

AGREEMENT

THIS AGREEMENT (“Agreement”) is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a home rule city organized and existing pursuant to Article XX of the Colorado Constitution (the “City”), and **UNITED AIRLINES, Inc.**, a Delaware corporation, whose address is 233 South Wacker Drive, Chicago, IL 60606 (“United Airlines”) (the “Contractor”) (together, the “Parties”).

RECITALS

WHEREAS, there is a public purpose for retaining and growing companies and their associated economic activity within the City, including stimulating economic development and the retaining of jobs within the City;

WHEREAS, incentives are often necessary in order to retain and grow private enterprises to further this public purpose;

WHEREAS, United Airlines is willing to maintain and expand its flight training facility within the City partly due to the availability of certain incentives provided by the City, as further described in this Agreement;

WHEREAS, this Agreement, and the refurbishment and retention of the flight training center within the City will advance the valid and valuable public purpose set forth above by generating tax revenues and by the creation and maintenance of job opportunities, as a result of the incentives described herein; and

WHEREAS, for these reasons, in consideration of the mutual covenants herein contained, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

TERMS AND CONDITIONS

1. **CONDITIONS.** This Agreement and the City’s obligations hereunder are conditioned upon the following:

A. Contractor shall operate its flight training center facility at 7401 Martin King Boulevard within the City, and such facility shall be refurbished and either (a) company owned or (b) leased, for a term of not less than ten (10) years (the “Facility”).

B. Contractor shall spend no less than Forty Million Dollars and no Cents

(\$40,000,000) to refurbish the facility.

C. Contractor shall use its commercially reasonable efforts to make entry-level and other positions at the Facility available to residents of the City, by submitting to the City's Office of Economic Development pertinent job availability information on each job opening at the Facility during the term of this Agreement. Notwithstanding anything to the contrary, the City acknowledges that Contractor has certain hiring obligations at the Facility under its collective bargaining agreements and specifically agrees that Contractor may comply with such obligations.

2. **INCENTIVE PAYMENTS/MECHANISM.** Subject to the terms hereof, the City agrees to make incentive payments to Contractor payable as follows:

A. Refurbishment and Expansion of the Facility (\$4,000,000.00). The City shall pay to the Contractor the amount of One Hundred Forty-Three Thousand Dollars (\$143,000.00) for each Flight Training Simulator (FTS Device) used in service, up to a maximum of 28, within the Facility during the term of the Agreement. For the avoidance of doubt, such 28 FTS Devices may include FTS Devices that were already in use in the Facility prior to this Agreement, provided they otherwise meet the conditions below for an incentive payment in this Agreement. This payment shall be made upon receipt by the City's Office of Economic Development ("OED") of an invoice for payment ("Invoice"). Each Invoice shall include evidence that the following three conditions have been met: (1) use at the Facility of an FTS Device, with the corresponding Federal Aviation Administration (FAA) Identification number for each such FTS Device, (2) completion of the refurbishment of the Facility where such FTS Devices are used in service ("Refurbished Space"), and (3) evidence of the number of both retained and new full time permanent employees, at a corresponding rate of at least twenty (20) employees per FTS Device employed by Contractor for positions at the Facility. The City shall determine the number of retained and new employees employed at the Facility by considering the number of employees employed by Contractor within the Facility on the most recent month prior to the invoice date as evidenced by the corresponding Occupational Privilege Tax ("OPT") records and associated administrative records for identification of employees assigned to the Facility. The City will consider the number of additional employees hired and employed by Contractor during subsequent periods by determining the increase in the number of employees from those employed at the Facility as documented in the previous verified

invoice period compared to the most recent month prior to the invoice date as evidenced by corresponding OPT records and associated administrative records for identification of employees assigned to the Facility. To illustrate as an example: if, on June 30 of 2016, the number of FTS Devices used in service in Refurbished Space is increased by ten (10) from the prior verified invoice period (for a total then of 20 FTS Devices) and the total number of employees at the Facility is 425; the incentive payment for that period would be \$1,430,000; earned through the placement in service of ten (10) additional FTS Devices in the Refurbished Space of the Facility with an associated employment of at least 200 retained and new employment, compared to the prior verified invoice period. As additional FTS Devices are placed in service in the Refurbished Space of the Facility and Contractor meets the minimum employment requirement of twenty (20) or more employees per FTS Device, the City will make additional incentive payments up to the total amount of this Agreement. The City's incentive payments to Contractor for FTS Devices placed in service in the Refurbished Space and associated minimum employment requirements in the Facility for each FTS Device shall not exceed Four Million (\$4,000,000.00) over the term of this Agreement. Such payments shall be made pursuant to paragraph 2.B below.

B. Invoice Petition. To receive an incentive payment hereunder, Contractor shall invoice jointly the Executive Director of OED and the City Treasurer.

1. The invoice for payment shall include the FTS Devices used in service in the Refurbished Space, with appropriate minimum associated employment levels met for each FTS Device. Invoice for payment shall also contain (a) FAA certification and approval for use of each FTS Device requested for incentive payment, (b) reasonable documentation showing the refurbishment of the Facility, and (c) Contractor's certification and supporting OPT documentation evidencing the number of employees located at the Facility as of the most recent month of the year for which Contractor is petitioning for payment as described in paragraph 2.A above, based upon Contractor's documentation for the corresponding period, and Contractor's satisfaction of the requirements contained in Paragraph 1 above. Contractor shall be entitled to invoice quarterly for its incentive payments hereunder beginning on December 31, 2015, and each quarter in each year thereafter through June 30, 2024. Contractor shall use its commercially reasonable efforts to submit its invoice for its incentive payment on or before the 15th day of February, May, August, or November for the previous quarter of each year of the term.

