

SECOND AMENDATORY AGREEMENT

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

WITNESSETH

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

WHEREAS, the parties desire to amend the Existing Agreement by amending language including sections of the existing agreement that have changed as a result of recent legislation along with changing several operational aspects of the Existing Agreement to ensure the continuing operation of shuttle bus services at DEN; and

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

1. **Section 1.14 Index** is hereby deleted and replaced with the following:

"1.14 Index

"Index" shall mean the HALF1 Consumer Price Index (CPI-U) for All Items and All Consumers for the Denver-Aurora-Lakewood, Colorado Metropolitan Area as maintained by the U.S. Bureau of Labor Statistics (1982-1984 = 100), based upon calendar year. If the United States Bureau of Labor Statistics shall discontinue issuing the Index for the Denver-Aurora-Lakewood Metropolitan, then the wage adjustments provided for in this Agreement using the Index shall be made on the basis of changes in the U.S. national city average CPI-U for all items and all consumers, if available, or if not, using the most comparable and recognized cost-of-living index then issued and available which is published by the United States Government."

2. **Section 4.4 Adjustment of Fees** is hereby deleted and replaced with the following:

"4.4 Adjustment of Fees

Effective February 1, 2022, the fees per vehicle hour paid to Contractor hereunder shall be increased annually for each Contract Year during the term of this Agreement by application of the following formulae, where "Index" is as defined in Section 1.14 of this Agreement,

Fee per Vehicle Hour for last approved rates on Exhibit E for 2021 x $\frac{\text{Index for 2021}}{\text{Index for 2020}}$
02/01/2022 – 01/31/2023 =

Fee per Vehicle Hour for 2022 Vehicle Fee x $\frac{\text{Index for 2022}}{\text{Index for 2021}}$
2/01/2023– 01/31/2024=

3. **Section 4.6 Liquidated Damages** is hereby amended with the moving of this section to the Standard Operating Procedures Liquidated Damages section of the Agreement.

4. In **Section 7.3 Vehicle Requirements** the section stating “Contractor shall assure that the mean age of the vehicles which Contractor uses in the shuttle bus fleet at the Airport shall not be greater than seven (7) years at any time during the term of this Agreement, including any Extended Term” shall be deleted.

5. **Section 8.7 General Manager** is hereby amended with the addition of the following language in Subpart 1 Minimum Qualifications-

“Transportation/Bus management/managerial experience can be substituted on a year for year basis for education requirements.”

6. **Section 8.12 Shuttle Bus Operators** is hereby deleted and replaced with the following:

“Contractor shall provide personnel to operate the Comprehensive Shuttle Bus Service at the Airport 24 hours a day, each day of the year, along routes and service intervals designated by the Director. Each bus driver must be in possession of a Colorado Driver’s License or permit that meets the criteria of the vehicle they are driving.”

A. Licensing of Shuttle Bus Operators

Contractor shall not permit Airport shuttle vehicles to be driven by any person who is not the holder of a valid current CDL or permit if required by the type of vehicle the person is operating and in full compliance with the current relevant rules and regulations established by the Colorado Department of Transportation. No driver shall have more than six (6) points assessed against his or her driver’s record over the previous two (2) years. Contractor shall present satisfactory evidence of such licensing and motor vehicle data to the SVP and/or Director, upon request.”

7. **Section 8.19 Gratuities** is hereby deleted and replaced with the following:

“Neither the Contractor nor its employees, officers and agents shall solicit gratuities for any reason whatsoever from any person at the Airport or from any employee of the City. Contractor, its employees, officers and agents may accept unsolicited gratuities. The SVP or his/her authorized representative may prohibit the further acceptance of gratuities upon written notice to the Contractor.”

8. **Section 8.20 Job Assignments; Substitution of Employees** is hereby amended with the deletion and replacement of Section 8.20 B with the following-

“B. Additional employment shall in no way interfere with or compromise an employee’s ability to perform his or her duties for the Contractor or subcontractor under this Contract. Additional employment by Contractor’s employees shall not cause the employees to exceed DOT driving hour limits. Contractor shall provide a letter of attestation to the SVP or his/her authorized representative a monthly report confirming no violation of hours. The Contractor shall require all Contractor personnel to promptly and to fully disclose all outside employment and shall report all such outside employment to the SVP if requested.”

