

COURTESY
GROUND TRANSPORTATION OPERATING AGREEMENT
BETWEEN
SPOKANE AIRPORT
AND

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COURTESY GROUND TRANSPORTATION OPERATING AGREEMENT

THIS AGREEMENT, made and entered into, by and between SPOKANE AIRPORT, by and through its AIRPORT BOARD, created pursuant to the provisions of Section 14.08.200 of the Revised Code of Washington, as a joint operation of the City and County of Spokane, municipal corporations of the State of Washington, hereinafter referred to as "Airport," and _____, a company organized and existing under the laws of the State of Washington, hereinafter referred to as "Operator";

WITNESSETH

WHEREAS, the Airport Board is the administrator and operator of SPOKANE INTERNATIONAL AIRPORT, hereinafter referred to as "SIA", located in the City and County of Spokane, State of Washington, and is authorized to grant leases for real property and premises at SIA for the promotion, accommodation and development of commerce, commercial and general aviation air transportation; and

WHEREAS, the Airport has the authority and power to allow and regulate ground transportation services ("services") demanded or desired by the traveling public; and

WHEREAS, on May 25, 2017, the Airport adopted Resolution 04-17 – In the Matter of Amending the Ground Transportation Rules and Regulations regarding Courtesy and For Hire Vehicle Operators at Spokane International Airport Spokane, Washington; and

WHEREAS, Operator is desirous of utilizing Airport property for the purpose of operating as a Courtesy Vehicle Operator; and

WHEREAS, Operator agrees to operate said service under the following terms and conditions and subject to Resolution No. 04-17, attached hereto and made a part hereof; and

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties hereto agree for themselves, their successors and assigns as follows effective November 1, 2016;

1. TERM

A. The term of this Agreement shall commence on _____ 1, 2018 and the term shall automatically renew on an annual basis thereafter on October 1st, provided the Operator is in compliance with all terms and conditions of this Agreement and Resolution No. 04-17.

B. Either party, if not in default, shall have the right to cancel this Agreement, without cause, upon thirty (30) days notice in writing.

C. The Airport shall have the right to amend the terms of this Agreement from time to time as necessary.

2. OPERATOR PRIVILEGES AND OPERATING REQUIREMENTS

A. Operator shall utilize Airport property for the purpose of operating a service under the following category

1. Courtesy Vehicle Operator - Courtesy Vehicle Operator shall include all motor vehicles used for ground transportation of persons and their baggage or personal property, without direct or indirect compensation, remuneration, consideration or exchange of value provided by such person to the Operator, between the Airport and business and/or commercial establishments. Such Operators shall not be for public hire. Any Operator that is compensated for transporting passengers or provides transportation as an ancillary service will not be considered in this classification.

B. The Airport grants to the Operator the right to operate and maintain a Courtesy Vehicle Service for transporting passengers and baggage to and from SIA.

C. The issuance of an Agreement is subject to the terms and conditions of Resolution No. 04-17, and as may be amended, attached hereto and made a part hereof and any subsequent resolutions adopted or implemented by the Airport as they pertain to Ground Transportation Services at SIA. Operator agrees to abide by all rules, regulations and resolutions adopted by the Airport.

D. Operator has acquired and agrees to maintain all federal, state and local licenses and permits required to operate in the City and County of Spokane, Washington necessary to conduct Courtesy Vehicle Services at SIA as outlined on Exhibit A – Ground Transportation Licensing Requirements. Copies of said licenses and permits shall be provided to the Airport prior to entering into an agreement.

E. Prior to permitting a person to act as an Operator or Operator's Driver(s), and annually thereafter, Operator shall obtain a criminal history and background report for such person and provide a copy to the Airport upon request. The criminal history and background report shall consist of both (i) a Washington State Patrol criminal history report and a (ii) Federal Bureau of Investigation fingerprint background check (FBI Identity History Summary) that includes a search of the national sex offender database. Any person who has been convicted, within the past seven years of driving under the influence of drugs or alcohol, or who has been convicted at any time for fraud, sexual offences, use of a motor vehicle to commit a felony, a crime involving property damage, and/or theft, acts of violence, or acts of violence, or acts of terror shall not be permitted to be employed by the Operator. Operator shall maintain electronic records of such criminal background checks for a period of two years.

F. Prior to permitting a person to act as an Operator or Operator's Drivers and annually thereafter, Operator shall obtain and review a driving history report for such Operator or Operator's Driver and shall provide a copy to the Airport upon request. Any driver with: (i) more than three (3) moving violations in the three-year period prior to such check, or (ii) a major violation in the three-year period prior to such check (including, but not limited to, attempting to evade the police, reckless driving, or driving on a suspended or revoked license) shall not be permitted to be a driver for Operator or be an Operator. Operator shall maintain electronic records of such driving history reports for a period of two (2) years.

