

THIRD AMENDATORY AGREEMENT

THIS **THIRD AMENDATORY AGREEMENT**, is entered into as of the date indicated on the signature page below by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (“**the City**”), Party of the First Part, and **DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION (“TSA”)**, Party of the Second Part;

WITNESSETH:

WHEREAS, the parties entered into an Agreement dated March 26, 2012, which Agreement was subsequently amended by a First Amendment to the Agreement dated April 16, 2013, and a Second Amendment to the Agreement dated September 16, 2013, (the “Existing Agreement”) for the cost sharing of design, engineering, and construction related services to consolidate and upgrade the Checked Baggage Resolution Areas (CBRAs) located at Denver International Airport; and

WHEREAS, the parties now desire to amend the Existing Agreement to modify certain terms thereof; and

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

The purpose of Modification P00005 to Agreement HSTS04-12-H-CT1014 is to modify the following articles:

As a result of this modification, the following changes hereby take place:

(1) The project is hereby retitled “Consolidated Checked Baggage Resolution Area Project” from “Planning Guidelines and Design Services Upgrade Project” to accurately capture the project scope.

(2) ARTICLE III – PURPOSE AND SCOPE

Article III “Purpose and Scope” is deleted in its entirety and replaced with the following:

The purpose of this Agreement is to set forth the terms and conditions, as well as establish the respective cost-sharing obligations of the TSA and the CITY with respect to the design, engineering and construction-related services to consolidate nine (9) Checked Baggage Resolution Areas (CBRAs) of Denver International Airport’s (Project) Checked Baggage Inspection System (CBIS) to two (2) CBRAs. The Project will adhere to the latest standards, as outlined in the Planning Guidelines and Design Standards (PGDS) v5. A Request for Variance (RFV) shall be requested to waive any requirements. The CBRA’s being consolidated are MOD 1 East, MOD 1 West, MOD 2 East, MOD 2 West, MOD 2 West Oversize, MOD 3 East, MOD 3 East Oversize, MOD 3 West, and the FIS.

This Project undertaken by the CITY involves the modification to or construction of the Airport Terminal building infrastructure to consolidate the nine (9) CBRAs. Terminal modifications include required changes to baggage conveyor components, mechanical, plumbing, electrical, structural, architectural, furnishings, and telecommunications infrastructure to provide for the installation of applicable CBIS/CBRA hardware and software. The objective of the Project is to enhance Airport security and baggage screening capabilities and efficiencies.

(3) ARTICLE IV – COST SHARING AND OTHER RESPONSIBILITIES

Article IV “Cost Sharing and Other Responsibilities” is hereby deleted in its entirety and replaced with the following:

1. Capital Costs: The estimated cost of the Project (Total Project Cost) relates to the activities to modify the airport terminal building infrastructure and the baggage handling system (BHS) to support the installation and operation of the EDS and ETD equipment necessary to consolidate the nine (9) CBRAs into two (2) CBRAs. It does not include the costs of acquisition, delivery or installation of the EDS and ETD equipment itself. TSA will be solely responsible for the acquisition, delivery, installation, and testing of the EDS and ETD equipment, as well as associated peripherals at the designated Project location(s). All work performed by the CITY pursuant to this Agreement shall be accomplished in accordance with the TSA PGDS v. 5.0.
2. The cost of the security-related portion of the Project has been determined to be \$49,249,646.00 (CBIS Project Costs). TSA agrees to reimburse the CITY for (100%) of the allowable, allocable and reasonable CBIS Project Costs, for the design and construction of this project, not to exceed a total reimbursement of \$49,249,646.00 (TSA Reimbursement Limit).
3. TSA will determine allowable and allocable costs in accordance with the OMB Circular A-87 “Cost Principles for State, Local and Indian Tribal Governments” codified at 2 C.F.R. Part 225 (together with Appendices A – D). TSA will reimburse the CITY on an actual expense basis supported by one or more invoices submitted by the CITY in accordance with Article X “Payment.” The parties understand and agree that all Project costs in excess of the TSA Reimbursement Limit of \$49,249,646.00, as well as any costs that are inconsistent with OMB A-87 and the guidance set forth in the Electronic Baggage Screening Program TSA Funding of Checked Baggage Inspection System Project Costs (Version 2.0) Memo, which discusses TSA Funding of CBIS Project Costs, shall be borne solely by the CITY unless otherwise agreed by the TSA in a written modification in accordance with this Article (IV) and Article XIII “Changes and/or Modifications.” Should the TSA reimbursements of \$49,249,646.00, as adjusted pursuant to Article XIII, represent more than 100% percent of the final allowable and allocable, and reasonable CBIS Project Costs, the CITY will refund TSA sufficient funds such that TSA’s total reimbursement will equal no more than 100% of the final allowable, allocable and reasonable CBIS Project Costs.
4. All costs requested for reimbursement must satisfy the requirements of OMB Circular A-87. In general, the costs for which TSA will provide reimbursement

