AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT FOR PROFESSIONAL SERVICES ("Agreement") is made and entered into as of the date stated on City's signature page below (the "Effective Date") by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado acting on behalf of its Department of Aviation ("City"), and **CUBIC TRANSPORTATION SYSTEMS INC.**, a corporation authorized to do business in Colorado ("Contractor") (collectively "Parties").

W I T N E S S E T H:

WHEREAS, City owns, operates, and maintains Denver International Airport ("DEN"); and

WHEREAS, a fleet of busses takes passengers between the parking lots and the Jeppesen Terminal at DEN; and

WHEREAS, City has a system installed in the busses that provides real time information on bus schedules; and

WHEREAS, Contractor is qualified, willing, and able to perform the services, as set forth in this Agreement in a timely, efficient, and economical manner;

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

ARTICLE I LINE OF AUTHORITY

The Chief Executive Officer City and County of Denver Department of Aviation ("CEO"), his or her designee or successor in function (hereinafter referred to as the "Chief Executive Officer" or the "CEO") authorizes all work performed under this Agreement. The CEO hereby delegates his or her authority over the work described in this Agreement to the Director of Parking and Transportation Systems ("Director"), as the CEO's authorized representative for the purpose of administering, coordinating, and approving work under this Agreement. The Director may designate a Department of Aviation employee as the Contract Administrator with authority to act in all day-to-day matters in the administration of this Agreement. The Contractor shall submit its reports, memoranda, correspondence and submittals to the Director or the Director's authorized representative.

ARTICLE II DUTIES AND RESPONSIBILITIES OF CONTRACTOR

A. Scope of Services. Contractor will provide professional services and provide deliverables for the City as designated by the CEO, and/or her designee, from time to time and as described in the attached **Exhibit A** ("Scope of Work") in accordance with schedules and budgets set by City along with **Exhibit B** ("Contractor's Terms and Conditions"). Additionally, **Exhibit D (**"Service Level Agreement" or "SLA") contains the agreed upon level of service to be provided by the Contractor for this Agreement. **Exhibit E** contains Contractor's Systems

Operation Agreement and **Exhibit G** contains Equipment Repair and Warranty terms and conditions.

B. Standard of Performance. Contractor shall faithfully perform the work required under this Agreement in accordance with the standard of care, skill, efficiency, knowledge, training, and judgment provided by highly competent professionals who perform work of a similar nature to the work described in this Agreement. Contractor hereby represents and warrants to City it will perform its services skillfully, carefully, diligently, and in a first-class manner. Contractor agrees and understands City, in its sole and reasonable discretion, shall determine whether services are provided in a first-class manner. Contractor acknowledges that time is of the essence in its performance of all work and obligations under this Agreement.

C. Key Personnel Assignments.

1. It is the intent of the Parties that all professional personnel be engaged to perform their specialty for all such services required by this Agreement.

2. If, during the term of this Agreement, the Contract Administrator determines that the performance of Contractor's personnel is not acceptable, the Contract Administrator shall notify Contractor, and may give Contractor notice of the period of time which the Project Manager considers reasonable to correct such performance. The Contract Administrator retains the right to notify the Contractor that certain of its personnel shall be removed from the project and the Contractor will use its best efforts to obtain adequate substitute personnel within a reasonable period of time from the date of the notice.

D. Subcontractors.

1. Although Contractor may retain, hire, and contract with outside subcontractors for work under this Agreement, no final agreement or contract with any such subcontractor shall be entered into without the prior written consent of the Contract Administrator. Requests for such approval must be made in writing and include a description of the nature and extent of the services to be provided, the name, address and professional experience of the proposed subcontractor, and any other information requested by City. Any final agreement or contract with an approved subcontractor must contain a valid and binding provision whereby the subcontractor waives any and all rights to make any claim of payment against City or to file or claim any lien or encumbrance against any City property arising out of the performance or non-performance of the contract.

2. Because Contractor's represented qualifications are consideration to City in entering into this Agreement, the CEO shall have the right to reject any proposed outside subcontractor for this work deemed by the CEO, in the CEO's sole discretion, to be unqualified or unsuitable for any reason to perform the proposed services, and the CEO shall have the right to limit the number of outside subcontractors or to limit the percentage of work to be performed by them, all in the CEO's sole and absolute discretion.

3. Contractor is subject to D.R.M.C. § 20-112 wherein Contractor is to pay its subcontractors in a timely fashion. A payment is timely if it is mailed to the subcontractor no later than seven (7) days after receipt of any payment from City. Any late payments

are subject to a late payment penalty as provided for in the prompt pay ordinance (§§ 20-107 through 20-118).

E. Ownership and Deliverables. Upon payment to Contractor, all records, data, deliverables, and any other work product prepared by the Contractor or any custom development work performed by the Contractor on or before the day of payment shall become the sole property of the City. Contractor, upon request by the City, or based on any schedule agreed to by Contractor and the City, Contractor shall provide City with copies of the data/files that have been uploaded to any database maintained by or on behalf of Contractor or otherwise saved or maintained by Contractor as part of the services provided to the City under this Agreement. All such data/files shall be provided to the City electronically in a format agreed to by the Contractor and the City. Contractor also agrees to allow the City to review any of the procedures the Contractor uses in performing any work or other obligations under this Agreement, and to make available for inspection any and all notes, documents, materials, and devices used in the preparation for or performance of any of the scope of work, for up to three years after termination of this agreement. Upon written request from the City, the Contractor shall deliver any information requested pursuant to this Article II, Section E within 10 business days in the event a schedule or otherwise agreed upon timeframe does not exist.

ARTICLE III TERM AND TERMINATION

A. Term. The Term of this Agreement shall commence on September 1, 2019 and shall terminate August 31, 2022, unless sooner terminated in accordance with the terms stated herein ("Expiration Date"). It is also a specific provision of this Contract that the CEO in his or her discretion (or his/her designee) may renew and continue the Contract under the same terms and conditions as the original agreement for up to two (2) additional years in increments of one year. Though multiple extensions may be granted, in no event shall the total extensions total more than two years. Should for any reason the Term expire prior to the completion by Contractor, in the CEO's sole discretion, this Agreement shall remain in full force and effect to permit completion of any services commenced prior to the Expiration Date.

B. Termination.

1. City has the right to terminate this Agreement without cause on thirty (30) days prior written notice to Contractor, and with cause on ten (10) days prior written notice to Contractor. In the event of termination by City for cause, Contractor shall be allowed five (5) days to commence remedying its defective performance, and in the event Contractor diligently cures its defective performance to City's satisfaction, within a reasonable time as determined solely and reasonably by City, then this Agreement shall not terminate. However, nothing herein shall be construed as giving Contractor the right to perform services under this Agreement beyond the time when such services become unsatisfactory to the CEO.

2. If Contractor is discharged before all the services contemplated hereunder have been completed, or if Contractor's services are for any reason terminated, stopped or discontinued because of the inability of Contractor to provide services in accordance with the terms of this Agreement, Contractor shall be paid only for those services deemed by the CEO, in his/her reasonable discretion, satisfactorily performed prior to the time of termination.

3. Upon termination of this Agreement by City, Contractor shall have no claim of any kind whatsoever against City by reason of such termination or by reason of any act incidental thereto, except as follows: if the termination is for the convenience of City, Contractor shall be entitled to reimbursement for the reasonable cost of the work to the date of termination, and reasonable costs of orderly termination, provided request for such reimbursement is made no later than six (6) months from the effective date of termination. Contractor shall not be entitled to loss of anticipated profits or any other consequential damages as a result of any such termination for convenience, and in no event shall the total sums paid exceed the Maximum Contract Liability.

ARTICLE IV COMPENSATION AND PAYMENT

A. Maximum Contract Liability. Notwithstanding any other provision of this Agreement, in no event shall City be liable for payment for services rendered and expenses incurred by Contractor under the terms of this Agreement for any amount in excess of the sum of **Two Million Sixty-Eight Thousand Five Hundred Twenty-Four Dollars and Zero Cents ($2,068,524.00)** ("Maximum Contract Liability"). Contractor will be performing the services on a time and material basis up to the Maximum Contract Amount. Contractor's fee is based on the time required by its professionals to complete the services. Rates are set forth in **Exhibit *A***.

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. 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.

C. Payment under this Agreement shall be paid from the Airport System Fund of the City and County of Denver and from no other fund or source. City has no obligation to make payments from any other source. City is not under any obligation to make any future encumbrances or appropriations for this Agreement nor is City under any obligation to amend this Agreement to increase the Maximum Contract Liability above.

D. Payment Schedule. Subject to the Maximum Contract Amount set forth in this Agreement, Contractor's fees and expenses shall be paid in accordance with this Agreement. Unless otherwise agreed to in writing, Contractor will invoice the City on a regular basis in arrears, and the City will pay each invoice in accordance with Denver's Prompt Pay Ordinance, Denver Revised Municipal Code ("D.R.M.C.") § 20-107, *et seq*., subject to the Maximum Contract Liability set forth above. Contractor understands and agrees interest and late fees shall be payable by City only to the extent authorized and provided for in City's Prompt Payment Ordinance. Travel and any other expenses are not reimbursable unless Contractor receives prior written approval of the Contract Administrator and be related to and in furtherance of the purposes of the Contractor's engagement.

E. Invoices. Payments shall be based upon monthly progress invoices and receipts submitted by Contractor, audited and approved by City and this Section, as follows:

(1) An executive summary and status reports that describe the progress of the services and summarize the work performed during the period covered by the invoice.

(2) A statement of hours spent where billing is based upon hourly rates. Time sheets shall be maintained by Contractor and shall be available for examination by City, at City's request.

(3) The amounts shown on the invoices shall comply with and clearly reference the relevant services, the hourly rate and multiplier where applicable, and allowable reimbursable expenses.

(4) Contractor shall submit itemized business expense logs or copies of receipts for all allowable reimbursable expenses, where billing is based upon such items.

(5) The signature of an officer of Contractor, along with such officer's certification they have examined the invoice and found it to be correct, shall be included on all invoices.

City reserves the right to reject and not pay any invoice or part thereof where the CEO determines, in his/her reasonable discretion, the amount invoiced exceeds the amount owed based upon the work performed. City, however, shall pay any undisputed items contained in an invoice. Disputes concerning payments under this provision shall be resolved by administrative hearing pursuant to the procedures of D.R.M.C. § 5-17.

F. Carry Over and Carry Back. If Contractor's total fees for any of the services described above are less than the amount budgeted for, the amount by which the budget exceeds the fee may be used, with the written approval of the CEO or their designee, to pay fees for additional and related services rendered by Contractor in any other services if in the CEO or her designee's judgment, such fees are reasonable and appropriate.

ARTICLE V INSURANCE, INDEMNIFICATION, AND DISPUTE RESOLUTION

A. Insurance.

1. Contractor shall obtain and keep in force during the entire term of this Agreement, all of the insurance policies described in 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 professional liability. Upon execution of this Agreement, Contractor shall submit to City a fully completed and executed original of the attached insurance certificate form, which specifies the issuing company or companies, policy numbers and policy periods for each required coverage. In addition to the completed and executed certificate, Contractor shall submit a copy of a letter from each company issuing a policy identified on the certificate, confirming the authority of the broker or agent to bind the issuing company, and a valid receipt of payment of premium.

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

3. 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.

4. Unless specifically excepted in writing by City's Risk Management Administrator, Contractor shall include all subcontracts performing services hereunder as insureds under each required policy or shall furnish a separate certificate (on the form certificate provided), with authorization letter(s) for each subcontractor, or each subcontractor shall provide its own insurance coverage as required by and in accordance with the requirements of this section of the Agreement. All coverages for subcontractors shall be subject to all of the requirements set forth in the form certificate and Contractor shall insure that each subcontractor complies with all of the coverage requirements.

Unless specifically excepted in writing by DEN Risk Management, if Contractor will be using subcontractors to provide any part of the services under this Agreement, Contractor shall do one of the following:

(a) include all subcontractors performing services hereunder as insureds under its required insurance and specifically list on all submitted certificates of insurance required under Exhibit C; or

(b) ensure that each subcontractor provides its own insurance coverage in accordance with the requirements set forth in this Agreement.

5. City in no way warrants and/or represents the minimum limits contained herein are sufficient to protect Contractor from liabilities arising out of the performance of the terms and conditions of this Agreement by Contractor, its agents, representatives, or employees. Contractor shall assess its own risks and as it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. Contractor is not relieved of any liability or other obligations assumed or pursuant to this Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. In no event shall City be liable for any: (i) business interruption or other consequential damages sustained by Contractor; (ii) damage, theft, or destruction of Contractor's inventory, Improvements, or property of any kind; or (iii) damage, theft, or destruction of an automobile, whether or not insured.

