

AGREEMENT FOR OPERATIONAL INCENTIVES (“AGREEMENT”)

THIS AGREEMENT is made and entered as of the date indicated on the City’s signature page below, by and between the **CITY AND COUNTY OF DENVER** (the “City”) and **AIR CANADA**, a certified air carrier with its principal place of business in Dorval, Canada (the “Airline”).

W I T N E S S E T H

WHEREAS, the City owns and operates Denver International Airport (“DEN”); and

WHEREAS, the Airline will initiate new regular passenger service between Montreal, Canada, and Denver, Colorado on or about June 4, 2016; and

WHEREAS, DEN assesses operational fees for the Airline’s use of DEN, payable to the Denver Municipal Airport System Enterprise Fund (the “Airport Revenue Fund”); and

WHEREAS, a factor in Airline’s decision to initiate new passenger service is an offer by DEN of promotional benefits to any air carrier initiating qualified scheduled passenger service between September 1, 2015 and August 31, 2016, consistent with the terms and conditions of the City’s Air Service Incentive Program, attached hereto as *Exhibit A*;

NOW THEREFORE, in consideration of the mutual agreements herein contained, and subject to the terms and conditions herein stated, the parties agree as follows:

1. INCENTIVE/INCENTIVE PAYMENT MECHANISM:

A. Credits. For the purposes of this Agreement, the parties expressly agree that the term “Airline” includes aircraft movements at DEN by the Airline as well as by its subsidiaries, affiliates and aircraft operators with whom the Airline has a capacity purchase agreement covering the aircraft movements at DEN and that all such aircraft operators shall be construed as the Airline hereunder. If the Airline establishes and continues for at least two years new passenger service between Montreal, Canada and Denver, Colorado, beginning on or about June 4, 2016 (but, in any event, prior to August 31, 2016), the City

will provide credit from airport revenues against the fees Airline would owe to the Airport Revenue Fund for Landing Fees, FIS Fees, and Gate-Use Fees. The total maximum credit amount is set forth in Section 2 below. The current published schedule is one departure per day, seven days per week.

B. Accounting for Credits. The credits will be accounted for in the City's Airport Revenue Fund. The credit is calculated based upon number of enplaned passengers, with a refund of \$25 per enplanement up to the Maximum Contract Amount (defined below). Such refunds per enplanement will be recorded on the reporting form attached hereto as *Exhibit B* ("Program Passenger Tracking Template"). If the service is discontinued before two consecutive years have elapsed then the credits will be terminated in accordance with Section 4 below.

2. MAXIMUM CONTRACT AMOUNT: The total amount of the fee incentive offered to Airline shall not exceed **One Million Five Hundred Thousand United States Dollars and No Cents (US\$1,500,000.00)**.

3. TERM: The term of the Agreement shall begin on the date of commencement of service on or about June 4, 2016, and shall expire twenty-four (24) months thereafter. The incentive credits shall be accounted for and reconciled in accordance with DEN rate-making procedures outlined in Part VI of the Airport Use and Lease Agreement.

4. TERMINATION: The Airline may adjust its frequency of service during the term of this Agreement. However, the Airline shall not decrease the frequency of service to less than fifty percent (50%) of the initial amount of published service, the calculation of which will be averaged over the course of a year. If the Airline does not provide non-stop service between Montreal and Denver at a minimum of fifty percent (50%) of the frequency set forth in Paragraph 1A, above, for a period of twenty-four (24) consecutive months immediately following the commencement of service, then the incentives shall terminate and all operational fees which would have been due and owing to the City without the application of the credits shall be payable to the City's Airport Revenue Fund within 30 days of the discontinued or reduced service.

5. **STATUS OF AIRLINE:** The Airline acknowledges and agrees that it has executed an Airport Use and Lease Agreement (the “Existing Agreement”) at least 60 days before the commencement of service and that the Airline has become a Signatory Airline as defined in DEN’s Rules and Regulations. This Agreement is expressly subject to all of the terms and conditions set forth in the Existing Agreement. It is further understood and agreed that the status of Airline shall be that of an independent contractor, and it is not intended, nor shall it be construed, that the Airline or its employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code or for any purpose whatsoever.

6. **NOTICES:** Notices concerning termination of this Agreement, notices of alleged or actual violations of the terms of this Agreement, and other notices of similar importance shall be made as follows:

by Airline to: Chief Executive Officer
Denver International Airport
8500 Peña Boulevard, 9th Floor
Denver, Colorado 80249-6340
Facsimile: 303-342-2215

And by City to: Air Canada
Manager, Airport Relations and Charges
YUL 1232
7373 Boulevard de la Cote-Vertu Ouest
Saint-Laurent, Quebec H4S 1A3 Canada
Facsimile: 514-422-7798

With a copy to:

Senior Vice-President and Chief Legal
Officer
Facsimile: 514-422-4147

Said notices shall be delivered personally during normal business hours to the appropriate office above or by prepaid certified mail, return receipt requested [or by facsimile at the numbers set out above]. Mailed notices shall be deemed effective upon deposit with the U.S. or Canadian

Postal Service. Either party may from time to time designate substitute addresses or persons where and to whom such notices are to be mailed or delivered, but such substitutions shall not be effective until actual receipt of written notification thereof. Non-legal notices (such as day-to-day operational notices) may be sent via e-mail.

7. **ASSIGNMENT AND SUBCONTRACTING:** The City is not obligated or liable under this Agreement to any party other than the Airline named herein. The Airline 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.