under this Agreement are limited to those costs associated with the deliverables in Appendices A and D as defined in TSA's PGDS. The Electronic Baggage Screening Program TSA Funding of Checked Baggage Inspection System Project Costs Memo (Version 2.0) provides guidance regarding costs that are and are not reimbursable for TSA CBIS Projects.

Identification of cost classifications herein does not create any obligation on TSA's part beyond the requirements found in OMB Circular A-87 and TSA's PGDS Version 5.0.

5. Change Orders are defined as work that is added to or removed post OTA award that consequentially adds cost or changes the scope of the OTA. Change orders shall not be considered authorization to exceed TSA's Reimbursement Limit. Any changes to the authorized amount shall be submitted by the CITY to the TSA Contracting Officer's Representative (COR) and TSA Contracting Officer (CO) prior to any work starting. Once the COR and CO have been given advance notice of the impact the Change Order has on the total cost of the Project, if agreed to by TSA, the TSA CO will provide written approval to the CITY via a modification to the OTA in accordance with Article XIV. The fully executed modification will provide the CITY authority to proceed with the work identified in the Change Order. TSA will not reimburse the CITY for any cost incurred for change order work that was not pre-approved by TSA. Note: Change Orders for cost increases related to inaccurate as-built design specifications and/or issues that existed and clearly visible, but not considered in the design plans or construction bids will not be considered an allowable cost.
6. Change Requests are defined as requests for the utilization of contingency funds that do not add costs or changes to the scope of the OTA. Change requests shall not be considered authorization to exceed TSA's Reimbursement Limit. Any change requests shall be submitted by the CITY to the TSA COR prior to any work starting. Once the COR has been given advance notice of the impact the change request has on the Project, if agreed to by TSA, the TSA COR will provide written approval to the CITY to proceed with the work identified in the Change Request. TSA will not reimburse the CITY for any cost incurred for change request work that was not pre-approved by TSA.

(4) ARTICLE V – PROJECT RESPONSIBILITIES

- (a) The following statements are updated as follows to correct Appendix references:
 - i. The reference to "Appendix A" in the first paragraph is replaced with "Appendix B" as follows:

The primary Project responsibilities of the TSA and the CITY are outlined below. In addition to primary Project Responsibilities, specific technical responsibilities for the two parties are contained in Appendix B, "TSA Acceptance Test Requirements", attached hereto and incorporated by reference into this Agreement. The Project will be overseen by the CITY, except for those portions of the Project that are TSA's sole responsibility as set forth in this Agreement.

A. TSA Responsibilities

- ii. Statement 6 under "TSA Responsibilities" is hereby replaced as follows:

6. Provide the CBIS System Specific Test Plan (SSTP) to the Airport following an EDS machine commissioning, coordination and test planning meeting. See Appendix B for further specifics relating to the TSA testing portion of the Project.

B. CITY/AIRPORT Responsibilities

iii. The following statements under “CITY/Airport Responsibilities” are hereby replaced as follows:

1. Except for the responsibilities of the TSA, as outlined above, the CBIS Project will be managed and overseen by the CITY. The CITY, acting through such contractors as it may engage, will provide the engineering and design services, as well as the associated construction and baggage handling system contractors, necessary for successful completion of the Project. The CITY will provide oversight of such contractor(s) to ensure the Project conforms to the TSA endorsed design and is completed within the prescribed costs and schedule identified and incorporated herein as Appendix C.