6. The Parties hereto understand and agree that 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 City and County of Denver, its officers, officials and employees.

B. Defense and Indemnification.

1. Contractor agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property to the extent arising directly out of, resulting from, or relating to the work performed by Contractor under this Agreement ("Claims"), unless and to the extent 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.

2. 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.

3. 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. In addition to the duty to indemnify and hold harmless, Contractor will have the duty to defend City, its agents, employees, and officers from all liabilities, claims, expenses, losses, costs, fines, and damages (including but not limited to attorney's fees and court costs) and causes of action of every kind and character. The duty to defend under this paragraph is independent and separate from the duty to indemnify, and the duty to defend exists regardless of any ultimate liability of Contractor, City, and any indemnified party. The duty to defend arises immediately upon written presentation of a claim to Contractor. The choice of counsel and method of defense of any Claims under this clause shall be at Contractor's sole and reasonable discretion. City may choose to defend itself with separate counsel provided that if it does so it shall be liable for its own costs and expenses in doing so.

4. 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.

5. This defense and indemnification obligation shall survive the expiration or termination of this Agreement. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

C. Existing Utilities and Structures

1. The Contractor shall adequately protect the work, Airport property, adjacent property and the public. In the event of damage to facilities and/or disruption in services at the facilities, as a result of the Contractor's operations or lack thereof when required, the Contractor shall take immediate steps to notify the Project Administrator and subsequently repair or restore all services to the satisfactory approval of the Project Administrator. The Contractor shall also provide temporary services to maintain uninterrupted use of the facilities.

2. All costs involved in making repairs and restoring disrupted service shall be borne by the Contractor, and the Contractor shall be fully responsible for any and all claims resulting from the damage.

3. The Project Administrator, at his/her option, may elect to perform such repairs and deduct the cost of such repairs, replacements and outside services from the monthly charges by the Contractor.

D. DISPUTE RESOLUTION. Disputes arising under or related to this Agreement or the work which is the subject of this Agreement shall be resolved by administrative hearing which shall be conducted in accordance with the procedures set forth in D.R.M.C. §5-17. The parties agree that the determination resulting from said administrative hearing shall be final, subject only to Contractor's right to appeal the determination under Colorado Rule of Civil Procedure, Rule 106.

ARTICLE VI GENERAL TERMS AND CONDITIONS

A. Status of Contractor. It is agreed and understood by and between the parties hereto that the status of Contractor shall be an independent contractor retained on a contractual basis to perform professional or technical services for limited periods of time as described in §9.1.1(E)(x) of the Charter of City and County of Denver, and it is not intended, nor shall it be construed, Contractor or its personnel are employees or officers of City under D.R.M.C. Chapter 18 for any purpose whatsoever.

B. Assignment. Contractor shall not assign, pledge or transfer its duties, obligations, and rights under this Agreement, in whole or in part, without first obtaining the written consent of the Contract Administrator. Any attempt by Contractor to assign or transfer its rights hereunder without such prior written consent shall, at the option of the Contract Administrator, automatically terminate this Agreement and all rights of Contractor hereunder. Such consent may be granted or denied at the sole and absolute discretion of the Contract Administrator. Notwithstanding the foregoing, Contractor may assign any payments due from the City to the Contractor.

C. Compliance with all Laws and Regulations. All of the work performed under this Agreement by Contractor shall comply with all existing and future applicable laws, rules, regulations and codes of the United States and the State of Colorado and with the charter, ordinances and rules and regulations of City and County of Denver.

D. Compliance with Environmental Requirements

1. The Contractor in conducting any activity on the Airport shall comply with all existing and future applicable local, state and federal environmental rules, regulations, statutes, laws and orders (collectively "Environmental Requirements"), including but not limited to Environmental Requirements regarding the storage, use and disposal of Hazardous Materials or Special Wastes to the environment. For purposes of this Agreement the terms "Hazardous Materials" shall refer to those materials, including without limitation asbestos and asbestos-containing materials, polychlorinated biphenyls (PCBs), oil or any other petroleum products, natural gas, source material, pesticide, and any hazardous waste, toxic substance or related material, including any substance defined or treated as a "hazardous substance," "hazardous waste" or "toxic substance" (or comparable term) in the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Sec. 9601 et seq. (1990), the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq. (1990), and any rules and regulations promulgated pursuant to such statutes or any other applicable federal or state statute.

In addition, Environmental Requirements include applicable Environmental Guidelines developed for DEN's Environmental Management System (EMS), as summarized in DEN Rules and Regulations Part 180 (Environmental Management) and DEN's Environmental Policy.

Part 180 and DEN's Environmental Policy can be found at the following addresses-

https://www.flydenver.com/sites/default/files/rules/180_environmental.pdf

http://www.flydenver.com/sites/default/files/environmental/policy.pdf

These Environmental Requirements include, but are not limited to, requirements regarding the storage, use, and disposal of Hazardous Materials, petroleum products; the National Environmental Policy Act (NEPA); the Clean Water Act (CWA); and all other federal, state, and local water, wastewater, and air quality regulations.

2. The Contractor shall acquire all necessary federal, state, local, and airport permits/approvals and comply with all permit/approval requirements.

3. Prior to use, the Contractor shall provide to the City copies of Material Safety Data Sheets (MSDSs) for all chemicals or detergents to be used in its activities for approval. This obligation is continuing for the term of this Agreement, and the Contractor shall provide updated MSDSs and MSDSs for new chemicals, as such information is updated and as new chemicals or detergents are placed into use, as applicable.

4. The Contractor agrees to ensure that its operations hereunder are conducted in a manner that minimizes environmental impact through appropriate preventive measures. The Contractor agrees that it shall be responsible for any notice of violation from CDPHE, the City and County of Denver or the EPA. The Contractor further agrees that it is responsible for the health and safety of its personnel in connection with such environmental requirements.

5. In the case of a release, spill or leak as a result of the Contractor's activities, the Contractor shall immediately control and remediate the contaminated media to applicable federal, state and local standards. The Contractor agrees that in such event it will immediately clean up all spills and the cleanup material must be disposed of offsite at the Contractor's sole expense. The Contractor agrees that it shall reimburse the City for any penalties and all costs and expenses, including without limitation attorney's fees, incurred by the City as a result of the release or disposal by the Contractor of any pollutant or hazardous material on or about the Airport.

E. Compliance with Patent, Trademark and Copyright Laws.

1. Contractor agrees that all work performed under this Agreement shall comply with all applicable patent, trademark and copyright laws, rules, regulations and codes of the United States. Contractor will not utilize any protected patent, trademark or copyright in performance of its work unless it has obtained proper permission and all releases and other necessary documents. If Contractor prepares any documents which specify any material, equipment, process or procedure which is protected, Contractor shall

disclose such patents, trademarks and copyrights in the construction drawings or specifications.

2. Contractor further agrees to release, indemnify and save harmless City, its officers, agents and employees, pursuant to Article V, Section I, "Defense and Indemnification," from any and all claims, damages, suits, costs, expenses, liabilities, actions or proceedings of any kind or nature whatsoever, of or by anyone whomsoever, in any way to the extent resulting from, or arising out of, directly or indirectly, the performance of work under this Agreement which infringes upon any patent, trademark or copyright protected by law.

F. Notices. Notwithstanding the above, notices concerning termination of this Agreement, notices of alleged or actual violations of the terms of this Agreement, and other notices of similar importance shall be made as follows:

by Contractor to:

Chief Executive Officer
Denver International Airport
Airport Office Building
8500 Peña Boulevard, 9th Floor
Denver, Colorado 80249-6340

And by City to:

Cubic Transportation Systems Inc.
9333 Balboa Avenue
San Diego, CA 92123
Attn: Katie DeConzo

With a copy to:

Legal Department
Cubic Corporation
9333 Balboa Avenue
San Diego, CA 92123
Fax: (858) 505-1559

Said notices shall be delivered personally during normal business hours to the appropriate office above or by prepaid U.S. certified mail, return receipt requested. Mailed notices shall be deemed effective upon deposit with the U.S. Postal Service. Either party may from time to time designate substitute addresses or persons where and to whom such notices are to be mailed or delivered, but such substitutions shall not be effective until actual receipt of written notification thereof.

G. Rights and Remedies Not Waived. In no event shall any payment by City hereunder constitute or be construed to be a waiver by City of any breach of covenant or default

which may then exist on the part of Contractor, and the making of any such payment when any such breach or default shall exist shall not impair or prejudice any right or remedy available to City with respect to such breach or default; and no assent, expressed or implied, to any breach of any one or more covenants, provisions or conditions of this Agreement shall be deemed or taken to be a waiver of any other breach. Neither party shall be deemed to have waived any right or remedy available to it under this Agreement unless such waiver is express and in writing signed by an authorized representative of the party waiving such right or remedy.

H. No Third-Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement shall be strictly reserved to City and Contractor, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on this Agreement. It is the express intention of City and Contractor that any person other than City or Contractor receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

I. Governing Law; Bond Ordinances; Venue.

1. This Agreement is made under and shall be governed by the laws of the State of Colorado. Each and every term, provision or condition herein is subject to the provisions of Colorado law, the Charter of City and County of Denver, and the ordinances and regulations enacted pursuant thereto.

2. 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.

3. Venue for any action arising hereunder shall be in City and County of Denver, Colorado.

ARTICLE VII STANDARD CITY PROVISIONS

A. Diversity and Inclusiveness.

1. The City encourages the use of qualified small business concerns doing business within the metropolitan area that are owned and controlled by, economically or socially disadvantaged individuals.

2. The Contractor is encouraged, with respect to the goods or services to be provided under this Contract, to use a process that includes small business concerns, when considering and selecting any subcontractors or suppliers.

B. Small Business Enterprises. Contractor is subject to City's ordinance, DRMC Chapter 28, Article III (MBE/WBE Ordinance) which prohibits discrimination in the awarding of contracts and subcontracts and directs the DSBO Director to establish goals for MBE and WBE participation in the preconstruction and construction of City-owned facilities. There are no goals for this Agreement. The Contractor must comply with the terms and conditions of the MBE/WBE

Ordinance in soliciting and contracting with its sub-contractors and sub-contractors in administering the performance of the work hereunder.

C. City's Non-Discrimination Policy. In connection with the performance of Services under this Agreement, Contractor agrees not to refuse to hire, discharge, promote, demote, or to discriminate in matters of compensation against any person otherwise qualified solely because of race, creed, color, religion, national origin, gender, age, military status, sexual orientation, gender variance, marital status, and/or physical and mental disability. Contractor further agrees to insert the foregoing provision in all subcontracts hereunder

D. Advertising and Public Disclosures. 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 Contract Administrator. Any oral presentation or written materials related to DEN shall include only presentation materials, work product, and technical data which have been accepted by City, and designs and renderings, if any, which have been accepted by City. The CEO shall be notified in advance of the date and time of any such presentations. Nothing herein, however, shall preclude Contractor's use of this contract and its component parts in GSA form 254 or 255 presentations, or the transmittal of any information to officials of City, including without limitation, the Mayor, the CEO, any member or members of City Council, and the Auditor.

E. Colorado Open Records Act. Contractor acknowledges that City is subject to the provisions of the Colorado Open Records Act, Colorado Revised Statutes § 24-72-201 et seq., and Contractor agrees that it will fully cooperate with City in the event of a request or legal process arising under such act for the disclosure of any materials or information which Contractor asserts is confidential and exempt from disclosure. 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 Contractor to City shall be considered confidential by City only to the extent provided in the Open Records Act, and Contractor agrees that any disclosure of information by City consistent with the provisions of the Open Records Act shall result in no liability of City.

In the event of a request to City for disclosure of such information, time, and circumstances permitting, City will make a good faith effort to advise Contractor of such request in order to give Contractor the opportunity to object to the disclosure of any material Contractor may consider confidential, proprietary, or otherwise exempt from disclosure. In the event Contractor objects to disclosure, City, in its sole and absolute discretion, may file an application to the Denver District Court for a determination of whether disclosure is required or exempted. In the event a lawsuit to compel disclosure is filed prior to City's application, City will tender all such material to the court for judicial determination of the issue of disclosure. In both situations, Contractor agrees it will either waive any claim of privilege or confidentiality or intervene in such legal process to protect materials Contractor does not wish disclosed. Contractor agrees to defend, indemnify, and hold harmless City, its officers, agents, and employees from any claim, damages, expense, loss, or costs arising out of Contractor's objection to disclosure, including prompt reimbursement to City of all reasonable attorney fees, costs, and damages City may incur directly or may be ordered to pay by such court.

