

**ADAMS COUNTY, COLORADO
PURCHASE OF SERVICE AGREEMENT**

THIS AGREEMENT ("Agreement") is made this 20th day of January 2017, by and between the Adams County Board of County Commissioners, located at 4430 South Adams County Parkway, Brighton, Colorado 80601, hereinafter referred to as the "County," and **DBT TRANSPORTATION SERVICES, LLC**, located at 26510 Cottage Cypress Lane, Cypress, Texas 77433, hereinafter referred to as the "Contractor." The County and the Contractor may be collectively referred to herein as the "Parties".

The County and the Contractor, for the consideration herein set forth, agree as follows:

1. SERVICES OF THE CONTRACTOR:

- 1.1. All work shall be in accordance with the attached scope of services attached hereto as **Exhibit A**, and incorporated herein by reference. Should there be any discrepancy between Exhibit A and this Agreement the terms and conditions of this Agreement shall prevail.
- 1.2. **Emergency Services:** In the event the Adams County Board of County Commissioners declares an emergency, the County may request additional services (of the type described in this Agreement or otherwise within the expertise of the Contractor) to be performed by the Contractor. If the County requests such additional services, the Contractor shall provide such services in a timely fashion given the nature of the emergency, pursuant to the terms of this Agreement. Unless otherwise agreed to in writing by the parties, the Contractor shall bill for such services at the rates provided for in this Agreement.

2. RESPONSIBILITIES OF THE COUNTY: The County shall provide information as necessary or requested by the Contractor to enable the Contractor's performance under this Agreement, as referenced in Section 1 above.

3. TERM:

- 3.1. **Term of Agreement:** The initial term of this Agreement shall be for one (1) year from the date of execution, unless sooner terminated as specified elsewhere herein.
- 3.2. **Extension Options:** The County, at its sole option, may offer to extend this Agreement as necessary for up to two (2) option year extensions providing satisfactory service is given and all terms and conditions of this Agreement have been fulfilled. Such extensions must be mutually agreed upon in writing by the County and the Contractor.

4. PAYMENT AND FEE SCHEDULE: The County shall pay the Contractor for services furnished under this Agreement, and the Contractor shall accept as full payment for those services, in an amount of **forty-two thousand, six hundred and sixty dollars and no cents (\$42,660.00)**.

- 4.1. Payment pursuant to this Agreement, whether in full or in part, is subject to and contingent upon the continuing availability of County funds for the purposes hereof. In the event that funds become unavailable, as determined by the County, the County may immediately terminate this Agreement or amend it accordingly.
5. **INDEPENDENT CONTRACTOR:** In providing services under this Agreement, the Contractor acts as an independent contractor and not as an employee of the County. The Contractor shall be solely and entirely responsible for his/her acts, and the acts of his/her employees, agents, servants, and subcontractors during the term and performance of this Agreement. No employee, agent, servant, or subcontractor of the Contractor shall be deemed to be an employee, agent, or servant of the County because of the performance of any services or work under this Agreement. The Contractor, at its expense, shall procure and maintain workers' compensation insurance as required by law. Pursuant to the Workers' Compensation Act § 8-40-202(2)(b)(IV), C.R.S., as amended, the Contractor understands that it and its employees and servants are not entitled to workers' compensation benefits from the County. The Contractor further understands that it is solely obligated for the payment of federal and state income tax on any moneys earned pursuant to this Agreement.
6. **NONDISCRIMINATION:** The Contractor shall not discriminate against any employee or qualified applicant for employment because of age, race, color, religion, marital status, disability, sex, or national origin. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices provided by the local public agency setting forth the provisions of this nondiscrimination clause. Adams County is an equal opportunity employer.
- 6.1. The Contractor will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.
7. **INDEMNIFICATION:** The Contractor agrees to indemnify and hold harmless the County, its officers, agents, and employees for, from, and against any and all claims, suits, expenses, damages, or other liabilities, including reasonable attorney fees and court costs, arising out of damage or injury to persons, entities, or property, caused or sustained by any person(s) as a result of the Contractor's performance or failure to perform pursuant to the terms of this Agreement or as a result of any subcontractors' performance or failure to perform pursuant to the terms of this Agreement.
8. **INSURANCE:** The Contractor agrees to maintain insurance of the following types and amounts:
- 8.1. **Commercial General Liability Insurance:** to include products liability, completed operations, contractual, broad form property damage and personal injury.
- 8.1.1. Each Occurrence: \$1,000,000
- 8.1.2. General Aggregate: \$2,000,000