10. Submit monthly milestone and project progress status reports by the 10th of each month to the TSA Regional Deployment Manager (RDM), TSA Site Lead Contractor and TSA Contracting Officer. Specific requirements for the content of the monthly project status report are identified in Appendices A and D.

12e. Provide TSA and their Contractors full and complete most recent documentation of the project to include “approved for Construction” sets of the mechanical, electrical and controls drawings and control descriptions.

D. Deliverables

iv. “Deliverables” is hereby replaced with the following:

Specific testing related deliverables are outlined in Appendix B. Appendices A and D identify other required deliverables to be submitted by the CITY and/or Airport.

(b) Statements #14 through 17 under Section B “CITY / Airport Responsibilities” are hereby updated / incorporated as follows:

14. The Airport owns the design for the consolidated CBRAs, and will be responsible for making sure that each one, including all of its sub components, work and are fully functioning under this OTA.

15. TSA requires 180 days to plan for the procurement, manufacture and deployment of EDS. Therefore, the **CITY** must communicate this 180 day timeframe to Construction Managers upon construction contract award to be built into the project schedule.

16. The **CITY** shall ensure all shall ensure that all connections between the EDS equipment, the baggage handling system, or any other connection of the CBIS meet the requirements of the EDS OEM integration guide and the TSA cabling guidelines as given in the PGDS. The CITY or its authorized representative shall coordinate all activities involving such connections directly with the EDS OEM. If questions or concerns about the data connection or any of the relevant requirements arise, the CITY shall communicate the issue/concern with the TSA COR and CO.
17. The **CITY** is responsible for complying with all *DHS 4300A Sensitive Systems Handbook*, Version 9.1 requirements. This includes, but is not limited to:
 - a) Ensuring EDS network equipment is kept separate from other airport stakeholder IT equipment, in a temperature and humidity controlled, access controlled locked cabinet with a sign-in and out sheet housed inside.
 - b) Having controls in place to deter, detect, restrict, and regulate access to sensitive areas in order to safeguard equipment from possible loss, theft, destruction, damage, hazardous conditions, fire, malicious actions, and natural disasters.
 - c) Ensuring smoke/fire detectors are in place with an adequate fire suppression system in place.

(5) ARTICLE VI – EFFECTIVE DATE AND TERM

The period of performance end date is hereby revised from September 30, 2017 to June 30, 2018 unless earlier terminated by the parties pursuant to Article XV – *Termination* or extended by mutual agreement of the parties pursuant to Article XIII – *Changes and/or Modifications*.

The City and County of Denver, Denver International Airport is advised that the \$14,922,730.00 in Fiscal Year (FY) 2012 appropriations obligated against the OTA will cancel on September 30, 2017 per 31 U.S.C § 1552(a), and as such, will not be available to pay for expenditures invoiced after this date. Extension of the period of performance does not negate the City and County of Denver's responsibility for timely invoice submission by July 1, 2017 to ensure successful payment processing before the funds are cancelled on September 30, 2017.

No year Capital Funds in the amount of \$34,326,916.00 obligated against the OTA in support of the project at DEN will remain available for the life of the OTA.

(6) ARTICLE VII – ACCEPTANCE AND TESTING

The first paragraph is replaced with the following to correct Appendix references:

TSA will deem the CBIS-related portion of the Project complete upon successful results of the TSA iSAT (Integrated Site Acceptance Test) as conducted by the TSA

independent Acceptance Test Contractor and successful completion of the 30-day Operational Run-In period. TSA iSAT will evaluate the CBIS against the TSA PGDS per the SSTP developed with the Airport as defined in Appendix B 1.3 Acceptance Testing.