F. Examination of Records.

1. In connection with any services performed hereunder on items of work toward which federal funds may be received the City, the Federal Aviation Administration

("FAA"), the Comptroller General of the United States and any other duly authorized representatives shall have access to any books, documents, papers and records of Contractor which are directly pertinent to a specific grant program for the purpose of making audit, examination, excerpts and transcriptions. Contractor further agrees that such records will contain information concerning the hours and specific services performed along with the applicable federal project number.

2. Contractor agrees until the expiration of three (3) years after the final payment under this Agreement, any duly authorized representative of City, including the CEO, City's Auditor or their representatives, shall have the right to examine any pertinent books, documents, papers and records of Contractor involving transactions related to this Agreement, without regard to whether the work was paid for in whole or in part with federal funds or was otherwise related to a federal grant program.

G. Use, Possession or Sale of Alcohol or Drugs. Contractor shall cooperate and comply with the provisions of Executive Order 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 City's barring Contractor from City facilities or participating in City operations.

H. City Smoking Policy. Contractor and its officers, agents and employees shall cooperate and comply with the provisions of Denver Executive Order No. 99 and the Colorado Indoor Clean Air Act, prohibiting smoking in all City buildings and facilities.

I. Conflict of Interest. Contractor agrees that it and its subsidiaries, affiliates, subcontractors, principals, or employees will not engage in any transaction, activity or conduct which would result in a conflict of interest. Contractor represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities, or conduct that would affect the judgment, actions or work of Contractor by placing Contractor's own interests, or the interest of any party with whom Contractor has a contractual arrangement, in conflict with those of City. City, in its sole discretion, shall determine the existence of a conflict of interest and may terminate this agreement if such a conflict exists, after it has given Contractor written notice which describes such conflict.

Contractor shall have thirty (30) days after the notice is received in which to eliminate or cure the conflict of interest in a manner which is acceptable to City.

J. Prohibition Against Employment of Illegal Aliens To Perform Work Under this Agreement.

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

2. The Contractor certifies that:

(a) 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.

(b) 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.

3. The Contractor also agrees and represents that:

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

(b) It shall not enter into a contract with a subcontractor or subconsultant 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.

(c) 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.

(d) 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.

(e) If it obtains actual knowledge that a subcontractor or subconsultant performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subcontractor and City within three days. The Contractor will also then terminate such subcontractor or subconsultant if within three days after such notice the subcontractor or subconsultant 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 subconsultant has not knowingly employed or contracted with an illegal alien.

(f) 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 City Auditor under authority of D.R.M.C. §20-90.3.

K. Funding Source. Payment under this Agreement shall be paid from the Airport System Fund of the City and County of Denver and from no other fund or source.

L. NON-EXCLUSIVE AGREEMENT. This is a non-exclusive Agreement. The City reserves the right to purchase the same materials and services through other procurements. The City also reserves the right to purchase from other sources those items which are required on an emergency basis and cannot be supplied immediately from stock by the vendor

ARTICLE VIII STANDARD FEDERAL PROVISIONS

A. Sensitive Security Information. Contractor acknowledges that, in the course of performing its work under this Agreement, Contractor may be given access to Sensitive Security

Information ("SSI"), as material is described in federal regulations, 49 C.F.R. part 1520. Contractor specifically agrees to comply with all requirements of the applicable federal regulations specifically, 49 C.F.R. Parts 15 and 1520. Contractor understands any questions it may have regarding its obligations with respect to SSI must be referred to the DEN's Security Office.

B. DEN Security. Contractor, its officers, authorized officials, employees, agents, subcontractors, and those under its control, will comply with safety, operational, or security measures required of Contractor or City by the FAA or TSA. If Contractor, its officers, authorized officials, employees, agents, subcontractors or those under its control, fail or refuse to comply with said measures and such non-compliance results in a monetary penalty being assessed against City, then, in addition to any other remedies available to City, Contractor covenants to fully reimburse City any fines or penalties levied against City, and any attorney fees or related costs paid by City as a result of any such violation. This amount must be paid by Contractor within fifteen (15) days from the date of the invoice or written notice.

C. Federal Rights. This Agreement is subject and subordinate to the terms, reservations, restrictions and conditions of any existing or future agreements between 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 City for DEN purposes and the expenditure of federal funds for the extension, expansion or development of the Denver Municipal Airport System.

ARTICLE IX PREVAILING WAGES AND MINIMUM WAGES

A. PAYMENT OF PREVAILING WAGES

A. Pursuant to Section 20-76 of the Denver Revised Municipal Code, the Contractor and each of its subcontractors shall pay every worker, laborer or mechanic employed by it directly upon the site of the work under this Contract the full amounts accrued at the time of payment, computed at wage rates not less than those shown on the current prevailing wage rate schedule for each class of employees performing work for the Contractor and its subcontractors under this Agreement (See **Exhibit H**). The wages shall be those prevailing as of the date of this Contract, and the Contractor shall post in a prominent and easily accessible place in its work area at the Airport, a copy of the wage rates for the positions or positions to which the prevailing wage ordinance applies. All construction workers, mechanics and other laborers shall be paid at least once per week; non-construction workers such as janitorial or custodial workers shall be paid at least twice per month.

B. The Contractor shall furnish to the City Auditor or his authorized representative, each week during which work is performed under this Contract, a true and correct copy of the payroll records of all workers employed to perform the work, to whom the prevailing wage ordinance applies. All such payroll records shall include information showing the number of hours worked by each worker, the hourly pay of such worker, any deductions made from pay, and the net amount of pay received by such worker for the period covered by the payroll. The payroll record shall be accompanied by a sworn statement of the Contractor that the copy is a true and correct copy of the payroll records of all workers performing such work, either for the Contractor or a subcontractor, that payments were made to the workers as set forth in the payroll records, that no deductions were made other than those set forth in such records, and that all workers were paid the prevailing wages as set forth in this Contract.

C. If the term of this Contract extends for more than one year, the minimum City prevailing wage rates that contractors and subcontractors shall pay during any subsequent

yearly period or portion thereof shall be the wage rates in effect on the yearly anniversary date of this Contract which begins such subsequent period. Decreases in prevailing wages subsequent to the date of this Contract shall not be effective except on the yearly anniversary date of this Contract. In no event shall any increases in prevailing wages after the first anniversary of this Contract result in any increased liability on the part of the City and the possibility and risk of any such increase is assumed by the Contractor.

D. If the Contractor or any subcontractor fails to pay such wages as required herein, the City Auditor shall not approve any warrant or demand for payment to the Contractor until the Contractor furnishes to the Auditor evidence satisfactory to the Auditor that such wages so required by this Contract have been paid. The Contractor may utilize the procedures set out in D.R.M.C. §20-76(d)(4) to satisfy the requirements of this provision.

E. If any worker to whom the prevailing wages are to be paid, employed by the Contractor or any subcontractor to perform work hereunder, has not been or is not being paid a rate of wages required by this Section, the CEO may by written notice to the Contractor, suspend by a stop-work order or terminate the Contractor's services hereunder, or the part of such services performed by such workers. The issuance of a stop-work order shall not relieve the Contractor or its sureties of any obligations or liabilities to the City under this Contract, including liability to the City for any extra costs incurred by it in obtaining substitute services for Airport facilities while any such stop-work order is in effect or following termination for such cause.

B. PAYMENT OF CITY MINIMUM WAGE:

Contractor shall comply with, and agrees to be bound by, all requirements, conditions, and City determinations regarding the City's Minimum Wage Ordinance, Sections 20-82 through 20-84 D.R.M.C., including, but not limited to, the requirement that every covered worker shall be paid no less than the City Minimum Wage in accordance with the foregoing D.R.M.C. Sections. By executing this Agreement, Contractor expressly acknowledges that they are aware of the requirements of the City's Minimum Wage Ordinance and that any failure by Contractor or any other individual or entity acting subject to this Agreement, to strictly comply with the foregoing D.R.M.C. Sections shall result in the penalties and other remedies authorized therein. (See **Exhibit F**).

ARTICLE X CONTRACT DOCUMENTS; ORDER OF PRECEDENCE

This agreement consists of Articles I through XI which precede the signature page, and the following attachments which are incorporated herein and made a part hereof by reference:

Appendices:	Standard Federal Assurances
Exhibit A:	Scope of Work
Exhibit B:	Contractor's Terms & Conditions
Exhibit C:	Certificate of Insurance
Exhibit D:	Service Level Agreement
Exhibit E:	Cubic Operation Agreement
Exhibit F:	Minimum Wage
Exhibit G:	Equipment Repair and Warranty
Exhibit H:	Prevailing Wages

In the event of an irreconcilable conflict between a provision of Articles I through XI and any of the listed attachments or 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
Articles I through XI hereof
Exhibit A
Exhibit B
Exhibit C
Exhibit D
Exhibit F
Exhibit G
Exhibit H

ARTICLE XI CITY EXECUTION OF AGREEMENT

A. City Execution. This Agreement is expressly subject to, and shall not become effective or binding on City, until it is fully executed by all signatories of City and County of Denver. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same, and it may be signed electronically by either party in the manner specified by City.

B. 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.

[SIGNATURE PAGES FOLLOW]

Contract Control Number: PLANE-201843845-00

Contractor Name: CUBIC TRANSPORTATION SYSTEMS INC

By: _____

Name: Cindy Adamos
(please print)

Title: Director of Contracts
(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

Scope of Work

GENERAL SCOPE OF SERVICES:
The current installed system was initially purchased by the Shuttle Bus Management Contractor under contract CE78003 and under the terms of the contract the system became the property of the City and County of Denver through the Department of Aviation (DEN) at the conclusion of Contract CE78003.

DEN is in possession of a fully functional and integrated Automatic Vehicle Location (AVL) Real Time Passenger Information System and requires maintenance and extended warranty of hardware and ongoing software support and additional services and support for the term of this contract. The Scope of Work shall include procuring, configuring, installing, integrating, testing, and warrantying a fully operational and functional system that achieves all objectives detailed in this Scope of Work.

ADDITIONAL SERVICES:
Additional Services may include but are not limited:

1. Removal and Installation of the current NextBus and NextStop systems from the existing Shuttle buses and installed in any replacement shuttle bus.
2. Installation and support of the NextStop system and upgrade of the existing Amtel trackers to the current Driver Control Units (DCU's) in the Shuttle Bus fleet.
3. Removal of the complete system from the current or future shuttle bus fleet upon request.
4. Installation of additional LED and LCD signs to improve customer service. NextBus develops the designs based on Current Apps, sets up APIs, alerts and maintains the back end. Current Apps include Prediction information (in minutes, for arrivals or departures) for vehicles leaving from any stops defined in the route Map views that the route, vehicles on the route and the direction of travel A general listing of air-side departure and arrival flight status Service alerts, RSS feeds and social media feeds in limited formats Local information in various formats: Time of day, Weather forecast, or weather forecast for a cities of interest Ability to change fonts, font sizes, colors, backgrounds, logos (provided by the transit agency). If there are additional requirements for information that go beyond current applications, customization is available, but this will take a separate development effort. Pricing, per month $79/mo per screen/player for renewals and extensions.
5. Installation of NextBus system including NextStop in any future additional Airport shuttle buses
6. Provision for Extended Warranty and annual Operating/Recurring Costs associated with the purchase and installation of any additional hardware and software for DEN.
7. Addition of any future feature/option provided by NextBus that has been purchased by DEN.

The Contractor agrees that the City may at any time require deletions, additions, or modifications to the work, hereinafter referred to as "Work Revisions" without invalidating the Agreement. Work Revisions will be issued, in writing, and signed by the Director. If prior to formal issuance of Work Revision, the Contractor and the City can agree to a price adjustment for the change, that agreement will be expressed on the Work Revision either as a decrease or increase to the monthly payment for services.

Even if agreement between the City and Contractor on price adjustments cannot be reached at the time the Work Revision is issued, the Contractor shall redirect the services as necessary to implement the revisions. In such event, the Contractor shall be paid for the actual quantity of quantities of such services whether increased or decreased, in direct proportion to the revision of services.

REMOVAL AND REINSTALLATION OF NEXTBUS EQUIPMENT:

At the request and direction of DEN, and in cooperation with the Airport's bussing contractor, NextBus installation teams shall remove NextBus equipment from existing buses and reinstall that equipment on the Airport's replacement buses. Any NextBus equipment installed on the existing buses at that time (including, but not limited to, trackers, automated passenger counters, voice announcement systems, etc.) shall be removed. That equipment shall then be reinstalled into new buses incorporated into DEN's fleet. Reinstallation, which may involve the ordering of new cabling or other parts, shall occur on DEN's property by NextBus trained installation personnel. Any necessary parts will be ordered by NextBus and shipped to the Airport for safe keeping until needed by the installation team. Once installed into replacement vehicles, the equipment shall be tested and verified on the NextBus tracking network under DEN's project installation.