- 8.2. Comprehensive Automobile Liability Insurance: to include all motor vehicles owned, hired, leased, or borrowed.
- 8.2.1. Bodily Injury/Property Damage: \$1,000,000 (each accident)
- 8.2.2. Personal Injury Protection: Per Colorado Statutes
- 8.3. Workers' Compensation Insurance: Per Colorado Statutes Not Applicable.
- 8.4. Professional Liability Insurance: to include coverage for damages or claims for damages arising out of the rendering, or failure to render, any professional services, as applicable.
- 8.4.1. Each Occurrence: \$1,000,000
- 8.4.2. This insurance requirement applies only to Contractors who are performing services under this Agreement as professionals licensed under the laws of the State of Colorado, such as physicians, lawyers, engineers, nurses, mental health providers, and any other licensed professionals.
- 8.5. Adams County as "Additional Insured": The Contractor's commercial general liability, and comprehensive automobile liability insurance policies and/or certificates of insurance shall be issued to include Adams County as an "additional insured," and shall include the following provisions:
- 8.5.1. Underwriters shall have no right of recovery or subrogation against the County, it being the intent of the parties that the insurance policies so affected shall protect both parties and be primary coverage for any and all losses resulting from the actions or negligence of the Contractor.
- 8.5.2. The insurance companies issuing the policy or policies shall have no recourse against the County for payment of any premiums due or for any assessments under any form of any policy.
- 8.5.3. Any and all deductibles contained in any insurance policy shall be assumed by and at the sole risk of the Contractor.
- 8.6. Licensed Insurers: All insurers of the Contractor must be licensed or approved to do business in the State of Colorado. Upon failure of the Contractor to furnish, deliver and/or maintain such insurance as provided herein, this Agreement, at the election of the County, may be immediately declared suspended, discontinued, or terminated. Failure of the Contractor in obtaining and/or maintaining any required insurance shall not relieve the Contractor from any liability under this Agreement, nor shall the insurance requirements be construed to conflict with the obligations of the Contractor concerning indemnification.
- 8.7. Endorsement: Each insurance policy herein required shall be endorsed to state that coverage shall not be suspended, voided, or canceled without thirty (30) days prior written notice by certified mail, return receipt requested, to the County.
- 8.8. Proof of Insurance: At any time during the term of this Agreement, the County may require the Contractor to provide proof of the insurance coverage's or policies required under this Agreement.

9. DAMAGES ARISING FROM BREACH OF PERFORMANCE OBLIGATIONS

9.1. Notwithstanding anything else set forth in this Agreement, if Contractor fails to comply with all terms of this contract, including but not limited to, its obligation to perform its work in a workmanlike manner in accordance with all codes, plans, specifications and industry standards, Contractor shall be liable to County for all damages arising from the breach, including but not limited to, all attorney fees, costs and other damages.

10. WARRANTY:

10.1. The Contractor warrants and guarantees to the County that all work, equipment, and materials furnished under the Agreement are free from defects in workmanship and materials for a period of one year after final acceptance by the County. The Contractor further warrants and guarantees that the plans and specifications incorporated herein are free of fault and defect sufficient for Contractor to warrant the finished product after completion date. Should the Contractor fail to proceed promptly in accordance with this guarantee, the County may have such work performed at the expense of the Contractor. This section does not relieve the Contractor from liability for defects that become known after one year.

11. TERMINATION:

11.1. For Cause: If, through any cause, the Contractor fails to fulfill its obligations under this Agreement in a timely and proper manner, or if the Contractor violates any of the covenants, conditions, or stipulations of this Agreement, the County shall thereupon have the right to immediately terminate this Agreement, upon giving written notice to the Contractor of such termination and specifying the effective date thereof.

11.2. For Convenience: The County may terminate this Agreement at any time by giving written notice as specified herein to the other party, which notice shall be given at least thirty (30) days prior to the effective date of the termination. If this Agreement is terminated by the County, the Contractor will be paid an amount that bears the same ratio to the total compensation as the services actually performed bear to the total services the Contractor was to perform under this Agreement, less payments previously made to the Contractor under this Agreement.

12. MUTUAL UNDERSTANDINGS:

12.1. Jurisdiction and Venue: The laws of the State of Colorado shall govern as to the interpretation, validity, and effect of this Agreement. The parties agree that jurisdiction and venue for any disputes arising under this Agreement shall be in Adams County, Colorado.

12.2. Compliance with Laws: During the performance of this Agreement, the Contractor agrees to strictly adhere to all applicable federal, state, and local laws, rules and regulations, including all licensing and permit requirements. The parties hereto aver that they are familiar with § 18-8-301, *et seq.*, C.R.S. (Bribery and Corrupt Influences), as amended, and § 18-8-401, *et seq.*, C.R.S. (Abuse of Public Office), as amended, the Clean Air Act (42 U.S.C. 7401-7671q), and the Federal Water Pollution Control Act

(33 U.S.C. 1251-1387), as amended, and that no violation of such provisions are present. Contractor warrants that it is in compliance with the residency requirements in §§ 8-17-101, et seq., C.R.S. Without limiting the generality of the foregoing, the Contractor expressly agrees to comply with the privacy and security requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

- 12.3. OSHA: The Contractor shall comply with the requirements of the Occupational Safety and Health Act (OSHA) and shall review and comply with the County's safety regulations while on any County property. Failure to comply with any applicable federal, state or local law, rule, or regulation shall give the County the right to terminate this agreement for cause.
- 12.4. Record Retention: The Contractor shall maintain records and documentation of the services provided under this Agreement, including fiscal records, and shall retain the records for a period of three (3) years from the date this Agreement is terminated. Said records and documents shall be subject at all reasonable times to inspection, review, or audit by authorized federal, state, or County personnel.
- 12.5. Assignability: Neither this Agreement, nor any rights hereunder, in whole or in part, shall be assignable or otherwise transferable by the Contractor without the prior written consent of the County.
- 12.6. Waiver: Waiver of strict performance or the breach of any provision of this Agreement shall not be deemed a waiver, nor shall it prejudice the waiving party's right to require strict performance of the same provision, or any other provision in the future, unless such waiver has rendered future performance commercially impossible.
- 12.7. Force Majeure: Neither party shall be liable for any delay or failure to perform its obligations hereunder to the extent that such delay or failure is caused by a force or event beyond the control of such party including, without limitation, war, embargoes, strikes, governmental restrictions, riots, fires, floods, earthquakes, or other acts of God.
- 12.8. Notice: Any notices given under this Agreement are deemed to have been received and to be effective: (1) three (3) days after the same shall have been mailed by certified mail, return receipt requested; (2) immediately upon hand delivery; or (3) immediately upon receipt of confirmation that an E-mail was received. For the purposes of this Agreement, any and all notices shall be addressed to the contacts listed below:

County:

Department: Adams County Front Range Airport
Contact: Bob Lewan, Operations/Maintenance Manager
Address: 5200 Front Range Parkway
City, State, Zip: Walkins, Colorado 80137
Office Number: 303.261-9013
Email: blewan@ftg-airport.com

Department: Adams County Purchasing Division
Address: 4430 South Adams County Parkway, Suite C4000A
City, State, Zip: Brighton, Colorado 80601

Department: Adams County Attorney's Office
Address: 4430 South Adams County Parkway
City, State, Zip: Brighton, Colorado 80601

Contractor:

Company: DBT Transportation Services, LLC
Contact: Nancy Thomsen, EVP of Sales Operations
Address: 2655 Crescent Drive, Suite A-1
City, State, Zip: Lafayette, Colorado 80026
Office Number: 720.626.3542
E-mail: NThomsen@DBTTranServ.com

12.9. Integration of Understanding: This Agreement contains the entire understanding of the parties hereto and neither it, nor the rights and obligations hereunder, may be changed, modified, or waived except by an instrument in writing that is signed by the parties hereto.

12.10. Severability: If any provision of this Agreement is determined to be unenforceable or invalid for any reason, the remainder of this Agreement shall remain in effect, unless otherwise terminated in accordance with the terms contained herein.

12.11. Authorization: Each party represents and warrants that it has the power and ability to enter into this Agreement, to grant the rights granted herein, and to perform the duties and obligations herein described.

13. AMENDMENTS, CHANGE ORDERS OR EXTENSIONS:

13.1. Amendments or Change Orders: The County may, from time to time, require changes in the scope of the services of the Contractor to be performed herein including, but not limited to, additional instructions, additional work, and the omission of work previously ordered. The Contractor shall be compensated for all authorized changes in services, pursuant to the applicable provision in the Solicitation, or, if no provision exists, pursuant to the terms of the Amendment or Change Order.

13.2. Extensions: The County may, upon mutual written agreement by the parties, extend the time of completion of services to be performed by the Contractor.

14. COMPLIANCE WITH C.R.S. § 8-17.5-101, ET. SEQ. AS AMENDED 5/13/08: Pursuant to Colorado Revised Statute (C.R.S.), § 8-17.5-101, *et. seq.*, as amended May 13, 2008, the Contractor shall meet the following requirements prior to signing this Agreement (public contract for service) and for the duration thereof:

- 14.1. The Contractor shall certify participation in the E-Verify Program (the electronic employment verification program that is authorized in 8 U.S.C. § 1324a and jointly administered by the United States Department of Homeland Security and the Social Security Administration, or its successor program) or the Department Program (the employment verification program established by the Colorado Department of Labor and Employment pursuant to C.R.S. § 8-17.5-102(5)) on the attached certification.
- 14.2. The Contractor shall not knowingly employ or contract with an illegal alien to perform work under this public contract for services.
- 14.3. The Contractor shall not enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this public contract for services.
- 14.4. At the time of signing this public contract for services, the Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this public contract for services through participation in either the E-Verify Program or the Department Program.
- 14.5. The Contractor shall not use either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this public contract for services is being performed.
- 14.6. If Contractor obtains actual knowledge that a subcontractor performing work under this public contract for services knowingly employs or contracts with an illegal alien, the Contractor shall: notify the subcontractor and the County within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to the previous paragraph, the subcontractor does not stop employing or contracting with the illegal alien; except that the contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.
- 14.7. Contractor shall comply with any reasonable requests by the Department of Labor and Employment (the Department) made in the course of an investigation that the Department is undertaking pursuant to the authority established in C.R.S. § 8-17.5-102(5).
- 14.8. If Contractor violates this Section, of this Agreement, the County may terminate this Agreement for breach of contract. If the Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the County.

CONTRACTOR'S CERTIFICATION OF COMPLIANCE

Pursuant to Colorado Revised Statute, § 8-17.5-101, *et seq.*, as amended 5/13/08, as a prerequisite to entering into a contract for services with Adams County, Colorado, the undersigned Contractor hereby certifies that at the time of this certification, Contractor does not knowingly employ or contract with an illegal alien who will perform work under the attached contract for services and that the Contractor will participate in the E-Verify Program or Department program, as those terms are defined in C.R.S. § 8-17.5-101, *et seq.* in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the attached contract for services.

CONTRACTOR:

DBT Transportation Services LLC
Company Name

1/13/17
Date

Nancy J. Thomson
Signature

Nancy J. Thomson
Name (Print or Type)

Executive Vice President
Title

Note: Registration for the E-Verify Program can be completed at: <https://www.vis-dhs.com/employerregistration>. It is recommended that employers review the sample "memorandum of understanding" available at the website prior to registering

Signature Page

IN WITNESS WHEREOF, the Parties have caused their names to be affixed hereto.