9. **Section 12.2 Minimum Wage and Adjustments: Bus Drivers, Supervisors, Fuelers, and Bus Attendants** is hereby amended with the addition of the following-

“Adjustment for any extended term:

Minimum wage and benefit effective February 1, 2022 2021 rate x $\frac{\text{Index for 2021}}{\text{Index for 2020}}$

Minimum wage and benefit effective February 1, 2023 2022 rate x $\frac{\text{Index for 2022}}{\text{Index for 2021}}$ ”

10. **Section 12.2 Minimum Wage and Adjustments: Bus Drivers, Supervisors, Fuelers, and Bus Attendants** is hereby amended with the addition of the following-

“Subject to any Federal, State, or Local laws, regulations, rules, etc. fringe benefits may be paid by the Contractor as additional wages instead of as fringe benefits at the election and request of an employee.”

11. **Section 12.2 Minimum Wage and Adjustments: Bus Drivers, Supervisors, Fuelers, and Bus Attendants** is hereby amended with the deletion of the following-

“Part-Time Drivers shall not exceed fifteen percent (15%) of the Contractor’s total workforce under this Contract.”

12. **Section 14.4 No Discrimination in Employment** is hereby deleted and replaced with the following-

“14.4 NO DISCRIMINATION IN EMPLOYMENT

In connection with the performance of work under the Agreement, the Contractor may not refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or disability. The Contractor shall insert the foregoing provision in all subcontracts.”

13. **Section 14.26 Prohibition Against Employment of Illegal Aliens to Perform Work Under this Agreement** of the existing agreement is hereby deleted and replaced with the following:

“14.26 NO EMPLOYMENT OF A WORKER WITHOUT AUTHORIZATION TO PERFORM WORK UNDER THE AGREEMENT

1.1. This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the “Certification Ordinance”).

1.2. The Contractor certifies that:

1.2.1. At the time of its execution of this Agreement, it does not knowingly employ or contract with a worker without authorization who will perform work under this Agreement, nor will it knowingly employ or contract with a worker without authorization to perform work under this Agreement in the future..

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

1.2.3. It will not enter into a contract with a subconsultant or subcontractor that fails to certify to the Contractor that it shall not knowingly employ or contract with a worker without authorization to perform work under this Agreement.

1.2.4. It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under this Agreement, and it is required to comply with any and all federal requirements related

to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.

1.2.5. If it obtains actual knowledge that a subconsultant or subcontractor performing work under this Agreement knowingly employs or contracts with a worker without authorization, it will notify such subconsultant or subcontractor and the City within three (3) days. The Contractor shall also terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the worker without authorization, unless during the three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with a worker without authorization.

1.2.6. It will comply with a reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S., or the City Auditor, under authority of D.R.M.C. 20-90.3.

1.3. The Contractor is liable for any violations as provided in the Certification Ordinance. If the Contractor violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If this Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the City. Any termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying the Contractor from submitting bids or proposals for future contracts with the City.”

14. SECTION 3 PERSONNEL CONDUCT, APPEARANCE, AND TRAINING in **STANDARD OPERATING PROCEDURES** is hereby amended with the addition of the following clause-

“The prohibition of the use of personal cell phones by any Contractor personnel while on duty is waived if the use of the cell phone is necessary to complete required work under this Contract.”

15. SECTION 2 BUS OPERATIONS, ROUTES, AND SCHEDULES A. Vehicles in **STANDARD OPERATING PROCEDURES** is hereby amended with the addition of the following clause-

“The City may desire to test certain shuttle bus types to determine their applicability in providing service at DEN. The Contractor agrees to assist with these tests up to and including the lease/purchase of said vehicles. Costs of testing will be reimbursable expenses with no mark up by Contractor. The intent is for the City to reimburse all actual operating costs of the test vehicles. Rates for testing and operating shall be negotiated between the parties. If the City adds test vehicles the Contractor shall be required to operate and maintain the vehicles in a first-class fashion. Additionally, the Contractor shall provide all insurance required by DEN Risk in order to operate the vehicles provided.”

16. **Section 8.12 Shuttle Bus Drivers B. Training of Shuttle Bus Operators** is hereby amended with the addition of the following clause-

“The Contractor may use the DEN CDL Training Program (“CTP”) to certify drivers. Costs shall be negotiated between the parties and be reflected in in Exhibit E. The Contractor shall not use the CTP for training drivers for any other agreements the Contractor may have. If DEN determines that more than 25% of CTP drivers have left the airport after 90 days of certification, the City may cancel the Contractor’s use of the CTP program.”

17. **Exhibit B City and County of Denver Insurance Certificate Insurance** is hereby replaced with the attached **Exhibit B**.

18. Except as otherwise provided herein, all of the terms and conditions of the Existing Agreement shall remain in full force and effect as though set out in full herein.

19. This Second Amendatory Agreement shall not be effective or binding on the City until fully executed by all signatories of the City and County of Denver.

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