GENERAL REAL TIME PASSENGER INFORMATION SYSTEM VEHICLE TRACKING SOFTWARE:

The NextBus system offers real-time arrival predictions and messaging capability directly to passengers through a variety of display devices, such as internet-capable mobile devices and other wireless static/mobile devices, and non-internet capable telephones/cell phones (via telephone information system). The solution uses real-time GPS data from the NextBus Automatic Vehicle Location hardware installed on the airport's shuttles. Stored lines, stops, and schedule definitions and historical travel time data are used to generate real-time reports.

The NextBus System must have the capability to display at each stop the minutes until the next shuttle arrives and the specific route from the following list:

a) East Economy Lot Route
b) West Economy Lot Route
c) Pikes Peak Lot Route
d) Mt. Elbert Lot Route

e) Airside Employee Routes:
- Concourse A Route
- Concourse B Route
- Concourse C Route

f) Landside Employee Route
g) Air Cargo Route
h) Any additional Route

VEHICLE TRACKING SOFTWARE:
LED signs are preferred for each exterior stop, with a larger LCD display for the interior public waiting area. Other options may be proposed, with a clear explanation of the advantages of these options. Proposals should include options for ADA-compliant voice-announce capabilities. The minimum requirement for the shelter and GTC stops is for signs displaying the arrival time of the next bus.

AUTOMATIC PASSENGER COUNTER REQUIREMENTS:

The Nextbus system must utilize the **Automatic Passenger Counter (APC),** count system and the associated software options to track the number of people riding each bus

VEHICLE LOCATION DATA:
In addition to the public map interface, the NextBus Management Map must provide the necessary tools for DEN managers and dispatchers to view fleet movement in real-time using the Internet. This tool communicates with the DCU to obtain AVL data (both real-time and historic), vehicle arrival times (predictions) and background map images as shown. The dispatcher can monitor vehicle behavior to ensure it does not deviate from established routes and schedules.

MANAGEMENT TOOLS:

AGENCY DISPATCH MAP:

The real-time management map allows dispatchers and agency management to view vehicle information. The vehicles appear on a route as icons and the label is displayed and connected to the vehicle icon. All mapping capabilities are part of the Core NextBus system and are currently being utilized by DEN.

ROUTE MANAGEMENT:

As part of the core NextBus system currently deployed at DEN is a suite of management tools designed to help agencies effectively manage their operations.

AUTOMATIC VOICE ANNUNCIATION SYSTEM: NEXT STOP

As part of the services that DEN will add to the existing system; NextBus will provide NextStop - which is our Automatic Voice Announcement System (AVAS). NextStop can

display and announce to passengers on board upcoming stops and transfer points. NextStop interfaces directly with the vehicle's public address system and Cubic-installed onboard LED signage.

If chosen as an option, the installation of the NextStop System will occur during the removal and reinstallation of the NextBus equipment into the replacement buses. Includes the upgrade of existing Atmel trackers to current Driver Control Units (DCU's) during the installation of the (AVAS).

SUPPORT:
Ongoing Customer Support

Please see Exhibit D and Exhibit E.

Software Updates

NextBus will upgrade its product features and functions as necessary during the term of the contract.

REPORTS:

The NextBus real-time passenger information system provides an extensive collection of management reports which are already being utilized by DEN staff. These reports are accessible through a web browser interface for viewing and accessing historical information in the database. The reports allow system managers to gain greater insight and control over their plans, schedules, and communications. For each report, the system presents a parameter web page.

HEADWAY COMPLIANCE:
The System shall have the capability to track and generate reports on bus timing and headway compliance in an exportable format.

DOCUMENTATION:
User manuals and documentation will be provided with the NextStop and APC NextBus systems.

TRAINING:
NextBus will provide training in a Train-the-Trainer format. An unlimited number of attendees may participate in this training, including dispatchers, field supervisors, managers, and administrative personnel. This training will cover NextStop and APC system operation.

WARRANTY:

All parts and materials shall have a one-year warranty. The initial one-year warranty begins upon installation of the individual equipment. NextBus will provide an option to

extend the warranty of all existing and future parts and material by the purchase of an extended warranty.

COMPENSATION:

The City agrees to pay, and the Contractor agrees to accept as sole compensation for its complete costs incurred and services rendered hereunder, a monthly fee in the amount of $15,000.00 for each complete month that the Contractor performs satisfactory services under this Contract, subject to any fee reduction for reduced service levels resulting from the agreed upon Service Level Agreement. Payments shall be made to the Contractor based upon monthly invoices and receipts submitted by Contractor for each complete month that the Contractor performs satisfactory services, which invoices have been approved by City, and subject to the City's maximum contract liability.

Annual Adjustments

The yearly contract amount for this contract shall be adjusted annually during the term of this Contract, effective each year on August 1, beginning on August 1, 2020, using the Index and the calculations described in this Section. Regardless of the change of the CPI under no circumstances shall the increase in the yearly contract amount rise more than 3% per annum. Historically the annual Index has not decreased from the prior year; if such a decrease occurs, the annual contract amount will not decrease from the previous year amount but will remain unchanged.

The yearly contract amount shall be adjusted by application of the following formulae, where “Index” is defined as:

“Index” shall mean the annual 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.

Annual CPI Calculation effective August 1, 2020 = 2019 rate x $\frac{\text{Index for 2019}}{\text{Index for 2018}}$

Annual CPI Calculation effective August 1, 2021= 2020 rate x $\frac{\text{Index for 2020}}{\text{Index for 2019}}$

Annual CPI Calculation effective August 1, 2022= 2021 rate x $\frac{\text{Index for 2021}}{\text{Index for 2020}}$

Annual CPI Calculation effective August 1, 2023=2022 rate x $\frac{\text{Index for 2022}}{\text{Index for 2021}}$

Each year on or before August 1 the City will notify the Contractor of the rates based upon the CPI.

Annual Adjustments- Optional Methodology

The annual service fee shall be adjusted annually during the term of this Agreement, effective each year on August 1, beginning on August 1, 2020, using the above Index and calculations.

Exhibit B

CUBIC | Transportation Systems

The Cubic|NextBus Solution for Real-Time Passenger Information

Standard Terms & Conditions

August 2018

Table of Contents

1 Definitions.

a. "Agreement" means this Agreement for the Provision of NextBus Equipment and Services.

b. "Content" or "Customer Content" means information, data, text, photographs, software, scripts, graphics, and interactive features generated, provided, or otherwise made accessible by the Customer on or through the Services.

c. "Cubic" means Cubic Transportation Systems, Inc.

d. "Customer" means the party entering into this Agreement with Cubic.

e. "Equipment" means any piece of hardware fielded by Cubic in performance of this Agreement that is necessary for Cubic's performance of the Services for the benefit of a specific customer.

f. "Mobile Application" means the mobile application developed and operated by Cubic as part of the Service.

g. "Service" or "Services" means Cubic's operation of its software on behalf of its Customers as manifested in the reports or displays resulting from the use of that software.

h. "Service Level" or "Service Levels" means the levels at which Cubic agrees to maintain and operate the Service as further detailed in Appendix A, Service Levels.

2 Services.

a. Cubic shall provide the Services in a professional and effective manner as contemplated in this Agreement. Customer's sole remedy for Cubic's failing to provide the Services as contemplated herein shall be a payment deduction.

b. Cubic shall provide the Services at the Service Levels contemplated in Exhibit D, Service Levels. Should the Services not meet the Service Levels, Customer may deduct amounts from any payment due Cubic. Cubic is not liable for any failures of underlying communication carrier services including, but not limited to, wireless services and the internet. From time to time, Cubic may schedule intentional downtime for system maintenance or upgrades. Cubic will strive to minimize downtime for maximum availability of the Services. Maintenance is scheduled one weekend a month. Normally scheduled in the middle of the night (Midnight PST for about 2 hours max) and doesn't last long so they can perform regular maintenance. We will always provide advance notification what is being updated. Current scheduled maintenance dates for the Legacy side are below, work on CNB is scheduled and reported to the PMs will know several days if not weeks in advance of major work.

2019 NextBus Maintenance Window:

Jan 20, Feb 24, Mar 17, Apr 14, May 19, Jun 16, Jul 21, Aug 18, Sep 22, Oct 20

3 ***Customer Content.*** All Content created through or submitted to the Services by Customer (collectively "Customer Content") is the sole responsibility of Customer. Customer acknowledges and agrees that Cubic will not assume any, and hereby disclaims all, responsibility and liability for Customer Content and any modifications thereto. Customer hereby grants Cubic a worldwide, non-exclusive, royalty-free, fully paid-up license to use, reproduce, perform, display, modify, and distribute the Customer Content in connection with providing the Services to Customer."

4 ***Equipment.***

a. As part of this Agreement, Customer may purchase Equipment from Cubic. Cubic maintains pricing for the Equipment as outlined in the Customer Quote.

~~b.~~ Customer will pay all shipping costs related to shipping the Equipment to the Customer's facility with the exception of defective equipment for which Cubic shall pay shipping costs. All risk of loss and damage to the Equipment will pass to the Customer upon the Equipment leaving Cubic's facility. Title to the Equipment will pass to Customer when Cubic has received payment from the Customer for the Equipment.

c. Cubic will use commercially reasonable efforts to meet any stated delivery date(s).

d. Cubic will warrant the Equipment against defects in the material on a return-to-factory basis for a period of one (1) year from the date on which Customer receives the Equipment. Customer shall return the defective Equipment in accordance with Cubic's shipping instructions. Cubic's sole responsibility under this warranty shall be, at Cubic's option, to either repair or replace, during Cubic's normal working hours, any component which fails during the warranty period because of a defect in the material. If Cubic determines that the Equipment is not defective within the terms of the warranty, Customer shall pay Cubic all costs of handling, transportation, and repairs at Cubic's then-prevailing rates.

5 ***Intellectual Property.***

a. Cubic retains for itself all intellectual property rights in and to all Equipment and Services, including but not limited to any patents (pending or otherwise), copyrights, trademarks and trade secrets.

b. To the extent Customer has purchased Equipment from Cubic, Cubic hereby grants to Customer a perpetual, royalty free, non-exclusive non-transferable license to use the Equipment for its intended purpose as contemplated under this Agreement. Customer may not assign, sublicense, or otherwise transfer this license. Customer shall not, without the express written consent of Cubic, provide, disclose, transfer, or otherwise make available any Equipment to any third party. Customer shall take appropriate action by instruction, agreement, or otherwise, with those of its employees and third-party agents having access to any Equipment, to restrict and control the use, copying, modification, disclosure, transfer, protection, and security of such Equipment in accordance with these Terms and Conditions. Customer agrees to protect any Equipment with the same standard of care which it uses to protect its own like products, services or proprietary information. Customer

shall not reverse engineer or decompile the Equipment or any associated firmware within the Equipment.

6 ***Publicity and Marketing Materials.*** Customer hereby consents to inclusion of its name and logo in client lists and marketing materials that may be published as part of Cubic's marketing and promotional efforts. From time to time upon Cubic's request, Customer agrees it will provide reasonable cooperation and assistance in connection with such efforts (such as, for example, by acting as a reference, issuing press releases and writing testimonials and case studies with statements attributed to a named employee of Customer).

7 ***Confidentiality.***

a. Each party agrees that the business, technical and financial information, including without limitation, the Services, Mobile Application, the Platform, and all software, source code, inventions, algorithms, know-how and ideas and the terms and conditions of this Agreement, designated in writing as confidential or disclosed in a manner that a reasonable person would understand the confidentiality of the information disclosed, shall be the confidential property of the disclosing party and its licensors ("Confidential Information"). For the avoidance of doubt, any and all data provided to Customer through the Services (other than Customer Content) shall be considered Cubic's Confidential Information. Confidential Information does not include information that (a) is previously rightfully known to the receiving party without restriction on disclosure, (b) is or becomes known to the general public, through no act or omission on the part of the receiving party, (c) is disclosed to the receiving party by a third party without breach of any separate nondisclosure obligation, or (d) is independently developed by the receiving party.

b. Except for the specific rights granted by this Agreement, the receiving party shall not access, use or disclose any of the disclosing party's Confidential Information without its written consent, and shall use at least the standard of care used to protect its own Confidential Information, but not less than reasonable care to protect the disclosing party's Confidential Information, including ensuring that its employees and contractors with access to such Confidential Information (a) have a need to know for the purposes of this Agreement and (b) have been apprised of and agree to restrictions at least as protective of the disclosing party's Confidential Information as this Agreement. Each party shall be responsible for any breach of confidentiality by its employees and contractors. Each party may disclose only the general nature, but not the specific terms, of this Agreement without the prior consent of the other party; provided that either party may provide a copy of this Agreement or otherwise disclose its terms in connection with any legal or regulatory requirement, financing transaction or due diligence inquiry.

c. Nothing herein shall prevent a receiving party from disclosing any Confidential Information as necessary pursuant to any applicable court order, law, rule or regulation; provided that prior to any such disclosure, the receiving party shall use reasonable efforts to (a) promptly notify the disclosing party (to the extent legally permitted) in writing of such requirement to disclose and (b) cooperate with the disclosing party in protecting against or minimizing any such disclosure or obtaining a protective order.

d. **OPEN RECORDS ACT:** Contractor understands that certain material in this Agreement may be subject to the Colorado Open Records Act, C.R.S. § 24-72-201, et seq. In the event of a request to the City for disclosure of such information, the City shall advise the Contractor of such request and give the Contractor the opportunity to object to the disclosure of any of material the Contractor

may consider confidential or proprietary. 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.