**BOARD OF COUNTY COMMISSIONERS
ADAMS COUNTY, COLORADO**

By: [Signature] _____
County Manager Date: 1/20/17

**CONTRACTOR
DBT TRANSPORTATION SERVICES, LLC**

By: Nancy J. Thomsen _____
Name (Print of Type) Date: 1/13/17
[Signature] _____
Authorized Signature Title Executive Vice President

Attest:
Stan Martin, Clerk and Recorder
[Signature]
Deputy Clerk

APPROVED AS TO FORM:
Adams County Attorney's Office
By: [Signature]
Attorney's Signature

NOTARIZATION:
COUNTY OF Boulder)
STATE OF Colorado)SS.

Signed and sworn to before me this 13 day of January, ²⁰¹⁷ ~~2016~~,

by Nancy Thomsen
Notary Public [Signature]

My commission expires on: 3-31-2020

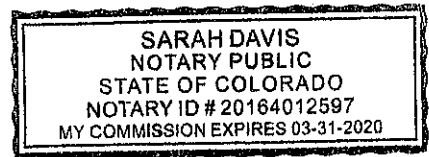


EXHIBIT A
(All Documents following this page of the Agreement)

Exhibit:

1. Agency Proposal and Scope of Services



**AVIATION SUPPORT AND MAINTENANCE SERVICES
Order and Pricing Schedule**

DBT Transportation Services 2655 Crescent Drive, Ste A-1 Lafayette, Colorado 80026 Email: CS@DBTiranServ.com	Customer: Front Range Airport Authority Front Range Airport (FTG) 5200 Front Range Pkwy Watkins, CO 80137 Email: blewan@ftg-airport.com
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This Order and Pricing Schedule is incorporated by reference into the Agreement for Transportation Services and Maintenance between the parties, and the Statement of Work, and made a part thereof.

The Effective Date of this Agreement is December 1, 2016.

The Term of this Agreement shall be for a period of 3 year(s) from the Effective Date.

Services (check as applicable)	Parts Excluded
<input checked="" type="checkbox"/> Periodic/Pre-Season Maintenance	
<input checked="" type="checkbox"/> Equipment Restoration	
<input type="checkbox"/> Data Service - NADIN Service	

Equipment	Manufacturer/Model	Equipment	Manufacturer/Model
<input type="checkbox"/> VOR		<input type="checkbox"/> RWIS	
<input type="checkbox"/> DME		<input type="checkbox"/> RWIS Runway	
<input type="checkbox"/> LOC		<input type="checkbox"/> NDB	
<input type="checkbox"/> GS		<input checked="" type="checkbox"/> Control Tower	
<input checked="" type="checkbox"/> AWOS		<input type="checkbox"/> Markers	
<input type="checkbox"/> RVR		<input type="checkbox"/> Other	

Fees		Contract Total: \$42,660.00
Annual Fee	\$ 14,220.00	Invoiced monthly
Unplanned Outage Fee	\$ 1500.00	per day (ex. lightning strike, bird strike)
Facility Visit Fee	\$ 1500.00	per day (ex. flight check)
Holiday Fee	\$ 500.00	per day additional
Cancellation/Delay Fee	\$ 500.00	per day

Statement of Work and Additional Terms Attachment 1: Terms and Conditions Attachment 2: Statement of Work - Naval Maintenance
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Invoice Contact (Accts. Payable):	Airport Manager/Authority:
Name: _____	Name: <u>Bob Lewan</u>
Address: _____	Address: _____
Phone: _____	Phone: _____
Email: _____	Email: _____

Invoice Instructions: _____

Accepted and agreed to by the duly authorized signatories below.

DBT Transportation Services	Front Range Airport Authority
By: <u><i>D. Dana Thomson</i></u>	By: _____
Title: <u>EVP of Sales</u>	Title: _____
Date: <u>12/12/16</u>	Date: _____



AWOS and Navaid Maintenance Statement of Work

1. Description of Equipment Services

- 1.1 **Periodic Maintenance** consists of such periodic routine tests and adjustments as may be required by the equipment manufacturer and by the FAA for non-Federal facilities in accordance with 14 C.F.R Part 171 and AC 150/5220-16C as they may be modified or superseded from time to time.
- 1.2 **Equipment Restoration.** In the event of an unplanned equipment failure or outage, DBT Transportation Services shall notify the customer as to the restoration plan of action within one (1) business day after the outage is reported and complete restoration services in a reasonable prompt manner. Diagnosis may be performed remotely and render the system inoperable until which time replacement equipment/parts can arrive to Customer's site. Repairs required due to Acts of God, lightning, vandalism, etc. are excluded and will be billed at the Unplanned Outage price.
- 1.3 All services provided by DBT shall be performed by qualified field technicians having all required certifications and licenses required by the FAA and OSHA. DBT will also maintain a full Aviation Products and Liability Insurance policy for the term of the contract.
- 1.4 DBT shall record test results in a station log and maintain the required 6000 series records, copies of which will be provided to the FAA as required.
- 1.5 DBT shall make a best effort to maintain and repair all equipment. Customer acknowledges that components and equipment under contract may be obsolete rendering repair or restoration of equipment impossible.