G. Operator shall provide Courtesy vehicle service to and from SIA to meet the demands of the traveling public, all of which shall be provided directly by the Operator.

H. Nothing herein shall be construed to prevent the Airport from authorizing other operators of vehicles to render the same type of service as under this Agreement.

I. It is agreed and understood that this Agreement shall not affect any right the Operator may have to operate service to and from other metropolitan areas.

J. It is further understood and agreed that nothing contained herein shall permit Operator to have an office or station at the SIA Terminal.

K. Operator shall conduct its business in a first-class manner continuously during the term of this Agreement. Operator, for itself and its employees, agrees it will not disturb the Airport or any other tenant, or other person using SIA, make or permit any disturbance or any unusual noise, vibration or other condition on or at SIA.

L. Operator covenants and agrees that its personnel at SIA shall be neat, clean and courteous. Operator shall not permit its agents or employees to conduct business or otherwise act in a loud, noisy, boisterous or offensive manner, or to solicit business at SIA in any manner whatsoever.

M. Operator is prohibited from soliciting passengers on Airport property, accepting curbside hails, leaving a vehicle unattended, smoking in vehicle or outside of vehicle, failing to provide information or provide false information to Airport personnel, occupy non-commercial lots such as a cellphone lot or hotel parking lots, fail to comply with posted speed limits and traffic control signs, double park, and engage in any criminal activity.

3. VEHICLES

A. All vehicles operated or offered for public service at SIA shall be in good operating order, free from exterior and mechanical defects and kept in a clean, neat and attractive condition, both inside and outside. Vehicles must be free from body damage. Vehicles with body damage must be repaired and inspected by the Airport staff prior to providing service at the Airport. Operator's vehicle(s) shall bear the company's identification in a prominent location on the exterior sides of the vehicles or as permitted by regulatory agencies.

B. The Airport shall inspect the vehicles annually and on a random basis to ensure the vehicles meet the requirements for operating at SIA.

4. FACILITIES TO BE PROVIDED

The Airport shall allow the Operator, in common with other authorized ground transportation operators to use, in the conduct of services under this Agreement, designated pick-up areas at Terminal A/B, Terminal C and the Ground Transportation Center to provide services to Operator's pre-arranged and scheduled passengers. Operator may drop-off passengers at curbside Terminal A/B and Terminal C at the appropriate airline check-in area. Designated pick-up and drop-off areas are depicted on Exhibit B, attached hereto and made a part hereof.

5. PROHIBITED ACTIVITIES

Operator and Operator's Driver(s) shall not:

- A. Drop-off or pick-up at unauthorized locations;
- B. Solicit passengers on Airport property;
- C. Accept curbside hails;
- D. Leave a vehicle unattended;
- E. Smoke in vehicle or outside of vehicle
- F. Fail to provide information or provide false information to Airport personnel;
- G. Occupy non-commercial lots such as a cellphone lot or hotel parking lots;
- H. Fail to comply with posted speed limits and traffic control signs;
- I. Double park;
- J. Engage in any criminal activity; or
- K. Use, possess or be under the influence of any alcohol or legal or illegal drugs.

6. OPERATING FEES & CHARGES

A. Operator agrees to pay the Airport the following Operating Fees and Charges upon commencement of this Agreement:

1. A trip fee in the amount of One Dollar and Twenty Five (\$1.25) per trip shall be assessed on all pick-ups and drop-offs. The Airport shall invoice the Operator for said trip fees for the preceding month's activity by the 10th of the following month, and Operator shall pay the trip fees to the Airport on or before the 20th day of the same month; provided, however, trip fees not in excess of \$5.00 may be held by the Airport for future billing to avoid unnecessary administrative burden and expense.

2. It is agreed that the Operating Fees and Charges as set forth herein shall be subject to adjustment annually on January 1st as outlined in Resolution 04-17. The Airport shall provide Operator thirty (30) days written notice of any change in the trip fee.

3. Operator shall pay to the Airport a fee of \$35.00 for each original transponder and \$100.00 for each lost, stolen or damaged transponder issued to the Operator.

B. In the event of an automatic vehicle identification system or transponder failure, the Airport shall determine the Operator's monthly fee based upon the number of vehicle trips made in the same month of the prior year plus 2%, or if less than one full year of operation, Operator's fee shall be based upon the average of the number of vehicle trips for the total number of months in operation.

