

The policy must provide the following:

1. Coverage applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.
2. If transporting wastes, hazardous material, or regulated substances, Contractor shall carry a pollution coverage endorsement and an MCS 90 endorsement on their policy.

## II. ADDITIONAL COVERAGE

### Excess/Umbrella Liability

#### Minimum Limits of Liability (In Thousands):

|  |                               |         |
|--|-------------------------------|---------|
| Umbrella Liability Controlled Area     | Each Occurrence and aggregate | \$9,000 |
| Umbrella Liability Non-Controlled Area | Each Occurrence and aggregate | \$1,000 |

The policy must provide the following:

1. Coverage must be written on a "follow form" or broader basis.
2. Any combination of primary and excess coverage may be used to achieve required limits.
3. If operations include unescorted airside access at DIA, then a \$9 million Umbrella Limit is required.

## III. ADDITIONAL CONDITIONS

It is understood and agreed, for the benefit of the City, that the following additional conditions shall apply to all coverage specified herein:

1. For Commercial General Liability, Auto Liability and Excess Liability/Umbrella (if required), Contractor and subcontractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.
2. All coverage provided herein shall be primary and any insurance maintained by the City shall be considered excess.
3. For all coverages required under this Agreement, Contractor's insurer shall waive subrogation rights against the City.
4. The City shall have the right to verify or confirm, at any time, all coverage, information or representations contained herein, and the insured and its undersigned agent shall promptly and fully cooperate in any such audit the City may elect to undertake.
5. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better.
6. For claims-made coverage, the retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier
7. No changes, modifications or interlineations on this document shall be allowed without the review and approval of the Risk Administrator prior to contract execution.

### NOTICE OF CANCELLATION

It is understood and agreed that should any Policy issued hereunder be cancelled or non-renewed before the expiration date thereof, or sustain a material change in coverage adverse to the City, the issuing company or its authorized Agent shall give notice to the Department of Aviation in accordance with policy provisions.

## APPENDIX A

### COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS

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

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

1. **Compliance with Regulations.** The Contractor will comply with the Title VI List of Pertinent Non-Discrimination Statutes and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made part of this Agreement.

2. **Nondiscrimination.** The Contractor, with regard to the work performed by it during this Agreement, will not discriminate on the grounds of race, creed, color, national origin, or sex in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and Regulations, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

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

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

5. **Sanctions for Noncompliance.** In the event of a Contractor's noncompliance with the nondiscrimination provisions of this Agreement, the sponsor will impose such Contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:

- a. Withholding of payments to the Contractor under this Agreement until the Contractor complies, and/or;
- b. Cancelling, terminating, or suspending this Agreement, in whole or in part.

6. **Incorporation of Provisions.** The Contractor will include the provisions of paragraphs one (1) through six (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations or directives issued pursuant thereto. The Contractor will take

action with respect to any subcontract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the sponsor to enter into such litigation to protect the interests of the sponsor. In addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

## APPENDIX E

### TITLE VI LIST OF PERTINENT NONDISCRIMINATION AUTHORITIES

As used below, the term "Contractor" will mean and include Contractor and the term "sponsor" will mean City.

During the performance of this Agreement, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits' discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation-Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601 ), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S. C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC§ 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 1 00-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and Contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 -12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;



- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S. C. 1681 et seq).

