

ACCESS AGREEMENT
Between
Mountain Metro Transit,
Ace Express Coaches, LLC
And
The Colorado Department of Transportation

This Agreement (“Agreement”) is made this ____ day of _____, 20____, between The City of Colorado Springs, a home rule municipality and Colorado municipal corporation, by and through its Transit Division, Mountain Metro Transit (“Local Agency” or “Transit”), Ace Express Coaches, LLC (“Ace Express”) and the STATE of COLORADO acting by and through the Department of Transportation (“State” or “CDOT”). The Local Agency, Ace Express and CDOT may also be referred to herein individually as a “Party” or collectively as the “Parties”.

RECITALS

1. Local Agency owns and operates a transit center at 127 E. Kiowa St., Colorado Springs, CO, 80903 in the City of Colorado Springs, hereafter referred to as “Facility” or “Premises”.
2. CDOT operates the Bustang Service through Ace Express.
3. The lines of the Parties connect at Mountain Metro Transit’s Downtown Transit Center.
4. The purpose of this Agreement is to allow Ace Express limited access to the Downtown Transit Center for the purpose of picking up and discharging Bustang passengers.

TERMS AND CONDITIONS

A. PURPOSE

CDOT and Ace Express wish to have Commercial Vehicle curbside access at a designated location at Local Agency’s transit center located at 127 E. Kiowa St., Colorado Springs, CO, 80903, for the purpose of engaging in transportation of passengers and luggage, and has requested access to Local Agency’s property to accomplish this objective. The Parties have determined the Premises, and more specifically a designated curbside access location at 127 E. Kiowa St., is an appropriate site for this purpose.

B. LICENSE

Subject to all the terms and conditions hereof, Local Agency hereby grants to CDOT and Ace Express a non-exclusive license (“License”) for the right of accessing the Local Agency Facilities and more specifically a designated curbside access location at 127 E. Kiowa St., shown on **Exhibit A**, which is attached hereto and fully incorporated by reference herein, solely for use as a bus pick-up and drop-off location, and for certain other activities incidental thereto, as may be particularly described herein.

1. CDOT and Ace Express are prohibited from constructing any fixtures or improvements on the Local Agency Facilities.
2. This Agreement is subject to all outstanding rights, including any and all existing licenses affecting the Local Agency Facilities, whether recorded or unrecorded, and is subject to Local Agency’s rights to renew and extend the same.

3. CDOT and Ace Express acknowledge that the Local Agency Facilities are located on property that is currently used as a Local Agency transit center. CDOT and Ace Express shall not interfere with Local Agency's use and/or maintenance of the Facility, nor interfere with the public use of the Facility. Local Agency shall retain all other rights in and usage of the Local Agency Facility not inconsistent with the reasonable enjoyment of this License.
4. CDOT and Ace Express shall not permit any lien to be placed on Local Agency property arising from performance of work hereunder, and shall promptly cause any such lien to be removed.
5. The right to use the Local Agency Facility granted hereunder is hereby contracted for and shall be granted with respect to the Local Agency Facilities in its "as is" physical condition without any further warranty, express or implied. This grant is subject to all other prior granted or reserved rights and interests in the Local Agency Facility, if any, whether of record or not.

C. CDOT ACTIVITIES

CDOT Shall notify Local Agency of its requested date when Ace Express would like its service at Local Agency Facility to commence, but such notification shall occur no later than 3 days prior to the date CDOT would like service to commence. Local Agency shall notify CDOT in writing of the date service may commence.