7. FAILURE TO PAY OPERATING FEES & CHARGES

A. It shall be the duty of the Operator to pay all fees and charges when due. In the event Operator fails to pay fees and charges or billings as required under this provision of the Agreement after the payments become due as described in Article 6 – OPERATING FEES & CHARGES, interest at a maximum legal rate, or 18% per annum, whichever amount is greater shall be assessed until fully paid. The implementation of this provision shall not preclude Airport

from terminating this Agreement for default in the payment of fees and charges, or from enforcing any other provisions contained herein.

B. Failure to remit payment for the trip fees as invoiced, by the 20th day of the month, shall result in the immediate suspension of Operator's Agreement as outlined in Resolution 04-17, Article 7 – Enforcement of Resolution No. 04-17.

8. COMPLIANCE WITH LAWS, RULES AND REGULATIONS

Operator covenants and agrees that it will comply with all Airport, federal, state and local laws, ordinances, and regulations, and further covenants and agrees it will abide by all applicable rules and regulations that are now in effect or hereinafter adopted by the Airport. The Operator shall, at its own expense, obtain and keep in effect all certificates, licenses and permits necessary to conduct said services and pay all fees and taxes applicable to these services.

9. INDEMNITY AND WAIVER OF DAMAGES

A. The Operator shall indemnify, hold harmless and defend the Airport, the City and County of Spokane, their elected and appointed officials, agents, employees and representatives from and against any and all claims and actions, demands, damages, civil penalties, charges, judgments, losses, liabilities of any character or kind and other legal actions and proceeding of whatever nature, including reasonable attorney's fees (including fees to establish the right to indemnification) resulting from, arising out of, related to, or caused by Operator's conduct of business or from any activity or other things done, permitted, or suffered by Operator in, on or about SIA or other act or failure to act, excluding only claims or actions arising out of the sole negligence of the Airport, the City and County of Spokane, their elected and appointed officials, agents and employees, provided that the Airport shall give the Operator prompt and reasonable notice of any such claim or action made or filed against the Airport.

B. Operator hereby agrees to release and hold harmless the Airport, the City and County of Spokane, its elected and appointed officials, agents and employees, from any damages to the Operator caused by noise, vibrations, fumes, dust, fuel particles and all other effects that may be caused by the operation of aircraft landing at or taking off from, or operating at or on SIA; and the Operator does hereby fully waive, remise and release any right or cause of action which it may now have or which it may have in the future against the Airport, its successors and assigns, due to such noise, vibrations, fumes, dust, fuel particles, and all other effects that may be caused or may have been caused by the operation at or on SIA. The above exception shall not limit a cause of action against other persons or entities, including licensees, concessionaires or aircraft operators.

C. Operator further agrees to hold the Airport, the City and County of Spokane, their agents, officials and employees free and harmless for any claims arising out of damage, destruction or loss of any or all of Operator's equipment excluding any claims arising out of the sole negligence of the Airport, the City and County of Spokane, their elected officials, agents and employees.

10. INSURANCE

Operator shall, at its expense, maintain insurance in full force and effect during the term

of this Agreement in such amounts as to meet the minimum limits of liability as outlined below, and insurance shall be placed with companies or underwriters authorized to issue said insurance in the State of Washington and carry a Best's rating no lower than A-. Failure to obtain and maintain such insurance shall constitute a default under this Agreement. The insurance policy(ies) shall be standard comprehensive insurance coverage to cover all operations of the Operator. The policy(ies) shall include, but not by way of limitation, bodily injury; property damage; automobile including owned, non-owned, leased and hired; and contractual coverage, including the obligations pursuant to Article 9 – INDEMNITY AND WAIVER OF DAMAGES, herein. The Airport, the City and County of Spokane, their elected and appointed officials, agents and employees shall be named as additional insureds with respect to Operator's use of SIA which is the subject of this Agreement. The Operator's insurance shall be primary and non-contributory with any insurance maintained by the additional insureds. Operator shall promptly upon execution of this Agreement, furnish to the Airport appropriate certificates of insurance and additional insured endorsements evidencing coverage affected and to be maintained for the term of this Agreement. The coverage shall not be less than One Million Dollars (\$1,000,000), combined single limit with an annual aggregate coverage of Two Million Dollars (\$2,000,000). The automobile liability coverage shall not be less than One Million Dollars (\$1,000,000) for owned, non-owned and hired automobiles. The Operator's insurance policies shall be endorsed so that the insurance carrier will provide the Airport with at least thirty (30) days notification prior to cancellation or material change. Such notice of cancellation or material change shall be mailed to the Airport by certified mail. Where any policy(ies) has (have) normal expirations during the term of this Agreement, written evidence or renewal shall be furnished to the Airport at least thirty (30) days prior to such expiration. Upon written request by the Airport, Operator shall permit the Airport to inspect the originals of all applicable policies. The Operator's insurance identified in this Article 10 shall include a waiver of subrogation in favor of the additional insured. This Article 10 shall be subject to periodic adjustments by the Airport.