2. Testing Equipment and Replacement Parts – Nav aids Only

- 2.1 Customer shall at its own expense furnish, maintain and calibrate test equipment in accordance with FAA requirements.
- 2.2 Customer shall maintain at its own expense an inventory of replacement parts for the Equipment to be utilized by DBT when providing Service under this Agreement. In the event parts necessary for maintenance or restoration of the Equipment are not available in Customer's Inventory, DBT will provide such part(s) and invoice the Customer for required part(s). If customer does not have the necessary spare parts available for use in restoring the Equipment, DBT reserves the right to charge \$1500 for a return trip charge.

3. Customer Responsibilities

- 3.1 Customer shall be responsible for monitoring the status of the systems following maintenance by DBT.
- 3.2 Customer shall be responsible for providing transportation and/or access for DBT personnel between the airport office and the location of the Equipment.
- 3.3 Customer shall be responsible for providing security in and around the Equipment to be maintained under the Agreement.
- 3.4 Customer shall be responsible for any loss or damage to the Equipment for reasons other than the fault of DBT and for providing any insurance Customer may desire to cover any such loss or damage.
- 3.5 Customer shall be responsible for the issuance of all NOTAMS (Notice to Airmen) relating to the status of the facilities to be maintained under this Agreement.
- 3.6 Customer shall be responsible for maintaining the grounds and buildings associated with the NAVAID (Navigational Aids) and Equipment in good repair and in compliance with all FAA and all applicable laws.
- 3.7 Customer shall be responsible for the purchase of all replacement components for AWOS and Navaid equipment.



Attachment 1
DBT Transportation Services LLC
Agreement for Aviation Support and Maintenance Services Terms and Conditions

1. PURPOSE/SERVICES:

1.1 Customer desires to engage DBT Transportation Services, LLC (DBT) to render certain professional and/or technical services, including as recited in the Statement of Work ("SOW") and as indicated in the Order and Pricing Schedule, related to the support, maintenance and servicing of certain Equipment, and DBT desires to render such services under the terms and conditions of this Attachment 1, the SOW and the Order and Pricing Schedule. All terms not defined herein, including "Services", "Equipment" and "Term", shall have the meaning set forth in the Order and Pricing Schedule. This Attachment 1, the Order and Pricing Schedule and the SOW make up the complete agreement (the "Agreement") between Customer and DBT, and each may be amended, upon mutual written agreement, from time to time throughout the Term.

1.2 This Attachment 1 constitutes the terms and conditions offered with respect to the provision of Services and Equipment recited in the Order and Pricing Schedule and shall become a binding contract upon the execution of the Order and Pricing Schedule either by facsimile or in PDF form, by Customer and DBT. No contrary or additional terms or conditions proposed by Customer under any other document, including but not limited to a Customer purchase order, will be accepted by DBT, and any such proposed contrary or additional terms are hereby rejected unless otherwise mutually agreed to in a written fully executed instrument. DBT's performance pursuant to this Attachment 1, the Order and Pricing Schedule and the SOW shall be deemed unqualified acceptance of the terms and conditions set forth below.

2. PAYMENT/OTHER EXPENSES/ADDITIONAL CHARGES:

2.1 Customer agrees to pay DBT the amounts recited in the Order and Pricing Schedule.

2.2 DBT shall invoice Customer on an annual, quarterly or monthly basis, as applicable, based on the Services for the Equipment specified as more particularly recited under the Order and Pricing Schedule. Payment by Customer shall be net thirty (30) days of the invoice date.

2.3 Customer may withhold payment of any amounts to be paid to DBT which are disputed in good faith by Customer. In the event there is a dispute in connection with a submitted invoice, the parties shall confer on the invoice within five (5) days of receipt, and only the payment for that portion of the invoice in question may be withheld for ten (10) days after the payment due date so as to allow the parties to cooperatively resolve any dispute. Following the elapse of such ten (10) days, Customer shall pay, unless otherwise agreed by the parties, all the amounts due and owing to DBT under the invoice.

2.4 In accordance with the Order and Pricing Schedule, if restoration, repairs or other maintenance Services are required for an unplanned Equipment failure or outage, Customer shall pay DBT the recited "Unplanned Outage Fee". The "Unplanned Outage Fee" is billed in half-day increments, portal to portal, plus travel costs and expenses. Unplanned outages are defined as any restoration outside of normal or anticipated causes of Equipment failure, which outside causes include, but are not limited to, acts of God, weather damage, lightning strikes, vandalism or other damage caused by unauthorized airport personnel or third parties. The "Unplanned Outage Fee" is billed for each day or part thereof that Services are required.

2.5 In accordance with the Order and Pricing Schedule, the applicable "Holiday Fee" as recited in the Order and Pricing Schedule applies to the following holidays when Services are rendered: New Year's Eve, New Year's Day, Memorial Day, July 4th (Independence Day), Labor Day, Thanksgiving Day, the day after Thanksgiving Day, Christmas Eve and Christmas Day. If an Equipment failure or outage occurs on any of the foregoing holidays, Customer shall pay DBT the "Holiday Fee" in addition to the "Unplanned Outage Fee" as well as any other fees due and payable to DBT.

2.6 In accordance with the Order and Pricing Schedule, Customer Site (as subsequently defined) visits are defined as any Site visit not required for Equipment Services. Upon Customer's written request and DBT's written acceptance thereof and subject to mutually agreeable times, DBT will visit Customer Sites concurrent with Federal Aviation Administration (FAA) required or requested



Customer Site visits. Customer agrees to pay the "Facility Visit Fee" to DBT for such Customer Site visits. The "Facility Visit Fee" is billed in half-day increments, portal to portal, plus travel costs and expenses.