10 ***Limitation of Liability.***

a. IN NO EVENT WILL CUBIC BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE EQUIPMENT OR SERVICES BY CUSTOMER. IN NO EVENT SHALL CUBIC HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT CUBIC HAS BEEN ADVISED ON THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

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

If you are awarded the contract, your ACORD forms must be submitted electronically to:
contractadmininvoices@flydenver.com.
HARD COPIES will not be accepted.
All ACORD forms must have the project number in the Description of Operations section.

CONTRACT NAME & NUMBER TO WHICH THIS INSURANCE APPLIES:

I. PRIMARY 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.

Business Automobile Liability

Minimum Limits of Liability (In Thousands):

Combined Single Limit $1,000

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

Technology Errors & Omissions

Minimum Limits of Liability (In Thousands)

Per Occurrence	$1,000
Aggregate	$1,000

The policy must provide the following:

1. Liability arising from theft, dissemination and / or use of confidential information (a defined term including but not limited to bank account, credit card account, personal information such as name, address, social security numbers, etc. information) stored or transmitted in electronic form.
2. Liability arising from the introduction of a computer virus into, or otherwise causing damage to, a customer's or third person's computer, computer system, network or similar computer related property and the data, software, and programs thereon.
3. Policies written on a claims made basis must remain in full force and effect in accordance with CRS 13-80-104. The Insured warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning at the time work under the Contract is completed.
4. Coverage for advertising injury, personal injury (including invasion of privacy) and intellectual property offenses related to internet.

Any Policy issued under this section must contain, include or provide for the following:

1. The City and County of Denver, Department of Aviation shall be named as loss payee as its interest may appear.
2. Waiver of Subrogation Applies to City as Landlord for any protected Landlord Property.
3. In the event of payment of any Loss involving Tenant Improvements and Betterments, permanent fixtures, etc, the insurance carrier shall pay the City (as Landlord) its designee first for said property loss.
4. If leased property is located in a flood or quake zone (including land subsidence), flood or quake insurance shall be provided separately or in the property policy.

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.

Exhibit D – Service Level Agreement

This Service Level Agreement defines the terms of service as it pertains to Cubic's solution for providing passenger information and services that the City of Denver, CO – Denver International Airport may utilize for operations of its transportation and/or transit systems.

Service Commitment and Communication

Cubic will provide telephone and email access to Cubic's Technical Support Service Desk for Customer personnel. The Service Desk will provide access to non-automated support 24x7x365 for incident reporting, including requests for defect analysis, troubleshooting, clarification of applicable documentation, feature/function explanation, systems monitoring, and various other technical support activities, as required, for issues with the Services.

Customers can report problems in two (2) ways:

calling a toll-free phone number 1-877-NextBus (877-639-8287); and

sending an email to report issues. E-mail: support@nextbus.com.

Both venues of support are available 24 hours per day, 7 days per week. Please note the SLA response times below are predicated on customer support requests being made via the NextBus toll-free phone number 1-877-NextBus (877-639-8287) or support@nextbus.com .

Platform Service Issue Classification and Resolution Time

Classification Priority	Reported Issue or Defect	Target Measure and Resolution Time
P1	A mission critical situation, in which a primary business service, major application, high priority function, or the system is inoperable, produces incorrect results which have a material impact on the City's financial	Cubic acknowledges the issue within 15 minutes Cubic works on a 24x7 basis to resolve the issue Cubic provides email updates on an hourly basis or an

	operations, or otherwise results in serious failure to a production system for which work cannot continue: • Materially impacts the Agency's ability to deliver transit services; • No workaround is available; • Fatal error, application halt; • Functionality critically affecting customers, customer service representatives, operators, or City staff, is not available; • Security Breaches	agreed upon schedule until issue is resolved A P1 issue must be phoned into Cubic with a follow up via email for audit/tracking purposes
P2	A serious problem with a major function, feature, business service, major application, system or subsystem, not operating or seriously impaired: • The system is exposed to imminent potential loss or interruption of service; • A temporary workaround exists, or operations can continue in a restricted manner; Core functionality or primary interface affected	Cubic acknowledges the issue within 4 hours Cubic provides a schedule for email updates and expected time to resolution A P2 issue shall be phoned into Cubic with a follow up email for audit/tracking purposes
P3	An issue that is not a 1 or 2 Priority and meets one of the	Cubic acknowledges the issue within 8 hours

	following criteria: • A business service, major application, or system is not operational, or results in cosmetic or isolated errors; and • Workaround available; or • Secondary interfaces or functionality affected	Cubic and the City will work together to determine an agreed upon schedule for email updates and time to resolution.
P4	An issue that is not a 1,2, or 3 Priority and an issue requiring action but less significant such as: • Request for configuration changes and updates or; • Email resets and password changes; • Or similar but not system impacting activities or requests	Cubic acknowledges the issue within 24 hours Cubic and the City will work together to determine an agreed upon schedule for email updates and time to resolution.

Field Maintenance SLA

Item	Reported Issue or Defect	Target Measure and Resolution Time
Hardware maintenance support request	An issue related to an installed Hardware device (unit) supporting operation of Cubic's service on behalf of the city	Cubic acknowledges the issue within 60 minutes Cubic will be measured on 100% acknowledged within

		the defined response time measure

Penalties

Failure to meet any of the Target Measure and Resolution Times as defined above will lead to $100.00 USD per failure charge/per incident with an up to monthly cap of $2,000.00 USD that would be credited on invoice with the City of Denver.

Exhibit E - System Operations

This Systems Operations Exhibit contains the terms and conditions for Cubic's system operation services of its platform for the benefit of the City of Denver.

Software Operation and Maintenance

Cubic shall be responsible for the operation and availability of the back-office applications. Cubic shall provide updates for the service as required ensuring the services continue to meet the Service Level SLAs, deliverables and requirements as defined herein. The updates shall apply to the entire hosted system environment. Periodically, Cubic may schedule intentional downtime for system maintenance or upgrades without penalty. Cubic shall strive to minimize downtime for maximum availability of the Services.

Cubic reserves the right to perform regularly scheduled maintenance of the platform during non-core business hours without penalty. Non-core business hours are defined as 12:00 am to 4:00 am (Pacific Time Zone). Cubic maintains a standing scheduled maintenance window of either 12:00 am – 04:00 am (Pacific Time Zone) or 02:00 am – 06:00 am (Pacific Time Zone) once a month on Sunday ("Scheduled Downtime"). Cubic may schedule additional Scheduled Downtimes outside of the current once-a-month schedule without penalty by providing notification to Customer at least three (3) business days in advance; this notification shall be provided through agreed upon communication protocol to designated support representatives.

Additionally, any downtime caused by factors outside of Cubic's reasonable control will not factor into the Monthly Uptime Percentage calculation, including any force majeure event, Internet service or cellular provider availability outside of Company's platform or control, any downtime resulting from outages of third-party connections or utilities, and actions or inactions of the Customer ("Excluded Downtime").

Business Continuity and Disaster Recovery

Cubic shall use industry best practices for cloud-based database backups and archiving. This backup includes, but is not limited to, automatic vehicle location (AVL) and calculated arrival data, and does not include Customer Personally Identifiable Information, which is stored online for six (6) months and then is moved to a Cubic-hosted archive system cloud ecosystem, which serves as cold storage.

The software platform utilizes a scalable, highly available, fault tolerant architecture within

public cloud to ensure a high performance, dependable platform operating 24 hours per day, 365 days per year with 99.9% availability (excluding scheduled downtime). The platform is designed to self-repair in the event of system faults using modern service patterns and multiple redundant and physically separate data centers. The platform is designed to automatically scale up and down to ensure there is sufficient extra steady-state platform capacity to account for system usage spikes or system failures to provide consistent throughput and responsiveness. When peak demands are encountered above the steady-state thresholds, the platform automatically increase resources to meet the newly computed demand.

The key design tenets to achieve an availability of 99.9% include:

- Redundancy across multiple physical data centers to eliminate single points of failure for all services
- Optimum use of cloud resources and associated monitoring tools using reference design architectures
- Performance, stress, long-duration, and load testing are included within our automated testing program
- Complete monitoring, error reporting and performance metrics for automated problem detection
- Integration of monitoring and alerting tools into our IT Service Management tools (ServiceNow) and processes to allow our Global Operations Center to provide 24x7x365 support for the platform.

System Security

Cubic shall maintain information security policies and procedures that cover operations and maintenance of the platform cloud environment in accordance with industry best practices, and state and local laws.

EXHIBIT F

Municode.com Denver Ordinances

DIVISION 3.75. - MINIMUM WAGE PROTECTIONS FOR WORKERS ASSOCIATED WITH CITY CONTRACTS

Sec. 20-82. - Payment of city minimum wage.

(a)

Required. Subject to the terms of this division, every person or entity that provides any of the following services: concession services; catering services; maintenance services; ramp and cargo services; hospitality services; miscellaneous services; or security services as defined in this division ("covered services") to the city, or on city property for more than thirty (30) consecutive days in a calendar year, or pursuant to a negotiated contractual requirement, shall pay all covered workers not less than a "city minimum wage" as calculated pursuant to subsection (c) for covered work.

(b)

Contract specifications. Every covered contract with a maximum contract amount in excess of fifty thousand dollars ($50,000.00) shall contain a provision requiring that all covered workers shall be paid not less than the city minimum wage calculated pursuant to subsection (c) for all covered work. The city minimum wage shall be paid pursuant to a covered contract from and after the date it satisfies the criteria described in this division. For any city contract that is not a covered contract, but upon renewal, amendment, or otherwise qualifies as a covered contract at a later date, the city minimum wage requirement shall be mandatory from and after the date that a city contract qualifies as a covered contract pursuant to this division. Increases in the city minimum wage subsequent to the date of a covered contract for a term not to exceed one (1) year shall not be mandatory on either the contractor or any other person or entity. Except as provided in this division, in no event shall any increase in the city minimum wage result in any increased liability on the part of the city, and the possibility and risk of any such increase is assumed by all contractors entering into any covered contract with the city. Notwithstanding the foregoing, the city may negotiate, in particular covered contracts, to reimburse a contractor for increased city minimum wage rates. Decreases in the city minimum wage subsequent to the date of a covered contract shall not be permitted.

(c)

Calculation of city minimum wage.

(1)

City council hereby declares that it is in the best interest of the city to protect workers' bargaining power and establish a city minimum wage that shall be paid to the various covered workers identified in this division.

(2)

The city minimum wage, exclusive of fringe benefits, shall be calculated as follows:

i.

Beginning July 1, 2019: $13 (thirteen dollars) per hour;

ii.

Beginning July 1, 2020: $14 (fourteen dollars) per hour; and

iii.

Beginning July 1, 2021 $15 (fifteen dollars) per hour.

(3)

Tips actually received by a particular worker may be applied to a contractor or other person or entity's obligation to pay the city minimum wage. However, no more than three dollars and two cents ($3.02) per hour in tip income ("tip credit") may be used to partially offset payment of the city minimum wage for a given day, and only then for persons who directly and customarily receive tips until June 30, 2022. Beginning on July 1, 2022, the tip credit shall be increased by an amount corresponding to the prior year's increase, if any, in CPI as hereinafter defined. In no event shall the tip credit increase to an amount that would allow payment of a wage less than that required by state or federal law.

(4)

In order to prevent inflation from eroding the value of the city's minimum wage rate, on July 1, 2022, the city minimum wage rate shall increase by an amount corresponding to the prior year's increase, if any, in the Consumer Price Index (Urban Wage Earners and Clerical Workers, Denver-Aurora-Lakewood) or its successor index as published by the U.S. Department of Labor or its successor agency ("CPI"). Annually thereafter, on the first of July, the city's minimum wage rate shall increase by an amount corresponding to the prior year's increase, if any, in CPI.