1. Ace Express shall utilize the locations designated in **Exhibit A** as its passenger loading and unloading points. All Bustang buses operated by Ace Express shall access Local Agency Facility in accordance with the directional signage and street markings displayed at Facility.
2. Ace Express shall operate the Bustang Service in accordance with the times of service and number of buses as provided in **Exhibit B**, which is attached and fully incorporated by reference herein.
3. Ace Express drivers shall have access to all common areas of the Premises open to the general public such as waiting areas, restrooms, walk ways, and any other areas required for passenger movements.
4. By written agreement (**Exhibit C**), the Parties may hereunder modify the schedule and access locations, as provided in **Exhibits A and B**, as necessary to effectuate the Agreement.
5. Ace Express drivers shall immediately notify Local Agency dispatch, if applicable, at the number listed in **Exhibit A** if any accident or injury to person is observed on Local Agency property whether or not such accident involves Ace Express vehicles and/or employees or contractors. Ace Express drivers, supervisors and other employees or contractors shall strictly adhere to all instructions communicated by Local Agency Dispatch. CDOT and its employees or Ace Express and its employees agree to cooperate with Local Agency in any investigation into any such event.
6. In its provision of the transportation services related to this Agreement, CDOT shall be solely responsible for compliance with all applicable statutes, laws and regulations, including but not limited to the Americans with Disabilities Act. Other than as specifically provided herein, Local Agency shall not be responsible for any transportation services, including but not limited to compliance with all applicable statutes, laws and regulations.

D. CONDITION OF PREMISES

Local Agency shall maintain Premises in the same condition they were in at the commencement of this Agreement, reasonable wear and tear excepted. The Local Agency shall maintain Premises at their sole expense with no contribution from CDOT.

E. TERM OF AGREEMENT

This Agreement, including the License herein, shall become effective when all Parties have signed and shall continue until terminated by the Parties. Any Party may terminate this Agreement, including the License granted herein, with 180 days' prior written notice.

F. NOTICES

For CDOT:

Mike Timlin

4201 East Arkansas

Denver, CO 80222

303-757-9648

michael.timlin@state.co.us

For Mountain Metro Transit:

Brian Vitulli, Planning Manager

1015 Transit Drive

Colorado Springs, CO 80903

719-385-5439

bvitulli@springsgov.com

For Ace Express Coaches, LLC:

John Montgomery

President & CEO

15150 Preston Road, Ste 300

Dallas, TX 75248

Ph: 972-980-3991

Cell: 469-401-5908

Email: john.montgomery@aaahinc.com

G. STATUS OF PARTIES

The Parties shall be solely responsible for hiring, supervising and discharging of their own employees or contractors. Local Agency shall have no responsibility for, nor authority or control with respect to, the supervision and management of the CDOT Bustang drivers and other employees or contractors who work in connection with the transportation service provided in this Agreement.

The Parties agree that the status of each Party shall be that of any independent contractor to the other, and it is not intended, nor shall it be construed that one Party or any officer, employee, officer, agent or representative of the other Party. Nothing contained in the Agreement or documents incorporated by reference herein or otherwise, creates any partnership, joint venture or other association or relationship between Local Agency, CDOT and Ace Express. Any approval, review, inspection, direction or instruction by Local Agency or any party on behalf of Local Agency shall in no way affect any Party's independent contractor status or obligation to perform in accordance with this Agreement. No Party has authorization, express or implied, to bind the other to any agreements, liability, or understanding except as expressly set forth in this Agreement.

H. INSURANCE

CDOT, through Ace Express, shall procure and maintain for the duration of the agreement titled, Access Agreement, insurance as set forth below against claims, damages, losses, and expenses which may arise from or in connection with the performance of this Agreement. Ace Express will carry all required insurance with CDOT and Mountain Metro as additionally insured.

GENERAL LIABILITY: Commercial General Liability Insurance shall be written on an ISO form CG 00 01 occurrence form or equivalent for hazards of: (a) Operation, (b) Subcontractors and Independent Contractors with minimum limits of \$2,000,000 each occurrence and \$4,000,000 aggregate. The general aggregate coverage limits shall apply per project and shall be evidenced on the Certificate of Insurance. Insurance shall include contractual liability coverage sufficient to meet the requirements of this Agreement (including defense costs and attorney's fees assumed under the contract, which shall be payable in addition to the limit of liability.).

- a. The General Liability policy shall be endorsed to name the State, its agents, officers, directors, officials, employees, volunteers as additional insureds. The coverage shall contain no special limitations on the scope of protection afforded to Additional Insured parties.
- b. Coverage shall be primary and non-contributory as respects to any insurance held by the State. Any insurance or self-insurance maintained by the State shall be excess of that insurance maintained by Ace Express.
- c. The policy shall be endorsed to waive subrogation in favor of Additional Insured parties.