11. ASSIGNMENT

Operator shall not assign this Agreement or any interest herein nor subcontract any portion of the services to be rendered hereunder, nor shall this Agreement or any interest thereunder be assignable or transferable by operation of law or by any process or proceeding of any Court or otherwise.

12. AIRPORT'S RIGHTS OF CANCELLATION

In addition to any conditions as specified herein and all other remedies available to the Airport, this Agreement shall be subject to cancellations by the Airport should any one or more of the following occur:

A. If the Operator shall file a voluntary petition in bankruptcy, or proceedings in bankruptcy shall be instituted against the Operator and the Operator is thereafter adjudicated a bankrupt pursuant to such proceedings, or if a court shall take jurisdiction of the Operator and its assets pursuant to proceedings brought under the provisions of any Federal Reorganization or Bankruptcy Act, or if a Receiver for the Operator's assets are appointed, or if the Operator shall be divested of its rights, powers and privileges under this Agreement by other operation of law.

B. If the Operator shall voluntarily abandon or discontinue for thirty (30) consecutive days the conduct and operation of its business at the Airport, except when such abandonment be caused by fire, earthquake, war, strike or other calamity beyond Operator's control.

C. If the Operator or any of the Operator's Driver(s) shall fail to perform, keep and observe any of the applicable covenants and conditions contained in this Agreement or in Resolution No. 04-17, said Operator shall be subject to the provisions of Resolution No. 04-17, Article 7 – Enforcement of the Resolution.

D. Should the Operator or any of the Operator's Driver(s) fail to comply with any of the terms stated in this Agreement or Resolution No. 04-17, the Airport shall have the right to take Administrative action as outlined in Resolution No. 04-17, Article 7 – Enforcement of the Resolution.

E. The failure by Operator or any of Operator's Driver(s) to comply with any condition or requirements of this Agreement shall be grounds for cancellation or suspension of this Agreement.

13. OPERATOR'S RIGHTS OF CANCELLATION

In addition to all other remedies available to the Operator, this Agreement shall be subject to cancellation by Operator should any one or more of the following occur:

A. The permanent abandonment of SIA as an air carrier airport.

B. The issuance of any order, rule or regulation by the Federal Aviation Administration or its successor federal agency, or the issuance by any court of competent jurisdiction of an injunction, materially restricting for a period of at least ninety (90) days, the use of SIA for scheduled air transportation.

C. The breach by the Airport of any covenants, terms or conditions of this Agreement to be kept, performed and observed by the Airport and the failure to remedy such breach for a period of sixty (60) days after written notice from Operator of the existence of such breach.

D. The assumption of the United States Government, or any authorized agency of the same, of the operation, control or use of SIA and its facilities in such a manner as to substantially restrict the Operator from conducting its business, if such restriction be continued for a period of ninety (90) continuous days or more.

14. LEGAL CLAIMS AND ATTORNEY FEES

A. Each party hereto shall promptly report to the other any claim or suit against it arising out of or in connection with the Operator's operation at SIA. The Airport and Operator shall each have the right to compromise and defend the same to the extent of its own interest; provided the defense of the same has not been tendered and accepted by the other party. The Operator is an independent contractor in every respect, and not the agent of the Airport.

B. In the event either party requires the services of an attorney in connection with enforcing the terms of this Agreement or in the event suit is brought for the recovery of any rent, fees or other sum or charges otherwise payable by Operator, this Agreement or the breach of any covenant or condition of this Agreement, or for the restitution of the Premises to the Airport and/or eviction of Operator during the term of this Agreement, or after the expiration thereof, the prevailing party will be entitled to reasonable attorneys' fees, consultants' fees, witness fees and other costs, both at trial and on appeal. For purposes of calculating attorneys' fees, legal services rendered on behalf of the Airport by public attorneys shall be computed at hourly rates charged by attorneys of comparable experience in private practice in Spokane, Washington.