2. Contractor shall supply additional information the City requests

that is reasonably related and necessary for the City to substantiate Contractor's invoice for incentive payments. The City may withhold an incentive payment if the City reasonably determines that Contractor's supporting documentation for such incentive payment is not substantiated. Such determination shall be provided to Contractor in writing and shall be appealable to the Executive Director of OED or his or her successor. Contractor may, if it chooses, correct any deficiencies in its supporting documentation and/or provide new supporting documentation for its incentive payment as part of such appeal.

3. Upon receipt of documentation satisfying the requirements in Paragraphs 2.B.1 and 2.B.2 of this Agreement, the City shall verify Contractor's petition and issue proper incentive payment within the City's Prompt Payment Rules and Regulations as outlined in Denver Revised Municipal Code Sections 20-107 et seq.

3. **PRIOR APPROPRIATION.** The obligation of the City for payment(s) hereunder is limited to funds annually appropriated for this and similar agreements by the City Council and paid into a special revenue fund restricted to making incentive payments to private, taxpaying entities selected for such payments by the City. This Agreement shall not be construed to constitute a multiple year fiscal obligation of the City under Section 20, Article X of the Colorado Constitution. Further, the City's maximum obligation hereunder for the entire term of the Agreement shall not exceed [Four Million Dollars (\$4,000,000.00)].

4. **EXAMINATION OF RECORDS.**

A. Contractor agrees that any duly authorized representative of the City shall, until the expiration of three (3) years after the termination of this Agreement, have access to and the right to examine, during normal business hours and following reasonable notice by the City, books, documents, papers and records of Contractor that are directly relevant to verify Contractor's qualification for incentive payments hereunder.

B. Contractor agrees that the City's Office of Economic Development and Department of Finance (or successor agencies) shall have access to and the right to examine Contractor's City tax records (the "Tax Records") filed for the period beginning five (5) years prior to the execution of this Agreement and ending five (5) years after the termination or expiration of this Agreement. Tax Records shall include sales/use tax, property (real and business personal property), occupational privilege tax, and other City tax information reasonably necessary to provide data for the City to use to develop aggregated reports of

performance outcomes and assess the effectiveness of the City's Business Incentive Program (or its successor program). No identifying data and analysis shall be publicly available.

5. **TERM.** The term of this Agreement shall be from July 1, 2015 to June 30, 2024; provided, however, that this Agreement shall automatically terminate when the City's payment(s) hereunder equal the amounts set forth in Paragraphs 2.A above.

6. **ASSIGNMENT AND SUBCONTRACTING.** The City is not obligated or liable under this Agreement to any party other than Contractor. Contractor shall not assign or subcontract with respect to any of its rights, benefits, obligations or duties under this Agreement except upon prior written consent and approval of the City, which shall not be unreasonably withheld.

7. **WHEN RIGHTS AND REMEDIES NOT WAIVED.** In no event shall any action by the City or Contractor hereunder constitute or be construed to be a waiver by the City or Contractor of any breach of covenant or default which may then exist, and the non-breaching party's action or inaction when any such breach or default shall exist shall not impair or prejudice any right or remedy available with respect to such breach or default; and no assent, expressed or implied, to any breach of any one or more covenants, provisions or conditions of the Agreement shall be deemed or taken to be a waiver of any other breach.

8. **NO DISCRIMINATION IN EMPLOYMENT.** In connection with the performance of work under this Agreement, Contractor agrees not to refuse to hire, to discharge, to promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability.

9. **AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS.** This Agreement is intended as the complete integration of all understandings between the Parties. No prior, contemporaneous or subsequent addition, deletion, or other amendment hereto shall have any force or effect, unless embodied herein in writing, and executed in the same manner as this Agreement.

10. **CONFLICT OF INTEREST.** The Parties agree that no employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein and Contractor further agrees not to hire or contract for services any employee or officer of the City which would be in violation of the Denver Revised Municipal Code Chapter 2,

Article IV, Code of Ethics, or Denver City Charter provisions 1.2.9 or 1.2.12.

11. **CONSTRUCTION.** This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado, and the Charter and Revised Municipal Code of the City, and the ordinances, regulations and Executive Orders enacted and/or promulgated pursuant thereto. The Charter and Revised Municipal Code of the City, as the same may be amended from time to time, are hereby expressly incorporated into this Agreement as if fully set out herein by this reference. Venue for any legal action relating to this Agreement shall lie in a state or federal court located in the City.

12. **LEGAL AUTHORITY.**

A. Contractor represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement.

B. The person or persons signing and executing this Agreement on behalf of each Party do hereby represent and warrant that he/she has, or they have been fully authorized by Contractor or the City respectively, to execute this Agreement on behalf of such Party and to validly and legally bind such Party to all the terms, performances and provisions herein set forth.

C. The City shall have the right, at its option, to temporarily suspend or permanently terminate this Agreement, if the legal authority of either Contractor or the person signing the Agreement on Contractor's behalf is not sufficient to enter into this Agreement. The City shall not be obligated to Contractor for any performance of the provisions of this Agreement in the event that the City has suspended or terminated this Agreement as provided in this Section.

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

14. **ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS.** Contractor consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the

manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

15. **COMPLIANCE WITH ALL LAWS**. Contractor shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes of the United States, the State of Colorado; and with the applicable Charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver.

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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 _____



Contract Control Number: OEDEV-201524354-00

Contractor Name: United Airlines, Inc.

By: 

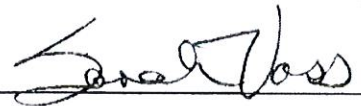
Gavin Molloy

Name: _____
(please print)

Vice President
Corporate Real Estate

Title: _____
(please print)

ATTEST: [if required]

By: 

Name: Sarah Voss
(please print)

Title: Assoc - Lease Administration
(please print)