BUSINESS AUTOMOBILE LIABILITY: Commercial Automobile Liability insurance covering all owned, leased and non-owned vehicles used in connection with the Scope with minimum limits of \$5,000,000 Combined Single Limit. Insurance shall include coverage for bodily injury, death and property damage to Lease Vehicles arising out of ownership, maintenance or use of any motorized vehicle and Contractual Liability coverage, and contractual liability coverage sufficient to meet the requirements of this Agreement.

- a. The Commercial Business Automobile policy shall be endorsed to name the State, its agents, officers, directors, officials, employees, volunteers as Loss Payees and Additional Insureds.(CA 20 01 10 13 or its equivalent).
- b. Coverage shall be primary and non-contributory as respects to any insurance held by the State. Any insurance or self-insurance maintained by the State shall be excess of that insurance maintained by Ace Express.
- c. The policy shall be endorsed to waive subrogation in favor of Additional Insured parties.
- d. The policy shall be endorsed to include Motor Carrier Act endorsement-Hazardous Materials Cleanup (MSC-90), if applicable.

WORKERS' COMPENSATION: Worker's Compensation Insurance and Employer's Liability Insurance (including occupational disease) to cover statutory benefits and limits under the Worker's Compensation laws of any applicable jurisdiction in which the Scope is to be performed Employers' Liability Insurance with minimum limits of \$1,000,000 Each Accident, \$1,000,000 Disease Each Employee \$1,000,000 Disease Policy Limit.

- a. Policy shall include a waiver of subrogation in favor of the STATE, its officers, directors, officials, employees, and volunteers.

EXCESS/UMBRELLA LIABILITY: Commercial Umbrella/Excess Liability Insurance for bodily injury and property damage liability must sit over Ace Express' primary Employer's Liability,

Commercial General Liability and Commercial Automobile Liability with minimum limits of \$10,000,000 each occurrence and aggregate.

- a. All coverages and terms required under the Commercial General Liability, Automobile Liability and Employer's Liability must be included on the Excess/Umbrella Liability policy.
- b. Ace Express' Excess/Umbrella Liability Policy shall provide liability coverage, subject to the terms and conditions of the policy, in excess of all available underlying coverage before any primary or excess coverage held by any Additional Insured.

COMMERCIAL CRIME: Ace Express shall provide Commercial Crime coverage in the amount of \$5,000,000 covering employee dishonesty involving money, theft, disappearance, and destruction of money and securities. The Commercial Crime policy must be endorsed to cover Third Party Fidelity. Additionally to ensure payment to the state, the policy should include the State as a Loss Payee.

PRIMACY OF COVERAGE: Coverage required of Ace Express shall be primary over any insurance or self-insurance program carried by the State and Mountain Metro, and does not create or imply any obligation by Mountain Metro to provide insurance or self-insurance for the benefit of the State or Ace Express.

I. NO EFFECT ON SERVICE

Nothing in this Agreement shall be construed to limit Local Agency's right to establish routes or services or perform any functions authorized by C.R.S. § 32-9-101, et seq. Similarly, nothing in this Agreement shall be construed to limit CDOT's right to determine its routes or service. Lastly, nothing herein guarantees any Local Agency Service to CDOT's, Ace Express' or Local Agency's passengers and fare holders.

J. ASSIGNMENT

Other than as specifically provided herein, the Parties agree that they will not assign or transfer any of their rights or obligations under this Agreement, including but not limited to the License granted herein, without first obtaining the written consent of the other Parties.