15. FEDERAL NONDISCRIMINATION

A. Operator understands and acknowledges that the Airport has given to the United States of America, acting by and through the FAA, certain assurances with respect to nondiscrimination, which have been required by Title VI of the Civil Rights Act 1964 and by 49 CFR Part 21 as a condition precedent to the Government making grants in aid to the Airport for certain Airport programs and activities, and that Airport is required under those regulations to include in every agreement pursuant to which any person or persons, other than Airport, operates or has the right to operate any facility on SIA providing services to the public, the following covenant, to which Operator agrees:

B. Operator, in its operation at and use of SIA, covenants that:

1. No person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities;

2. In the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination;

3. It shall use the Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation Effectuations of Title VI of the Civil Rights Act of 1964, and as that regulation may be amended; and

4. Operator further agrees promptly to provide the Airport, upon written request by the Airport, such information the Airport is required to obtain from Operator to show compliance with applicable nondiscrimination laws.

16. COMPLIANCE WITH SPONSOR'S AGREEMENT

Operator, in connection with its operations at SIA, covenants and agrees at all times to comply with the requirements of any agreements between the Airport and the United States of America in relation to the operation and maintenance of SIA.

17. SUBMISSION OF AGREEMENT

The submission of this document for examination and negotiation does not constitute an offer to enter into an Agreement by the Airport and Operator. No act or omission of any officer, employee or agent of the Airport shall alter, change or modify any of the provisions hereof.

18. RELATIONSHIP OF THE AIRPORT AND OPERATOR

Nothing contained herein shall be deemed or construed as creating the relationship of principal and agent, partnership, or joint venture partners, and no provision contained in this Agreement nor any acts of Operator and the Airport shall be deemed to create any relationship other than that of Operator and the Airport.

19. SURVIVAL OF INDEMNITIES

All indemnities provided in this Agreement shall survive the expiration or any earlier termination of this Agreement. In any litigation or proceeding within the scope of any indemnity provided in this Agreement, Operator shall, at the Airport's option, defend the Airport at Operator's expense by counsel satisfactory to the Airport.

20. WAIVER

No waiver by either party of any default by the other shall be construed as, or operate as, a waiver of any subsequent default of any of the terms, covenants or conditions herein contained to be performed, kept and observed by said other party.

21. APPLICABLE LAW; VENUE; WAIVER OF TRIAL BY JURY

This Agreement, and the rights and obligations of the parties hereto, shall be construed and enforced in accordance with the laws of the State of Washington. Jurisdiction and venue for any action on or related to the terms of this Agreement shall be exclusively in either the United States District Court for the Eastern District of Washington at Spokane or the Spokane County Superior Court for the State of Washington, and the parties irrevocably consent to the personal jurisdiction of such courts over themselves for the purposes of determining such action and waive any right to assert a claim for inconvenient forum. In any action on or related to the terms of this Agreement, the parties (for themselves and their successors and assigns) hereby waive any right to trial by jury and expressly consent to trial of any such action before the court.

22. ADVERTISING AND SIGNS

A. To the extent that Operator uses any electronic medium for identification and/or advertising which includes any reference to Operator's relationship with SIA, Airport shall have the right to review and approve the same.

B. Operator's vehicles must have appropriate permanent signage identifying the Operator's business.

23. NOTICES

All payments, demands and notices required herein shall be deemed to be properly served if personally delivered, or if sent by overnight courier or certified mail, to the last address furnished by the parties hereto. Until hereafter changed by the parties, in writing, notices shall be addressed as follows:

AIRPORT: Properties & Contracts Director
Spokane Airport
9000 W. Airport Drive, Suite 204
Spokane, WA 99224

OPERATOR: _____

The date of service of such notice shall be upon personal delivery, one (1) day after such notice is deposited with reliable overnight courier or three (3) days after such notice is deposited in a Post Office of the U.S. Post Office Department.

24. PARAGRAPH HEADINGS

Paragraph headings are for convenience and reference only, and are not intended to define or limit the scope of any provisions of this Agreement.

IN TESTIMONY WHEREOF, witness the signature of the parties hereto the day and year first above written.

SPOKANE AIRPORT BOARD:

APPROVED AS TO FORM:

By: Lawrence J. Krauter
Chief Executive Officer
Date: _____

Brian M. Werst
General Counsel
Date: _____

OPERATOR

Title: _____
Date: _____

STATE OF _____)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____
is the person who appeared before me, and said person acknowledged that he/she signed this instrument
and stated that he/she was authorized to execute the instrument and acknowledged it as the
_____ of _____, to be the free
and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

Notary Public
Print Name _____
My commission expires _____

EXHIBIT A

GROUND TRANSPORTATION LICENSING REQUIREMENTS

EXHIBIT B

DESIGNATED DROP-OFF & PICK-UP AREAS

RESOLUTION NO. 04-17