(d)

Exclusions. Absent a negotiated contractual requirement, this division shall not apply to: intergovernmental agreements; any participant in an employment program certified by the city; any contract for state or federally mandated services or for services subject to statutory rate-setting; loans made by the city; entities who are subject to a wage-commitment agreement; persons or entities not providing covered services to the city pursuant to a contractual relationship directly with the city whose provision of covered services on city property occurs for less than seven (7) consecutive days in a calendar year and thirty (30) total days in a calendar year; the purchase and sale by the city of real property or goods; persons providing volunteer services that are uncompensated except for reimbursement of expenses such as meals, parking or transportation; qualified small business contractors; except with respect to catering services, persons whose work pursuant to a covered contract is limited solely to the role of a supplier; or city contracts which contemplate work to be performed such as a license or permit to use city-owned land that are neither a revenue or expenditure contract.

(e)

Third party complaints. Subject to any rules and regulations that may be issued by the auditor, any person or third party, including an employee of a contractor, may submit a complaint of a violation of this division to the auditor. The burden of demonstrating to the auditor's satisfaction that a violation has occurred rests with the person or third party making the complaint and shall be demonstrated by a preponderance of the evidence. Any such complaint shall be made in writing to the auditor and shall include all information relied upon by such person. If a person making a complaint pursuant to this subsection is unable to reasonably file her or his complaint in writing, a complainant may request the auditor to assist him or her with documenting any allegations to satisfy the written complaint requirement. The auditor shall investigate credible complaints, shall notify any contractor alleged to have violated this division of any credible complaint, and shall provide a summary of findings regarding any such complaint to both the complainant and the contractor. Any determination by the auditor pursuant to this division is reviewable by the complained-of party, pursuant to subsection (g). Any complaint must be submitted to the auditor within one (1) year of the date the contractor was alleged to have violated the requirements of this division, and shall include: the worker's name and/or the name of their duly authorized representative, if applicable; the worker's contact information; and a detailed statement of the contractor's alleged violation of the requirements of this division, including all supporting documentation demonstrating a violation. Contractor shall be subject to penalties and other consequences pursuant to this division for any actual violation(s) that occurred within one (1) year of the date a credible complaint was first and timely submitted to the auditor pursuant to this division and within three (3) years of the date an audit of a covered contract is initiated by the auditor.

(f)

Retaliation strictly prohibited. No contractor shall interfere with, restrain, deny, assist another person or entity, or attempt to deny the exercise of any right protected under this division. Any attempted or actual retaliation shall be regulated as follows:

(1)

No contractor or any other person shall take any adverse action against any person because the person has exercised in good faith rights described in this division. Such rights include, but are not limited to, the right to make inquiries about rights protected under this division; the right to inform contractor, a union, or similar organization, and/or the person's legal counsel or any other person about an alleged violation of this division; the right to file a written complaint with the auditor; the right to cooperate with the auditor in any investigations pursuant to this division; the right to testify in a proceeding related to an investigation pursuant to this division; the right to refuse to participate in an activity that would result in a violation of city, state, or federal law; and the right to oppose any policy, practice, or act that is unlawful pursuant to this division.

(2)

No contractor or any other person shall communicate to a person exercising rights protected under this division, directly or indirectly, the willingness to inform a government employee that the person is not lawfully in the United States, or to report, or to make an implied or express assertion of a willingness to

report, suspected citizenship or immigration status of an employee or a family member of the employee to a federal, state, or local agency because the employee has exercised a right pursuant to this division.

(3)

It shall be a rebuttable presumption of retaliation if a contractor or any other entity or person takes an adverse action against a person within ninety (90) days of the person's exercise of rights protected in this division. However, in the case of seasonal work that ended before the close of a 90-day period, the presumption also applies if the contractor or other person or entity fails to rehire a former employee at the next opportunity for work in the same position. The contractor may rebut this presumption with clear and convincing evidence that the adverse action was taken for a lawful purpose.

(4)

Proof of retaliation shall be sufficient upon a showing that a contractor or any other person or entity has taken an adverse action against a person and the person's exercise of rights protected in this division was a motivating factor in the adverse action, unless the contractor can prove that the action would have been taken in the absence of such protected activity.

(g)

Review. Any determination of the auditor related to the payment of the city minimum wage, and a contractor's strict adherence to the requirements of this division including, but not limited to, determinations of covered worker status, determinations of underpayment or misreporting, and the imposition of penalties pursuant to this division shall be reviewable as follows:

(1)

Any contractor who disputes any determination made by or on behalf of the city pursuant to the authority of the auditor, which determination adversely affects such contractor, may petition the auditor for a hearing concerning such determination no later than thirty (30) days after having been notified of any such determination. Compliance with the provisions of this subsection shall be a jurisdictional prerequisite to any action brought under the provisions of this division, and failure of compliance shall forever bar any such action.

(2)

The auditor shall designate as a hearing officer a person retained by the city for that purpose.

(3)

The petition for a hearing shall be in writing, and the facts and figures submitted shall be submitted under oath or affirmation either in writing or orally at a hearing scheduled by the hearing officer. The hearing, if any, shall take place in the city, and notice thereof and the proceedings shall otherwise be in accordance with rules and regulations issued by the auditor. The petitioner shall bear the burden of proof, and the standard of proof shall conform with that in civil, nonjury cases in state district court.

(4)

Following a hearing, the hearing officer shall make a final determination. Such final determination shall be considered a final order and may be reviewed under Rule 106(a)(4) of the state rules of civil

procedure by the petitioner or by the city. A request for reconsideration of the determination may be made if filed in writing with the hearing officer within fifteen (15) days of the date of a final determination, in which case the hearing officer shall review the record of the proceedings, and the determination shall be considered a final order upon the date the hearing officer rules on the request for reconsideration.

(5)

The district court of the second judicial district of the State of Colorado shall have original jurisdiction in proceedings to review all questions of law and fact determined by the hearing officer by order or writ under Rule 106(a)(4) of the state rules of civil procedure.

(h)

Recordkeeping requirements and inspection. All contractors pursuant to a covered contract shall retain sufficient payroll records pertaining to all covered workers for a period of at least three (3) years. Contractors shall allow the auditor access to such records following a complaint determined credible by the auditor, or in connection with an audit of a covered contract, at a reasonable time during normal business hours to ensure compliance with the requirements of this division. Should a contractor not maintain or retain adequate records documenting the manner and amount of wages paid, or not allow the auditor reasonable access to such records, there shall be a presumption, rebuttable by clear and convincing evidence, that the contractor violated this division for the periods and for each employee for whom adequate records were not retained or access to such records was not timely provided.

(Ord. No. 163-19, § 1, 3-11-19)

Sec. 20-83. - Enforcement and penalties.

(a)

Enforcement.

(1)

Following notification of a complaint determined credible by the auditor or in connection with an audit of a covered contract, a contractor shall furnish to the auditor, upon the auditor's request, a true and correct electronically-certified copy of the payroll records of all covered workers employed pursuant to the applicable covered contract, by the contractor and also by any person or entity performing covered work pursuant to the covered contract. Such payroll records shall include information documenting the number of hours worked by each covered worker employed pursuant to the contract for covered work, the hourly wage of such covered workers for covered work, any deductions made from covered worker wages, and the net amount of wages received by each covered worker for all covered work.

(2)

Payroll records produced pursuant to subsection (a)(1) shall be accompanied by a sworn statement of the contractor that the document is a true and correct copy of the payroll records of all covered workers performing covered work pursuant to the covered contract, that payments were made to all covered workers as set forth in the payroll records, that no deductions were made other than those described in such records, and that all covered workers employed pursuant to the covered contract, either by the

contractor or another person or entity, have been paid at least the city minimum wage for all covered work or describe in detail all instances in which the foregoing requirements were not fully satisfied.

(3)

Contractors shall post in a place which is prominent and easily accessible to covered workers the city minimum wage to be paid to covered workers for covered work, and that complaints by third parties, including employees of contractors or other entities, of violations may be submitted to the auditor. Contractors shall display the posting in English and also in any primary language spoken by at least ten (10) percent of the employees at the work-place or job site. If display of a poster is not feasible, including situations when an employee does not have a regular workplace or job site, contractors may provide the information on an individual basis, in an employee's primary language, in physical or electronic form that is reasonably conspicuous and accessible.

(4)

If any covered worker employed by a contractor or any other person or entity pursuant to a covered contract has been or is being paid a rate of wages less than the city minimum wage for covered work, the city may, at its option, by written notice to the contractor, withhold further payment to the contractor, suspend the contractor's right to proceed with work, suspend access to city property, suspend such part of the work or access as to which there has been a failure to pay the city minimum wage rate for covered work, or terminate the contract. In the event of suspension or contract termination, the contractor shall be liable to the city for any and all costs related to such contract termination or suspension, including, but not limited to all costs incurred by the city to complete work or provide services contemplated by the contract.

(5)

For all covered contracts, following notification of a complaint determined credible by the auditor or in connection with an audit of city contracts, a contractor shall provide to the auditor a list of all persons and entities who have performed covered work as well as any known person or entity who will be performing any covered work pursuant to a covered contract within ten (10) days of the auditor's written request.

(6)

Nothing in this division shall restrict the auditor's authority to investigate city contracting practices. In connection with any audit of a covered contract, the auditor may require a contractor to provide, upon written request, documents described in this division that must be provided to the auditor upon notification of a credible complaint related to a covered contract. Further, any third-party submission of a credible complaint shall not require the auditor to initiate a full audit of any particular party or contract. The auditor's role in investigating and issuing findings related to a credible complaint pursuant to 20-82(e) shall be in accord with the terms of this division.

(b)

Penalties. Any contractor subject to the requirements of this division shall as a penalty pay to the city an amount as set forth below for each covered worker for each day they are paid less than the city minimum wage for the performance of covered work.

(1)

The amount of the penalty shall be determined by the auditor based on consideration of both of the following:

a.

Whether the failure of the contractor to pay the correct wage rate was a good faith mistake and, if so, the error was corrected within thirty (30) days of the date it was brought to the attention of the contractor.

b.

Whether the contractor has a prior record of failing to meet the requirements of this division.

(2)

The contractor's penalty shall be fifty dollars ($50.00) for each day, or portion thereof, for each covered worker paid less than the city minimum wage rate for covered work, unless the failure of the contractor to ensure payment of the city minimum wage rate was a good faith mistake and, if so, the error was corrected within thirty (30) days of the date it was brought to the attention of the contractor.

(3)

The contractor's penalty shall be two thousand five hundred dollars ($2,500.00) for a violation, plus seventy-five dollars ($75.00) for each day, or portion thereof, for each covered worker paid less than the city minimum wage rate for covered work, if the contractor has been assessed a penalty, but not more than two (2) other penalties, within the previous three (3) years for failure to comply with the terms of this division, unless all such penalties were subsequently withdrawn or overturned during the previous three (3) years pursuant to this division.

(4)

The contractor's penalty shall be five thousand dollars ($5,000.00) for a violation, plus one hundred dollars ($100.00) for each day, or portion thereof, for each covered worker paid less than the city minimum wage rate for covered work, if the contractor has been assessed three (3) or more other penalties within the previous three (3) years for failure to comply with the terms of this division, unless any such penalties were subsequently withdrawn or overturned resulting in two (2) or fewer penalties during the previous three (3) years pursuant to this division.

(5)

The contractor's penalty shall be one thousand dollars ($1,000.00) for each violation if a contractor fails to furnish the auditor a complete and certified payroll for which any covered worker employed by the contractor or other person or entity has performed any covered work pursuant to a covered contract, unless the failure of the contractor to furnish the auditor a complete and certified payroll was a good faith mistake and, if so, the error was corrected within thirty (30) days of the date the auditor notifies the contractor of such failure. This penalty shall be imposed in conjunction with penalties imposed under subsections (b)(2)—(4), and shall apply whether or not the covered work was performed by contractor employees or another person or entity.

(6)

The contractor's penalty shall be one thousand dollars ($1,000.00) for each incident of false reporting in connection with a certified payroll not corrected within fifteen (15) days of the date the auditor notifies the contractor of such report. A certified payroll shall be determined to be a false report when information related to hours worked or wages paid reported on a certified payroll is not identical to supportive documentation, including payments issued to workers, timecards maintained by contractor or other persons or entities, invoices for work performed issued to other persons or entities or the city, and tax documents. This penalty shall be imposed in conjunction with penalties imposed under subsections (b)(2)—(5).

(7)

The contractor's penalty shall be one thousand dollars ($1,000.00) for each violation should a contractor be found by the auditor to have violated any obligation of contractor described in this division and not otherwise described in subsections (b)(2)—(6).