2.7 In accordance with the Order and Pricing Schedule, and in DBT's sole opinion, if cancellations or excessive delays, in the provisions of Services occur as a result of Customer's fault, actions or causes, Customer shall pay DBT the "Cancellation/Delay Fee". The "Cancellation/Delay Fee" is billed in half-day increments, portal to portal, plus travel costs and expenses.

3. TERM:

3.1 The Term of the Agreement is in accordance with the Order and Pricing Schedule, shall be as recited in the Order and Pricing Schedule unless earlier terminated pursuant to this Attachment 1.

3.2 The parties may extend, upon mutual written agreement, the Term of the Agreement.

4. TERMINATION/OBLIGATIONS UPON TERMINATION:

4.1 This Agreement may be terminated by DBT, without cause and at any time, upon ninety (90) days written notice. The period of termination shall start from the date of the notice to Customer. Customer shall not be obligated to pay for any Services rendered after the date of termination, except that Customer shall be responsible for non-cancellable expense or commitment amounts that occur before the termination date and that such amounts shall remain due, owing and payable after the date of termination. The parties acknowledge that any amounts paid to DBT shall be non-refundable.

4.2 In the event of a material breach by Customer, DBT shall notify, in writing, Customer of such material breach. Customer shall be permitted thirty (30) days from the date of receipt of such notice to cure such breach to DBT's satisfaction. In the event the breach is cured to DBT's satisfaction, the Agreement shall not terminate. However, if the breach is not so cured, DBT may elect to promptly terminate the Agreement following the lapse of such thirty (30) days from the receipt of such notice. In the event of termination of the Agreement due to a material breach by Customer, other than of the type specified in Section 7.1 herein, the obligations under Section 4.3 shall be applicable.

4.3 In the event of termination of the Agreement either as provided herein or upon expiration of the Agreement, each party shall promptly return all Confidential Information (as subsequently defined) of the other party and DBT shall submit a final invoice, as recited above, for Services rendered up to the date of termination and for all non-cancellable expense or commitment amounts that occur before the termination date, which amounts remain due, owing and payable. Customer shall promptly pay such invoiced amount net ten (10) days from the invoice date.

5. WARRANTIES:

5.1 DBT warrants and represents that all Services provided by DBT shall be performed by qualified field technicians and by other personnel, who have all certifications and licenses required by the FAA. Further, DBT warrants and represents that all Services provided hereunder shall be of a professional quality consistent with general industry standards and shall be performed in accordance with the requirements of the SOW and as specified under the Agreement.

5.2 DBT represents and warrants that it is an independent contractor that makes its services available to the general public, has its own place of business and maintains its own sets of books and records, which reflect its own income and expenses. Further, DBT shall operate as an independent contractor and shall not represent itself as an agent, partner or joint venturer of Customer. DBT shall not obligate Customer in any manner, nor cause Customer to be liable under any contract or under any other type of commitment. Alternately, Customer shall not obligate DBT in any manner, nor cause DBT to be liable under any contract or under any other type of commitment.

5.3 THIS IS A SERVICE AGREEMENT. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, DBT MAKES NO WARRANTIES AND EXPLICITLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR RELIABILITY OR ACCURACY OF ANY GENERATED DATA OR INFORMATION FROM THE EQUIPMENT. THE EXPRESS WARRANTIES PROVIDED IN SECTIONS 5.1 AND 5.2 ARE EXCLUSIVE, AND DBT MAKES NO OTHER WARRANTIES, EXPRESS, STATUTORY



OR IMPLIED, WRITTEN OR ORAL, TO CUSTOMER REGARDING, RELATED TO OR ARISING FROM THE SERVICES RENDERED UNDER THE AGREEMENT, THE USE OR POSSESSION OF DBT CONFIDENTIAL AND PROPRIETARY INFORMATION, ANY REPORT OR DATA GENERATED UNDER OR IN CONNECTION WITH THIS AGREEMENT, IN ANY MANNER OR FORM WHATSOEVER.

6. LIMITATION OF LIABILITY / INDEMNIFICATION:

6.1 DBT will be permitted to enter Customer's premises ("Site") and have access to Customer's personnel or equipment upon reasonable notice and during normal business hours; provided that DBT complies with Customer's security procedures. DBT shall maintain aviation products and comprehensive liability insurance, as recited below, during the Term of the Agreement. DBT agrees to take all reasonable precautions to prevent any injury to persons or any damage to property in the performance of the Services as rendered by DBT under the Agreement. However, in the event Customer is negligent or engages in misconduct, then Customer shall be liable for such damages as provided herein.

6.2 DBT's entire liability hereunder to Customer for any breach of the Agreement shall be limited only to the amounts of fees paid hereunder to DBT in connection with the Services that gave rise to the claim, except for any damages or claims for damages or equitable relief resulting from DBT's breach of Customer's proprietary and/or confidential interest as set forth in Section 9. Potential liability for claims by third parties is covered by Sections 6.4 and 6.5 below. NEITHER PARTY SHALL BE LIABLE FOR LOSSES OR DAMAGES WHICH ARE INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY, INCLUDING WITHOUT LIMITATION, ANY LOSS OF PROFITS OR REVENUE (EXCLUSIVE OF THE FULL PAYMENT FOR SERVICES RENDERED PURSUANT TO THE TERMS OF THE AGREEMENT) INCURRED BY EITHER PARTY WHETHER IN AN ACTION BASED ON CONTRACT OR TORT, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, BASED ON CLAIMS OF SUPPLIER OR ANY OTHER PARTY ARISING OUT OF BREACH OR FAILURE OF EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY IN TORT, FAILURE OF ANY REMEDY TO ACHIEVE ITS ESSENTIAL PURPOSE, OR OTHERWISE ARISING FROM OR RELATED TO THIS AGREEMENT, AND THE SERVICES PERFORMED HEREUNDER, EXCEPT WITH RESPECT TO DAMAGES INCURRED WITH REGARD TO CLAIMS OF INFRINGEMENT, MISUSE OR MISAPPROPRIATION OF A PARTY'S PROPRIETARY AND/OR CONFIDENTIAL INFORMATION.