K. NO THIRD PARTY BENEFICIARY

The Parties expressly agree that enforcement of the terms and conditions of this Agreement, including but not limited to the License granted herein, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreements, including but not limited to subcontractors, subconsultants, and suppliers. The Parties expressly intend that any person other than the Parties who receives funding, services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

L. LEGAL AUTHORITY

Local Agency, Ace Express and CDOT represent or warrant to each other that they have all necessary legal authority to enter into this Agreement and to perform their obligations hereunder and that this Agreement does not conflict with any other agreement that each Party is subject or to which it may be bound. The person signing and executing this Agreement on behalf of each Party

represents that he/she has been fully executing this Agreement and to validly and legally bind a Party to all the terms, performances and provisions herein set forth. The Parties shall have the right, at their option, to either temporarily suspend or permanently terminate this Agreement, if there is a dispute as to the legal authority of a Party or the person signing the Agreement to enter into this Agreement. No Party shall be obligated to perform any of the provisions of this Agreement after it has suspended or terminated this Agreement as provided in this paragraph.

M. AMENDMENTS

This Agreement may be modified or amended only by a written document duly executed by all Parties.

N. PRIOR AMENDMENTS

The terms and provisions of this Agreement, including but not limited to the Recitals above, the Exhibits incorporated by reference herein, and the License granted herein, represent the entire understanding of the Parties with respect to the subject matter of this Agreement, and merge, incorporate and supersede all prior communications between CDOT and Local Agency concerning that subject. No representations or warranties are made by CDOT or Local Agency except as herein set forth.

O. CONFLICT OF INTEREST

No officer, member, or employee of any Party and no members of a governing body, and no other public official or employee of the governing body of the locality or localities included within Local Agency, during his or her tenure or for one year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

P. WAIVER AND BREACH

The waiver of any breach of a term hereof shall not be construed as a waiver of any other term, or the same term upon subsequent breach.

Q. GOVERNING LAW

Each and every term, provision and condition of this Agreement is subject to the provision of Colorado law. This Agreement is subject to such modifications as may be required by changes in Colorado or federal law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this Agreement on the effective date of such change as if fully set forth herein.

R. SEVERABILITY

The Parties expressly agree that if any part, term, or provision of this Agreement is by the courts held to be illegal or in conflict with any state or federal law, rule, or regulation, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

SIGNATURE PAGES (A.-C.)

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

* Persons signing for The Local Agency hereby swear and affirm that they are authorized to act on The Local Agency's behalf and acknowledge that the State is relying on their representations to that effect.

A.

<p style="text-align: center;">THE LOCAL AGENCY Mountain Metro</p> <p>Print: _____</p> <p>Title: _____</p> <p>_____</p> <p style="text-align: center;">*Signature</p> <p>Date: _____</p>	<p style="text-align: center;">THE LOCAL AGENCY Mountain Metro 2nd Signature if Required</p> <p>Print: _____</p> <p>Title: _____</p> <p>_____</p> <p style="text-align: center;">*Signature</p> <p>Date: _____</p>
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B.

<p style="text-align: center;">Ace Express Coaches, LLC</p> <p>Print: _____</p> <p>Title: _____</p> <p>_____</p> <p style="text-align: center;">*Signature</p> <p>Date: _____</p>	<p style="text-align: center;">Ace Express Coaches, LLC 2nd Signature if Required</p> <p>Print: _____</p> <p>Title: _____</p> <p>_____</p> <p style="text-align: center;">*Signature</p> <p>Date: _____</p>
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C.

<p style="text-align: center;">STATE OF COLORADO John W. Hickenlooper, GOVERNOR Colorado Department of Transportation Shailen P. Bhatt, Executive Director</p> <hr/> <p>By: Joshua Laipply, P.E., Chief Engineer</p> <p>Date: _____</p>	<p style="text-align: center;">LEGAL REVIEW Cynthia H. Coffman, Attorney General</p> <p>By: _____ Signature - Assistant Attorney General</p> <p>Date: _____</p>
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Exhibit A - MAP

**Mountain Metro Transit, Downtown Transit Center –
127 E. Kiowa St., Colorado Springs, CO 80903
Dispatch #: 719-385-7401**