(8)

A contractor who is found by the auditor pursuant to this division to have failed to ensure payment of the city minimum wage to a covered worker for covered work shall, within thirty (30) days of notice of a violation from the auditor, or if applicable, thirty (30) days from any final order pursuant to Section 20-82(g), attempt in good faith to locate and pay any such covered worker all wages required pursuant to this division. Failure by any contractor to attempt in good faith to locate and ensure payment of any underpaid covered worker in compliance with the terms of this subsection shall for any underpayment to a covered worker greater than fifty dollars ($50.00) result in a penalty of five thousand dollars ($5,000.00) for each such violation. If a contractor is able to adequately document its good faith efforts to locate and timely pay a covered worker pursuant to this subsection it shall not be subject to further penalty if it is unable to reasonably locate or pay a covered worker all city minimum wages owed. Any finding or penalty for failure to timely pay a covered worker, or attempt in good faith to locate and timely pay a covered worker amounts owed pursuant to this subsection shall be subject to review pursuant to Section 20-82(g).

(Ord. No. 163-19, § 1, 3-11-19)

Sec. 20-84. - Miscellaneous.

(a)

Covered workers; intent. The intent of this division is to ensure the payment of a city minimum wage to an expanded number of workers providing services to the city, or on city property pursuant to a covered contract, or pursuant to a negotiated contractual requirement. Unless specifically negotiated, it is not the city's intent to impose wage requirements for city contracts, or work pursuant to an otherwise covered contract (excepting catering services), that involves only the purchase of goods and non-professional services considered to be ancillary to the purchase of goods. For the purposes of this division, and except as described below, unless a city contract contains a negotiated contractual requirement specifying otherwise, a broker, entity or person that only supplies goods and/or transportation services incident to delivering goods to city property (including the use of common

carriers) is considered a supplier and is not performing covered work pursuant to this division. Notwithstanding the foregoing, the provision of catering services is not the mere provision of goods pursuant to this division and may qualify as a covered service. It is also not the intent of this division to reduce any differing wage requirements established by federal or state law or that arise from or in connection with federal or state funding utilized or disbursed by the city, and such greater wage requirements and restrictions shall be controlling in the event of a conflict between a federal or state wage requirement and the requirements of this division. To the extent a federal or state law or agreement involving state or federal funding prevents or restricts application of this division for a particular contract, the terms of this division shall be limited to the extent it may be applied and enforced consistent with such restrictions. For purposes of clarity, the term city contract shall apply to use and lease agreements, services contracts, and other forms of agreement not excluded by the terms of this division.

(b)

Covered contracts. Except as described in Section 20-84(f), this division shall not apply to contracts executed by the city on or before the effective date of this ordinance, contracts for which procurement was initiated prior to the effective date of this ordinance, but which were executed after the effective date of this ordinance, and any renewals of the foregoing contracts, unless such contracts contain a negotiated contractual requirement or explicitly require a contractor to comply with future changes in law.

(c)

Application of division to prevailing wage and living wage. Nothing in this division shall be deemed to lessen any obligations of contractors to comply with the Denver Revised Municipal Code concerning payment of prevailing wage and living wage to covered workers. Should a prevailing wage or living wage requirement for covered work be greater than the city minimum wage requirement, the greater wage rate shall be paid. If the city minimum wage requires payment of a higher wage rate than an applicable prevailing wage or living wage requirement for covered work, the city minimum wage shall be paid to any covered worker for all covered work.

(d)

Responsibility of contractor. For a particular covered contract a contractor may engage subcontractors, individuals and other entities: to fulfill some or all of contractor's contractual obligations to the city; to perform covered services on city property pursuant to a covered contract; or in connection with an otherwise covered contract. Contractor shall be solely responsible for ensuring payment of the city minimum wage to any and all agents and/or others performing covered services on contractor's behalf or on city property pursuant to a covered contract for purposes of compliance with this division. Contractor shall also be solely responsible for ensuring payment of the city minimum wage if required to do so by a negotiated contractual requirement for purposes of compliance with this division. Contractors may seek indemnification or recovery from third parties for penalties a contractor incurs for failure to comply with the requirements of this division. However, any such rights shall in no way excuse a contractor from taking whatever steps are necessary to ensure compliance with this division by all persons providing services or engaging in covered work pursuant to a covered contract, nor serve as a

basis for contractor to avoid payment of any monetary penalties or occurrence of other consequences for violations of this division.

(e)

Definitions. For purposes of this division the following definitions shall apply:

"Catering services" shall mean services involving any of the following: preparation, packaging and delivery of meals for in-flight service to flight passengers; food inspection; cleaning of dishes, utensils or glassware; or cleaning or operation of facilities used for the preparation, packaging, or storage of meals;

"City" shall mean the City and County of Denver;

"City contract" shall mean a written contract between the city and a third party;

"City property" shall mean any city owned or leased buildings and any city-owned land.

"Complaint" shall mean a third-party complaint submitted pursuant to Section 20-82(e);

"Concession services" shall mean services involving any of the following: the commercial provision of consumer goods or services to the public, including but not limited to: food and beverage services; cashier services; wait services; retail sales; retail customer services; lounge operation; kiosk operation; or concession cleaning services;

"Contractor" shall mean the entity or person that enters into a covered contract with the city;

"Covered contract" shall mean any city contract with a maximum contract amount in excess of fifty thousand dollars ($50,000.00) by which: (1) a covered worker provides covered services to the city; (2) which authorizes any covered services to occur on city property for more than thirty (30) consecutive days in a calendar year; or (3) which contains a negotiated contractual requirement;

"Covered work" shall mean covered services performed pursuant to a covered contract for which the city minimum wage is required to be paid pursuant to this division;

"Covered worker" shall mean a person performing covered work, and as further described in Section 20-84(d), includes persons employed by contractors, subcontractors, individuals and other entities fulfilling all or part of a contractor's contractual obligations to the City pursuant to a covered contract, which perform covered services on city property pursuant to a covered contract, and persons performing covered services in connection with a negotiated contractual requirement;

"Employ, employed, or employed by" means to suffer or permit to work;

"Employee" shall include, but not be limited to full-time employees, part-time employees, temporary workers, independent contractors and any other person employed by contractor or another person or entity to perform covered work;

"Goods" shall mean all things (including specially manufactured goods) which are movable during the term of a covered contract that are for sale other than the money in which the price is to be paid, investment securities, and things in action;

"Hospitality services" shall mean services involving any of the following: hotel cleaning or housekeeping; laundry; hotel desk clerk; or hotel porter;

"Intergovernmental agreement" shall mean any contract between the city and another governmental or quasi-governmental entity;

"Maintenance services" shall mean services involving any of the following conducted on city property: custodial; janitorial; window washing; aircraft cabin cleaning; solid waste removal; repairs; weed control; pest control; or recycling;

"Miscellaneous services" shall mean services involving any of the following: providing customer services as a ticketing agent, bag drop attendant or skycap; parking lot operation services; transporting or driving passengers via shuttle, wheelchair or cart; working as a cab starter; providing towing services; handling passenger baggage; or rental car-related activities, including, but not limited to, work performed by attendants, technicians, detailers/cleaners, and dispatchers;

"Negotiated contractual requirement" shall mean a mutually-negotiated term in a city contract that specifically requires a contractor to impose the terms of this division on persons or entities performing covered services not for the city or which otherwise would not constitute covered work pursuant to this division.

"Procurement" shall mean a competitive selection process by which the city identifies a vendor for provision of services to the city.

"Qualified small business contractor" shall mean a contractor that is a bona fide small business enterprise or non-profit entity that employs twenty-five (25) or fewer total full-time equivalents at any point during the term of a covered contract, including all of its divisions, subsidiaries, joint ventures, parent companies, and subsidiaries of parent companies and only applies to contractors for covered contracts with a maximum contract amount less than five hundred thousand dollars ($500,000.00);

"Ramp and cargo services" shall mean services involving any of the following: guiding aircraft in and out of the airport; coordinating aircraft loading and unloading positions; positioning and operating passenger, baggage, and cargo loading and unloading devices; handling baggage and cargo; screening cargo; aircraft maintenance; fueling and towing aircraft; cleaning ramp areas; or servicing aircraft equipment, mechanics and lavatories;

"Security services" shall mean services involving any of the following: general city property security; security of personal property located on city property, including but not limited to passenger aircraft; terminal security; or parking security;

"Supplier" shall mean a broker, entity or person not providing catering services that only supplies goods and/or transportation services incident to delivering those goods to city property (including the use of common carriers); and

"Tips" shall mean a verifiable sum presented directly and customarily by customers as a gift or gratuity in recognition of some service performed for customers by the person receiving the tip.

"Use and lease agreement" shall mean a lease of real property by an air carrier that authorizes commercial activity on city property.

"Wage-commitment agreement" shall mean a mutually-negotiated contract between the city and a third party non-profit entity ("counterparty") whereby counterparty agrees to pay all persons employed directly by counterparty at least the then-current city minimum wage within six (6) months of the respective deadlines specified in 20-82(c) for any and all types of work. To preserve an exemption from the terms of this division, counterparty shall further require in all of counterparty's contractual agreements and relationships with other persons or entities entered into subsequent to the effective date of this ordinance, that any person who provides covered services to counterparty or in connection with a contract with counterparty, be paid a wage equal to or greater than the then-current city minimum wage for all covered work as defined in this division.

(f)

The city shall not extend the term of or amend a city contract that is not subject to the terms of this division due solely to the timing of contract formation as described in 20-84(b), if city code, executive order or city charter requires council approval of such extension or amendment unless such extension or amendment requires compliance by contractor with the terms of this division during any extended term or subsequent to amendment or city council makes an express finding that such city contract should be extended or amended without a requirement that the contractor subsequently comply with the terms of this division. In addition to the foregoing, when a use and lease agreement is not subject to the terms of this division: (1) solely due to the timing of contract formation as described in 20-84(b); and (2) contains a right allowing the city to extend the then-current term of the use and lease agreement at the city's discretion; then the city shall not exercise a discretionary option to extend the current term of such use and lease agreement unless contractor agrees to amend the use and lease agreement in a manner so that it is subject to this division during any and all extended term(s).

(g)

The city may suspend or debar a contractor from participation in city contracting for a period as may be determined by the city, in its sole discretion, based upon grounds of violating this division, and pursuant to such suspension and debarment procedures as may be established by the city and as set forth in Denver Revised Municipal Code Section 20-77. In that event, the city shall regard as nonresponsive any bid, proposal or competitive selection process proposal received during such time period that includes the contractor.

(h)

The provisions of this division are declared to be separate and severable. If any clause, sentence, paragraph, subdivision, section, subsection or portion of this division, or the application thereof to any contractor, person, entity or circumstance is preempted or otherwise prohibited by federal or state law or is held to be invalid, it shall not affect the validity of the remainder of this division, or the validity of its application to other persons or circumstances.

(Ord. No. 163-19, § 3, 3-11-19)

Exhibit G – Equipment Repair and Warranty

This Equipment Repair and Warranty Exhibit contains the terms and conditions for Cubic to provide warranty and repair services to the Hardware equipment in the delivery of its service to the City of Denver.

Service Commitment and Communication

Please see Exhibit D.

Process

- The City of Denver in all cases shall provide "first level" of support to address Equipment Defects including but not limited to de-installation of faulty equipment, replacement with a spare, and return of the faulty equipment to Cubic if needed.

- Cubic shall be responsible for repairing all equipment not repaired by the City through "first level" support at a Cubic designated facility.

- Such equipment defects shall be notified by email to the Cubic Service Desk at support@nextbus.com (and in absence of email, by phone on 877-639-8287) and such email notifications shall include the following items to be reported by City before shipping to Cubic:
  (1) Date the equipment defect was discovered
  (2) Equipment type
  (3) Equipment serial number
  (4) Detailed description of the equipment defect
  (5) Detailed description of City first level support steps taken to resolve the issue
  (6) City statement if the equipment repair should be covered under warranty
- Cubic shall provide a Repair Maintenance Authorization Number (RMA) to City that will authorize City to send Cubic the faulty/defective equipment
- All equipment shipped from the City to Cubic will be at the cost of the City

1800 Sutter St #900, Concord, CA 94520

- All equipment shipped from Cubic to the City will be at the cost of Cubic
- If the equipment is under warranty, Cubic will repair at no cost to the City
- Cubic shall perform the following maintenance activities on all equipment sent into Cubic for repair:
    (1) Take receipt of equipment sent to Cubic and verify an RMA number was issued
    (2) Investigate the alleged equipment defect
    (3) Perform any necessary repairs on the Equipment as applicable
    (4) Test the equipment to ensure it is in good working order
    (5) Provide an equipment defect report to City on the repairs performed (if any)

Hours of Operation

As part of this agreement Cubic shall provide the City with access to Cubic's Service Desk regarding services rendered herein with the times below:

- For P1 issues – 24 hours a day, 7 days a week excluding public holidays; and

Warranty

- The manufacturer's 1-year warranty for equipment will begin upon successful completion of installation and testing
- The warranty period for any new equipment purchased after the initial implementation will commence upon delivery of equipment to the City

Non-Warranty Repair

- City shall have the option to send faulty equipment not under warranty to Cubic for repair at City's own expense
- All equipment not under warranty sent into Cubic for repair will be charged a minimum of one hour of repair time even if the device is found to have no fault or defect
- By submitting the non-warranty equipment for repair, City agrees to pay up to two hours of repair time plus all associated part costs needed for repairs
- If Cubic expects more than a total of two hours of repair time at the prescribed per hour

repair time price, Cubic shall notify the City with an estimate of cost for repair and, within 5 days of receipt of the aforementioned estimate, City will either approve or reject the additional estimated cost to repair via email to support@nextbus.com (and in absence of email by phone on 877-639-8287).