6.3 With regard to proprietary and/or confidential information and rights and interests, either party shall be entitled to pursue any legal and/or equitable action, including injunctive relief, against the other with regard to any misuse, misappropriation or breach of any term or condition recited herein with regard to such other party's confidential and/or proprietary claims.

Not applicable

6.4 Customer shall defend, indemnify and save harmless DBT, or its agents, employees, consultants or contractors, from any and all third-party claims, demands, suits, actions or proceedings of any kind or nature, including without limitation Worker's Compensation claims, of or by anyone that directly results from or directly arises out of Customer's actions, activities or events in connection with the Agreement or with respect to any negligent action, intentional or willful act or omission by Customer, or its agents, employees, consultants or contractors; provided, however, that DBT shall not be indemnified, held harmless and/or defended by Customer in connection with the foregoing claims of property damages, or death or personal injury where DBT, or its agents, employees, consultants or contractors, are, in any manner, negligent, or, in any manner, commit willful or intentional acts or omissions that result in such claims made. Customer's obligations to indemnify, defend and hold harmless will survive the termination of the Agreement for a period of one (1) year from the date of termination. DBT agrees to notify Customer within five (5) business days after it has received written notification of such loss due to damage to property, injuries or death to persons.

6.5 DBT shall defend, indemnify and save harmless Customer, or its agents, employees, consultants or contractors, from any and all third-party claims, demands, suits, actions or proceedings of any kind or nature, including without limitation Worker's Compensation claims, of or by anyone that directly results from or directly arises out of DBT's actions, activities or events in connection with the Agreement, including negligent Services, intentional or willful acts or omissions of DBT, or its agents, employees, consultants or contractors; provided, however, that Customer shall not be indemnified, held harmless and/or defended by DBT in connection with the foregoing claims of property damages, or death or personal injury where Customer, or its agents, employees, consultants or contractors, are, in any manner, negligent, or, in any manner, commit willful or intentional acts or omissions that result in such claims made. DBT's obligations to indemnify, defend and hold harmless will survive the termination of the Agreement for a period of one (1) year from the date of termination. Customer agrees to notify DBT within five (5) business days after it has received written notification of such loss due to damage to property, injuries or death to persons. Indemnification obligations of DBT under this section are subject to the limits set forth in Section 6.6.



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6.6 During the term of the Agreement and for a period of at least one (1) year after completion of DBT's obligations pursuant hereunder, DBT will maintain the following levels of insurance coverage with a reputable and financially sound insurance carrier: (a) workers' compensation insurance as required by applicable law; (b) employer's liability insurance with limits not less than US \$1 MILLION; (c) Commercial General Liability, including Products and completed Operations and Contractual Liability, with a minimum combined single limit of US \$2 MILLION per occurrence; (d) Excess Liability Insurance with limits not less than US \$5 MILLION; and (e) Aviation Liability Insurance of US \$10 MILLION per occurrence. DBT shall, at its own expense, maintain with a reputable insurer (and provide written certificate(s) of insurance to Customer if and when requested) for a period of one (1) year after the fulfillment of the SOW under the Agreement. IN CONNECTION WITH ANY INDEMNITY BY DBT HEREUNDER, DBT'S ENTIRE LIABILITY SHALL BE LIMITED ONLY UP TO THE AMOUNTS OF INSURANCE COVERAGE REQUIRED IN CONNECTION WITH THE CLAIM MADE; AND THEREFORE, IN NO EVENT SHALL DBT BE LIABLE FOR ANY AMOUNTS BEYOND THE LIMITATIONS OF INSURANCE COVERAGE RECITED HEREIN FOR ANY CLAIMS MADE UNDER DBT'S INDEMNIFICATION OF CUSTOMER UNDER SECTION 6.5.

7. FORCE MAJEURE

7.1 Neither party shall be deemed to have breached the Agreement by reason of delay or failure in performance resulting from causes beyond the control, and without the fault or negligence, of the party. Such causes include, but may not be limited to, an act of God, an act of war or public enemy, riot, epidemic, fire, flood, quarantine, embargo, epidemic, unusually severe weather or other disaster, or compliance with laws, governmental acts or regulations, in any case, not in effect as of the date of the Agreement, or other causes similar to the foregoing beyond the reasonable control of the party so affected. The party seeking to avail itself of any of the foregoing excuses must promptly notify the other party of the reasons for the failure or delay in connection with the performance hereunder and shall exert its best efforts to avoid further failure or delay. However, the Agreement shall terminate, as provided under Section 4, if such delay or failure persists for one-hundred twenty (120) consecutive days and there is no foreseeable remedy or cure available.