(7) ARTICLE VIII – AUTHORIZED REPRESENTATIVE

“B. CITY Points of Contact” is replaced with the following:

The CITY’s Point of Contact for all correspondence is:

David Mashburn
Director of Facility Services
8500 Pena Boulevard
Denver, CO 80249-6340

Phone: (303) 342-2610
Email: David.Mashburn@flydenver.com

(8) ARTICLE IX – FUNDING AND LIMITATIONS

Article IX “Funding and Limitations” is hereby replaced in its entirety with the following:

TSA will provide funding to the CITY in an amount not to exceed \$49,249,646.00 (TSA Reimbursement Limit). Funds in the amount of \$49,249,646.00 are hereby obligated and made available for payment for performance of this Agreement. Expenses incurred in executing the work identified herein are chargeable to:

PR: 2112202CT1014 **Amount:** \$14,922,730.00
Accounting Line: 5AV112B010D2012SWE044GE013723006200622CTO-5903001406040000/251B/TSA DIRECT/DEF. TASK

PR: 2113203CT1182 **Amount:** \$34,326,916.00
Accounting Line: 5CF11XB010D2013SWE044GE013723006200622CTO-5903001406040000-251B-TSA DIRECT-DEF. TASK-D

Total Funding Amount: \$49,249,646.00

In the event of termination or expiration of this Agreement, any TSA funds that have not been spent or incurred for allowable expenses prior to the date of termination and are not reasonably necessary to cover allowable and allocable costs as of the date of termination will be returned and/or de-obligated from this Agreement. TSA’s liability to make payments to the CITY is limited to the funds obligated and available for payment hereunder, including written modifications to this Agreement.

Under no circumstances will TSA be responsible to reimburse the RDAA for profit or the general costs of government. The CITY may recover the allowable direct costs of CITY personnel performing work necessary under this Agreement, as well as the allowable and allocable costs of the contractors hired by the CITY to perform the

necessary work under this Agreement. Profit and overhead costs for the CITY's contractors performing work on the Project are allowable costs. Submission of a cost allocation plan is required to address any indirect costs, to include CITY employees, who work on multiple activities that will result in a request for reimbursement under this Agreement. TSA will not be responsible for costs incurred by the CITY, its contractors or agents to perform work not in compliance with the TSA requirements in this Agreement. The TSA CO has the right to recoup any payments made to the CITY if the TSA CO determines that the invoices exceed the actual costs incurred, or if the work substantially deviates from the TSA approved CBIS design requirements for the Project pursuant to this Agreement.

A. Untimely Invoice:

This Project is funded fully or in part using time-limited congressional appropriations. Under fiscal law, five years after appropriated funds expire, they are automatically cancelled and are not available for obligation or expenditure for any purpose. See 31 U.S.C. § 1552(a). In furtherance of timely closeout and as a result of the time required to review an invoice and process payment, any invoice submitted for any reason after July 1, 2017 or six months after the period of performance end date (whichever is earlier) will be considered untimely and TSA cannot guarantee payment. The CITY may be liable for any expenses incurred as a result of an untimely or improperly submitted invoice. TSA reserves the right to reject untimely or improperly submitted invoices.

B. Reimbursement Limit:

The City and County of Denver, for and in consideration of the period of performance extension and scope change, expressly waives its ability to seek additional reimbursement from the Government for the OTA project beyond the \$49,249,646.00 obligated under the OTA.

C. Final Invoice: Assignment and Release of Claims:

The CITY shall execute and deliver, at the time of and as a condition precedent to final payment under this OTA, a release discharging the Government, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under the OTA. The release of claims includes all claims, past, present, and future, known and unknown, foreseen and unforeseen, which can be asserted by any person or persons, other than claims for property loss or damage, personal injury, or wrongful death cognizable under the Federal Tort Claims Act, 28 U.S.C. §§ 1342(b)(1), 1402(b), 2401(b), 2671-2680.

As such, the CITY's final invoice requesting release/payment of retainage withheld throughout the project shall state the following:

"The City and County of Denver, for and in consideration of the funding provided under OTA HSTS04-12-H-CT1014, does hereby remise, release and forever discharge Government, its officers, agents, and employees from any and all manner of actions, causes of action, rights, suits, covenants, contracts, claims, agreements, judgments and demands whatsoever by request, in law, or in equity arising from and by reason of any and all known and unknown, foreseen and

unforeseen circumstances, claims or injuries and the consequences thereof, other than claims for property loss or damage, personal injury, or wrongful death cognizable under the Federal Tort Claims Act, 28 U.S.C. §§ 1342(b)(1), 1402(b), 2401(b), 2671-2680. Such claims must be asserted within the time limits and in accordance with the procedures prescribed by the Federal Tort Claims Act and the implementing regulations promulgated by the U.S. Department of Justice at 28 C.F.R. part 14. The City and County of Denver expressly waives its ability to seek additional reimbursement from the Government under OTA HSTS04-12-H-CT1015.”