- Cubic shall not be under any obligation to perform non-Warranty repairs under this section until email confirmation is received from the City; and the non-warranty equipment shall in the absence of such confirmation be returned to the City at the City's cost.
- As far as is possible, repair parts for the equipment shall be purchased by the City in advance through Cubic and:
    - Cubic shall not charge additional fees for parts supplied by the City which are used in the repair of the equipment in non-Warranty repairs
    - Cubic shall house a reasonable level of stock of City owned spare parts at the request of the City to improve turn around time.

Rates

- Cubic repair of equipment that is not under warranty or otherwise faulty or defective, will be billed at an hourly rate of $150.00 per hour with a one hour minimum in all cases
- Additional time will be billed in quarter-hour increments on a pro-rata basis
- To adjust for inflation hourly rates will increase at a rate of 3% per calendar year on each anniversary of this agreement
- Cubic shall invoice City for the repair as per the current invoice process in our agreement and the City shall affect payment to Cubic within 30 days of the date of a valid invoice received by City from Cubic for such repair

First Level Maintenance – City

- City shall:
    - Keep and operate the equipment in accordance with Cubic's reasonable instructions governing the utility and installation of the Equipment
    - Ensure that only trained staff of City (or people under their supervision) are permitted to operate the equipment;
    - Reasonably endeavor at all times to maintain the spares pool required under this agreement at reasonable levels to minimize repair turnaround time

- Only allow properly qualified personnel to carry out repairs or maintenance to the Equipment
- Ensure that first line maintenance is performed in accordance with any instructions provided by Cubic
- Promptly give Cubic an equipment defect report if it reasonably considers that there is an equipment defect present
- Maintain and make freely available to Cubic an accurate and complete record of equipment malfunctions and provide, on request, all documentation in City's possession necessary for Cubic to maintain equipment efficiently as required
- Ensure that the environmental conditions for the equipment (including cables, fittings and electricity supply) are maintained in accordance with good industry practice and any recommendations of Cubic
- Make no adjustments or modifications to the equipment without the prior consent of Cubic
- Ensure that the external surfaces of the equipment are kept reasonably clean and in good condition

- If the City fails to comply with these requirements or to give notice to Cubic within 30 days after City first becomes aware of an equipment defect, Cubic shall not have any warranty obligation to investigate or correct that equipment defect, but will use reasonable endeavors to investigate or correct that Equipment defect on request and will be entitled to charge for such work at the rates noted above.

DENVER
THE MILE HIGH CITY

TO: All Users of the City and County of Denver Prevailing Wage Schedules
FROM: Ryland Feno, Classification & Compensation Technician II
DATE: May 13, 2019
SUBJECT: Latest Change to Prevailing Wage Schedules

The effective date for this publication will be **Friday, May 10, 2019** and applies to the City and County of Denver for **HEAVY CONSTRUCTION PROJECTS** in accordance with the Denver Revised Municipal Code, Section 20-76(c).

General Wage Decision No. CO190002
Superseded General Decision No. CO20180012
Modification No. 4
Publication Date: 05/10/2019
(6 pages)

Unless otherwise specified in this document, apprentices shall be permitted only if they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor (DOL). The employer and the individual apprentice must be registered in a program which has received prior approval by the DOL. Any employer who employs an apprentice and is found to be in violation of this provision shall be required to pay said apprentice the full journeyman scale.

Attachments as listed above.

General Decision Number: CO190002 05/10/2019 CO2

Superseded General Decision Number: CO20180012

State: Colorado

Construction Type: Heavy

Counties: Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, El Paso, Jefferson, Larimer, Mesa, Pueblo and Weld Counties in Colorado.

HEAVY CONSTRUCTION PROJECTS

Note: Under Executive Order (EO) 13658, an hourly minimum wage of $10.60 for calendar year 2019 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least $10.60 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2019. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate,if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/04/2019
1	02/01/2019
2	02/22/2019
3	04/12/2019
4	05/10/2019

ASBE0028-001 07/01/2018

	Rates	Fringes
Asbestos Workers/Insulator (Includes application of all insulating materials, protective coverings, coatings and finishings to		

all types of mechanical systems)	$ 31.73	14.23

BRCO0007-004 01/01/2019

ADAMS, ARAPAHOE, BOULDER, BROOMFIELD, DENVER, DOUGLAS, JEFFERSON AND WELD COUNTIES

	Rates	Fringes
BRICKLAYER	$ 29.52	10.48

BRCO0007-006 05/01/2018

EL PASO AND PUEBLO COUNTIES

	Rates	Fringes
BRICKLAYER	$ 25.88	10.34

ELEC0012-004 09/01/2018

PUEBLO COUNTY

	Rates	Fringes
ELECTRICIAN		
Electrical contract over $1,000,000	$ 27.70	12.30+3%
Electrical contract under $1,000,000	$ 24.85	12.30+3%

ELEC0068-001 06/01/2018

ADAMS, ARAPAHOE, BOULDER, BROOMFIELD, DENVER, DOUGLAS, JEFFERSON, LARIMER, AND WELD COUNTIES

	Rates	Fringes
ELECTRICIAN	$ 35.80	15.45

ELEC0111-001 03/01/2019

	Rates	Fringes
Line Construction:		
Groundman	$ 20.41	13.75%+$6.20
Line Equipment Operator	$ 28.98	13.75%+$6.20
Lineman and Welder	$ 44.92	25.25%+$5.75

ELEC0113-002 06/01/2018

EL PASO COUNTY

	Rates	Fringes

ELECTRICIAN	$ 31.80	15.90

ELEC0969-002 01/01/2019

MESA COUNTY

	Rates	Fringes
ELECTRICIAN	$ 24.80	9.84

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* ENGI0009-001 05/01/2018

	Rates	Fringes
Power equipment operators:		
Blade: Finish	$ 28.57	10.70
Blade: Rough	$ 28.25	10.70
Bulldozer	$ 28.25	10.70
Cranes: 50 tons and under	$ 28.40	10.70
Cranes: 51 to 90 tons	$ 28.57	10.70
Cranes: 91 to 140 tons	$ 29.55	10.70
Cranes: 141 tons and over	$ 31.07	10.70
Forklift	$ 27.87	10.70
Mechanic	$ 28.73	10.70
Oiler	$ 27.49	10.70
Scraper: Single bowl under 40 cubic yards	$ 28.40	10.70
Scraper: Single bowl, including pups 40 cubic yards and over and tandem bowls	$ 28.57	10.70
Trackhoe	$ 28.40	10.70

IRON0024-003 01/01/2019

	Rates	Fringes
Ironworkers: Structural	$ 29.85	21.76

LABO0086-001 05/01/2009

	Rates	Fringes
Laborers:		
Pipelayer	$ 18.68	6.78

PLUM0003-005 06/01/2017

ADAMS, ARAPAHOE, BOULDER, BROOMFIELD, DENVER, DOUGLAS, JEFFERSON, LARIMER AND WELD COUNTIES

	Rates	Fringes
PLUMBER	$ 39.08	16.44

PLUM0058-002 07/01/2018

EL PASO COUNTY

	Rates	Fringes
Plumbers and Pipefitters	$ 32.75	14.85

PLUM0058-008 07/01/2018

PUEBLO COUNTY

	Rates	Fringes
Plumbers and Pipefitters	$ 32.75	14.85

PLUM0145-002 07/01/2016

MESA COUNTY

	Rates	Fringes
Plumbers and Pipefitters	$ 35.17	11.70

PLUM0208-004 06/01/2016

ADAMS, ARAPAHOE, BOULDER, BROOMFIELD, DENVER, DOUGLAS, JEFFERSON, LARIMER AND WELD COUNTIES

	Rates	Fringes
PIPEFITTER	$ 37.10	16.62

SHEE0009-002 07/01/2018

	Rates	Fringes
Sheet metal worker	$ 34.02	17.49

TEAM0455-002 07/01/2018

	Rates	Fringes
Truck drivers:		
Pickup	$ 21.41	4.32
Tandem/Semi and Water	$ 22.04	4.32

SUCO2001-006 12/20/2001

	Rates	Fringes
BOILERMAKER	$ 17.60	
Carpenters:		
Form Building and Setting	$ 16.97	2.74

All Other Work	$ 15.14	3.37
Cement Mason/Concrete Finisher	$ 17.31	2.85
IRONWORKER, REINFORCING	$ 18.83	3.90
Laborers:		
Common	$ 11.22	2.92
Flagger	$ 8.91	3.80
Landscape	$ 12.56	3.21
Painters:		
Brush, Roller & Spray	$ 15.81	3.26
Power equipment operators:		
Backhoe	$ 16.36	2.48
Front End Loader	$ 17.24	3.23
Skid Loader	$ 15.37	4.41

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

Office of Human Resources
Supplemental Rates
(Specific to the Denver Projects)
(Supp #74, Date: 02-03-2012)

Classification		Base	Fringe
Ironworker	Ornamental	$24.80	$10.03
Laborer	Group 1	$18.18	$8.27
	Group 2	$21.59	$8.61
Laborer (Janitor)	Janitor/Yardmen	$17.68	$8.22
Laborer (Asbestos)	Removal of Asbestos	$21.03	$8.55
Laborer (Tunnel)	Group 1	$18.53	$8.30
	Group 2	$18.63	$8.31
	Group 3	$19.73	$8.42
	Group 4	$21.59	$8.61
	Group 5	$19.68	$8.42
Line Construction	Lineman, Gas Fitter/Welder	$36.88	$9.55
	Line Eq Operator/Line Truck Crew	$25.74	$8.09
Millwright		$28.00	$10.00
Power Equipment Operator	Group 1	$22.97	$10.60
	Group 2	$23.32	$10.63
	Group 3	$23.67	$10.67
	Group 4	$23.82	$10.68
	Group 5	$23.97	$10.70
	Group 6	$24.12	$10.71
	Group 7	$24.88	$10.79
Power Equipment Operator (Tunnels above and below ground, shafts and raises):	Group 1	$25.12	$10.81
	Group 2	$25.47	$10.85
	Group 3	$25.57	$10.86
	Group 4	$25.82	$10.88
	Group 5	$25.97	$10.90
	Group 6	$26.12	$10.91
	Group 7	$26.37	$10.94
Truck Driver	Group 1	$18.42	$10.00
	Group 2	$19.14	$10.07
	Group 3	$19.48	$10.11
	Group 4	$20.01	$10.16
	Group 5	$20.66	$10.23
	Group 6	$21.46	$10.31

Go to http://www.denvergov.org/Auditor to view the Prevailing Wage Clarification Document for a list of complete classifications used.

APPENDIX 1

Federal Aviation Administration Required Contract Provisions

ALL CONTRACTS – NON-AIP FUNDED

Federal laws and regulations require that recipients of federal assistance (Sponsors) include specific contract provisions in certain contracts, requests for proposals, or invitations to bid.

Certain provisions must be included in all Sponsor contracts, regardless of whether or not the contracts are federally-funded. This requirement was established when a sponsor accepted the Airport Improvement Program (AIP) grant assurances.

As used in these Contract Provisions, "Sponsor" means The City and County of Denver, Department of Aviation, and "Contractor" or "Consultant" means the Party of the Second Part as set forth in Contract Number **PLANE 201843845**.

GENERAL CIVIL RIGHTS PROVISIONS

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

This provision binds the contractor and subtier contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

Compliance with Nondiscrimination Requirements

During the performance 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 (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin 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 Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

3. **Solicitations for Subcontracts, 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 contract and the Nondiscrimination Acts And Authorities 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, the Regulations, and 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 to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, 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 Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

    a. Withholding payments to the contractor under the contract until the contractor complies; and/or

    b. Cancelling, terminating, or suspending a contract, in whole or in part.

6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration 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 any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination 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);

APPENDIX 1

Federal Aviation Administration Required Contract Provisions

ALL CONTRACTS – NON-AIP FUNDED

- 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 100-209), (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 non-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).

FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

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

APPENDIX 1

Federal Aviation Administration Required Contract Provisions

ALL CONTRACTS – NON-AIP FUNDED

OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

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.