Aerial View



Ground View



Exhibit B - SCHEDULE

SOUTH LINE - ORANGE		NORTHBOUND					
South Line operates Monday - Friday except major holidays							
	501	503	505	507	509	531	533
TEJON PnR	5:00 AM	5:20 AM	5:45 AM	6:00 AM	6:15 AM	10:30 AM	3:00 PM
DOWNTOWN (MMT) TERMINAL						10:40 AM	3:10 PM
WOODMEN PnR	5:15 AM	5:35 AM	6:00 AM	6:15 AM	6:30 AM	10:55 AM	3:25 PM
MONUMENT PnR	5:30 AM	5:50 AM	6:15 AM	6:30 AM	6:45 AM	11:10 AM	3:40 PM
COLORADO STATION (RTD LRT)	6:20 AM	6:40 AM	7:05 AM	7:20 AM	7:35 AM	11:55 AM	4:25 PM
CIVIC CENTER Colfax & Lincoln	6:55 AM	7:15 AM	7:40 AM	7:55 AM	8:10 AM		
18TH & STOUT Light Rail	7:00 AM	7:20 AM	7:45 AM	8:00 AM	8:15 AM		
Denver Union Station Arrive	7:10 AM	7:30 AM	7:55 AM	8:10 AM	8:25 AM	12:10 PM	4:40 PM
Denver Union Station Depart	7:15 AM	7:35 AM	8:00 AM	8:15 AM	8:30 AM	12:15 PM	4:45 PM
DENVER BUS CENTER	7:20 AM	7:40 AM	8:05 AM	8:20 AM	8:35 AM	12:20 PM	4:50 PM

SOUTH LINE - ORANGE		SOUTHBOUND					
	530	532	500	502	504	506	508
DENVER BUS CENTER	7:45 AM	1:00 PM	3:50 PM	4:05 PM	4:45 PM	5:35 PM	6:15 PM
Denver Union Station Arrive	7:50 AM	1:05 PM	3:55 PM	4:10 PM	4:50 PM	5:40 PM	6:20 PM
Denver Union Station Depart	7:55 AM	1:10 PM	4:00 PM	4:15 PM	4:55 PM	5:45 PM	6:25 PM
17TH & CALIFORNIA Light Rail			4:05 PM	4:20 PM	5:00 PM	5:50 PM	6:30 PM
CIVIC CENTER Colfax & Broadway			4:15 PM	4:30 PM	5:10 PM	6:00 PM	6:40 PM
COLORADO STATION RTD LRT	8:10 AM	1:25 PM	4:40 PM	4:55 PM	5:35 PM	6:25 PM	7:05 PM
MONUMENT PnR	8:55 AM	2:10 PM	5:30 PM	5:45 PM	6:25 PM	7:15 PM	7:55 PM
WOODMEN PnR	9:10 AM	2:25 PM	5:45 PM	6:00 PM	6:40 PM	7:30 PM	8:10 PM
DOWNTOWN TERMINAL	9:20 AM	2:35 PM					
TEJON PnR	9:25 AM	2:40 PM	6:00 PM	6:15 PM	6:55 PM	7:45 PM	8:25 PM

No Passengers will be handled where entire trip is within El Paso County and within the Denver RTD District

Exhibit C – SAMPLE CHANGE LETTER

[Date]

[Local Agency Name]
[Local Agency Contact]
[Local Agency Address]

Change Letter #:

Project #:

Original Routing # and Current Routing #:

Subject: To notify of change to Bustang Bus Schedule at [Park and Ride Name or Transit Station Name]

Dear Ms./Mr. _____

This is with regard to the contract signed between [Local Agency Name] and Evergreen Trails Inc. dba Ace Express Coaches, LLC (“Ace Express”) and the State of Colorado acting by and through the Colorado Department of Transportation (“CDOT”) executed on [date of execution] with regard to the Bustang Bus Service Access to Local Agency’s [Park and Ride Name or Transit Station Name].

In accordance with Section C. 4 of the original Access Agreement, CDOT and Ace Express are modifying the Bustang bus schedule as shown in the attached schedule.

The modified schedule is effective on [Date] and will remain in effect for the Term of the Access Agreement or until modified by a future Change Letter. Should [Local Agency Name] disagree with the schedule changes provided by CDOT and Ace Express, [Local Agency] should contact the CDOT contact listed under Section 4, Notices, within 10 days of the date of this Change Letter.

Thank you,

DTR Director