8. ASSIGNMENT

8.1 Customer shall not be permitted to assign, in whole or in part, the Agreement or any rights or obligations hereunder except with the written authorization of DBT, which authorization shall not be unreasonably withheld. In the event of any permitted assignment or transfer of the Agreement or the obligations under the Agreement, the parties agree that such obligations shall be binding upon the assigning or transferring party's executors, administrators and legal representatives, and the rights of assignor or transferor shall inure to the benefit of assignee or transferee. Any attempted transfer, assignment, sale or conveyance, or delegation in violation of this Section 8 shall be null and void.

9. CONFIDENTIAL AND/OR PROPRIETARY INFORMATION

9.1 During the Term of the Agreement, each party may be exposed either in writing, orally or through observation to the other party's confidential and/or proprietary information ("Information"). Information includes, but is not limited to, product specifications, drawings, design plans, product blueprints, ideas, inventions, methods, processes, chemical formulations, chemical compounds, mechanical/electrical specifications, current and future product plans, system architectures, product strategies, software (object, source or microcode), scientific or technical data, prototypes, demonstration packages, documents, marketing strategy, customer lists, equipment, personnel information, business strategies, financial information, instruction manuals, the Agreement and any other business and/or technical information related to the atmospheric and weather technology fields, or any Information marked with a disclosing party's confidential or similar type legend. If the Information is orally or visually disclosed, then such Information shall be reduced to a summary writing by the disclosing party within thirty (30) days of such disclosure, marked as "confidential" and delivered to the receiving party.

9.2 The receiving party shall use the Information only for the purposes of the Agreement and for no other purpose whatsoever. The receiving party shall not disclose, disseminate or distribute the Information to any third party. However, DBT shall be permitted to disclose Information to agents, employees, subcontractors and consultants, who have a definable need to know, and who are under written obligations commensurate with the terms and conditions recited herein. The receiving party shall protect the Information by using the same degree of care, but no less than a reasonable degree of care, it would to protect its own information of a like nature. Information shall remain confidential for a period of two (2) years following termination of the Agreement; except that any information which is designated as a trade secret shall remain confidential until one of the events recited in Section 9.3 occurs.



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9.3 The receiving party shall not be obligated to maintain the confidentiality of the Information if such Information: a) is or becomes a matter of public knowledge through no fault of the receiving party; b) is disclosed as required by law; provided that, the receiving party promptly notifies the disclosing party of such request to disclose so that disclosing party has the opportunity to seek a protective or similar order to prevent such disclosure of Information; c) is authorized, in writing, by the disclosing party for release; d) was rightfully in the receiving party's possession before receipt from disclosing party; or e) is rightfully received by the receiving party from a third party without a duty of confidentiality.

See addition

9.4 No license under any trademark, patent, copyright or other intellectual property right is granted, either expressed or implied, by the disclosing of such Information by the disclosing party to the receiving party.

Customer is a governmental entity subject to the Colorado Open Records Act ("COORA"). In the event of a conflict between the terms of this Agreement & the provisions of COORA, the provisions of COORA shall prevail.

10. DISPUTES/ARBITRATION/GOVERNING LAW/OTHER

10.1 The parties shall first try to resolve any dispute relating to or arising from the Agreement through good faith negotiations and agreement by the parties. If the parties are unable to resolve the dispute through negotiation and still seek resolution, ~~the dispute may be submitted to, and settled by binding arbitration, by a single arbitrator chosen by the American Arbitration Association in accordance with the Commercial Rules of the American Arbitration Association. The prevailing party shall be entitled to reasonable and documented attorneys' fees and administrative fees in the event an action is brought. Notwithstanding the foregoing, the arbitrator shall award any damages subject to the limitations on liability and indemnification recited herein. Any court having jurisdiction over the matter may enter judgment on the award of the arbitrator. Service of a petition to confirm the arbitration award may be made by First Class mail or by commercial express mail, to the attorney for the party or, if unrepresented, to the party at the last known business address.~~

See change

10.2 With regard to the subject matter recited herein, the Agreement (including addenda or amendments added hereto) comprises the entire understanding of the parties hereto and as such supersedes any oral or written agreement. Any inconsistency in the Agreement shall be resolved by giving precedence in the following order:

- a) The Order and Pricing Schedule
- b) The SOW
- c) This Attachment 1
- d) Any addenda added hereto

10.3 This Agreement shall not be modified or amended except by written amendment executed by both parties. All requirements for notices hereunder must be in writing. The parties further acknowledge that facsimile signatures or signatures in PDF are fully binding and constitute a legal method of executing the Agreement.

10.4 Sections 4, 5, 6, 7, 9 and 10 shall survive termination of the Agreement.

10.5 If any of the provisions of the Agreement are declared to be invalid, such provisions shall be severed from the Agreement and the other provisions hereof shall remain in full force and effect. The rights and remedies of the parties to the Agreement are cumulative and not alternative.

10.6 This Agreement may be executed in one or more counterparts, each of which shall be deemed to be a duplicate original, but all of which, taken together, shall be deemed to constitute a single instrument.

10.7 This Agreement is made under and shall be construed according to the laws of the State of Colorado, notwithstanding the applicability of conflicts of laws principles.

10.8 The parties shall adhere to all applicable U.S. Export Administration Laws and Regulations and shall not export or re-export any technical data or materials received under the Agreement or the direct product of such technical data or materials to any proscribed country or person listed in the U.S. Export Administration Regulations unless properly authorized by the U.S. Government.