(9) ARTICLE XVII – PROTECTION OF INFORMATION

The following statement is replaced in its entirety to correct PGDS references:

A. RELEASE OF TECHNICAL DATA

No Sensitive Security Information (SSI), as defined in 49 CFR Parts 15 and 1520, concerning the scope of this Agreement, shall be published or released to the public without prior written approval of the TSA Assistant Secretary or his or her designee.

(10) APPENDIX B – PROJECT AND ACCEPTANCE TESTING REQUIREMENTS

The following sections are updated as follows to remove erroneous PGDS references:

(a) 1.3.2. SITE Specific Test Plan Development (SSTP)

The first sentence is hereby updated as follows:

FROM: TSA has arranged for its Acceptance Test Contractor to develop a SSTP based on testing criteria outlined in the TSA PGDS Appendix D.

TO: TSA has arranged for its Acceptance Test Contractor to develop a Site Specific Test Plan based on testing criteria outlined in the TSA CBIS Planning Guidelines and Design Standards (Appendix C).

(b) 2.0 DESIGN

The first sentence is hereby updated as follows:

FROM: The CITY will undertake design of a baggage screening system in accordance with the TSA PGDS to meet the needs of the Airport and TSA FSD. The CITY shall submit all applicable design requirements to the TSA RDC for review and as further defined in Chapter 2 of PGDS Version 4.1.

TO: The CITY will undertake design of a baggage screening system in accordance with the TSA PGDS to meet the needs of the Airport and TSA FSD. The CITY shall submit all applicable design requirements to the TSA RDC for review.

(c) 2.5.2. Test Readiness Report

The first sentence of “Functional Testing Documentation...” is hereby updated as follows:

FROM: Functional Testing Documentation: Testing authentication must be clearly reported and show every test with bag ID and declared status on printed EDS FDRS (Field Data Reports) and on the printed Critical Tracking PEC Report (as required in in PGDS Section 7.2.14) resulting bag destination.

TO: Functional Testing Documentation: Testing authentication must be clearly reported and show every test with bag ID and declared status on printed EDS FDRS (Field Data Reports) and on the printed Critical Tracking PEC Report (as required in in the PGDS) resulting bag destination.

(d) 2.5.6 Operational Run-In

The sentence beginning “Once a week during the Run-In Period...” is hereby updated as follows:

FROM: Once a week during the Run-In period, the Airport or their authorized representatives shall forward electronic versions of all CBIS Reports required by PGDS Chapter 7, Section 7.2.14 to the TSA Acceptance Testing Contractor.

TO: Once a week during the Run-In period, the Airport or their authorized representatives shall forward electronic versions of all CBIS Reports required by the PGDS to the TSA Acceptance Testing Contractor.

(11) APPENDIX D – SCHEDULE OF CONSTRUCTION DELIVERABLES

The following item is updated as follows to correct the PGDS reference:

FROM:

Item	Submitted To:	Frequency or Due Date
Design: pre-design, schematic, 30%, 100% to include detailed construction cost estimate	TSA Regional Deployment Coordinator	In accordance with the TSA PGDS, version.4.1

TO:

Item	Submitted To:	Frequency or Due Date
100% to include detailed construction cost estimate	TSA Regional Deployment Coordinator	In accordance with the TSA PGDS, version 5.0

(12) All other terms and conditions are in full force and effect and remain unchanged.

(13) This Third Amendatory Agreement shall not be effective or binding on the City until fully executed by all signatories of the City and County of Denver.

(SIGNATURE PAGES FOLLOW)

Contract Control Number:

By: _____

Name: _____
(please print)

Title: _____
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



Contract Control Number:

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____

By _____

By _____