8. **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 Airline, 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 the Airline that any person other than the City or Airline receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

9. **AIRLINE'S INSURANCE:** The Airline agrees to insure its operations in accordance with the terms of an Airport Use and Lease Agreement with the City, to be executed on or before flight operations begin.

10. **EXAMINATION OF RECORDS:** The Airline agrees that the Manager and the Auditor of the City or any of their duly authorized representatives, until the expiration of three (3) years after the final credit has been accounted for under this Agreement, shall have access to and the right to examine the books, documents, papers and records of Airline pertinent to this Agreement. The Airline, upon the written request by either, shall make all such books and records available for examination and copying in Denver.

11. WHEN RIGHTS AND REMEDIES NOT WAIVED: In no event shall any action by the City hereunder constitute or be construed to be a waiver by the City of any breach of covenant or default which may then exist on the part of Airline, and the City's action or inaction when any such breach or default exists shall not impair or prejudice any right or remedy available to the City; 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.

12. 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 County of Denver, and the ordinances, regulations, and Executive Orders enacted and/or promulgated pursuant thereto. Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver, Colorado.

13. NO DISCRIMINATION IN EMPLOYMENT: In connection with the performance of work under this Agreement, Airline agrees not to refuse to hire, discharge, 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; and the Airline further agrees that its Code of Conduct includes provisions substantively similar to those set out in this Section and that adherence to this Code of Conduct is a contractual requirement for doing business with Airline.

13. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS: This Agreement is intended as the complete integration of all understandings between the parties as regards the amount of the Airline's credit against operational fees and the City's method of crediting. 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.

14. LEGAL AUTHORITY:

A. Airline assures and guarantees 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 Airline do hereby warrant and guarantee that he/she or they have been fully authorized by Airline to execute this Agreement on behalf of Airline and to validly and legally bind Airline to all the terms, performances and provisions herein set forth.

C. The City shall have the right, at its option to either temporarily suspend or permanently terminate this Agreement, if there is a dispute as to the legal authority of either Airline or the person signing the Agreement to enter into this Agreement. The City shall not be obligated to Airline 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.

15. ELECTRONIC SIGNATURES-COUNTERPARTS OF THIS AGREEMENT: This Agreement may be executed by the use of electronic signatures, and in counterparts, each of which shall be deemed to be an original of this Agreement.

[END OF AGREEMENT; SIGNATURE PAGES AND EXHIBITS FOLLOW]

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: PLANE-201525901-00

Contractor Name: AIR CANADA



By: _____

Name: Amos Kazzaz
(please print) Senior Vice President
Financial Planning & Analysis

Title: _____
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



EXHIBIT A

Air Service Incentive Program

Goal: To increase nonstop air service and passenger traffic at Denver International Airport, and to sustain this service over the long-term.

- Promotional benefits offered to any air carrier initiating qualifying scheduled passenger service between Sept. 1, 2015, and Aug. 31, 2016 (one year period)
- A carrier is eligible for a maximum of two incentivized markets during the aforementioned period

Promotional Period

- The Promotional Period is defined as the first consecutive 24 months immediately following the initiation of eligible new service

Qualifying Criteria

- Carriers must offer daily nonstop scheduled passenger service from Denver International Airport to the eligible market; if service is less than five times weekly, the marketing incentive benefit will be prorated accordingly
- The carrier must provide the service for 24 consecutive months; seasonal service is also eligible; if service is seasonal the marketing incentive benefit will be prorated accordingly
- Charter operations, including operators under Parts 121, 135 and 380, are not eligible
- All conditions for receiving the benefits will be documented in a contract between the City and County of Denver and the qualifying carrier which will be subject to approval by the appropriate officials at the City and County of Denver
- If the carrier does not operate the scheduled passenger service at Denver International Airport for a period of 24 consecutive months immediately following the initiation of the route then all amounts paid by the City and County of Denver for marketing activities shall be refunded to the City and County of Denver, and all refunds credited to the carrier shall be refunded to the City and County of Denver

Promotional Incentive

The Promotional Incentive includes an operational incentive and a marketing incentive.

Operational Incentive:

- Operational incentives are administered through fee waivers
- Operational incentive available to carriers:
 - o Refund per enplaned passenger (see attached table)

Marketing Incentive:

- The marketing incentive is administered by the City & County of Denver, Department of Aviation

- The Department of Aviation Project Manager will develop a marketing plan that is approved by the carrier
- The marketing plan will promote public and industry awareness of the new services offered by the carrier at Denver International Airport
- The Department of Aviation Project Manager is responsible for executing the marketing plan in cooperation with the carrier

Eligible Markets

Domestic

- Unserved domestic markets are eligible (unserved as of Sept. 1, 2015)
- Domestic markets that are unserved but had nonstop service within the one year prior to a carrier announcing new service are not eligible
- A new domestic carrier (new entrant) can receive a marketing incentive even if the service they are providing is to a domestic market that is currently served nonstop from Denver; note that the new carrier incentive, if it is to a market that is currently served, is only eligible for an incentive for a period of one year
- A new domestic carrier is not eligible for an incentive if the market(s) served are not deemed eligible markets, as described above

International

- All international markets are eligible including currently served markets; note that currently served international markets are only eligible for an incentive for a period of one year
- The carrier adding new service must not have operated service to the market (or a market within 100 miles) over the preceding 12-month period

Minimum Service Level

- The carrier may adjust its frequency of service during the term of the agreement; however, the carrier shall not decrease the frequency of service to less than fifty percent (50%) of the initial amount of published service, the calculation of which will be averaged over the course of a year

EXHIBIT B

Air Canada

Air Service - Incentive Program
 Denver International Airport
 June 2016 to June 2018



Refund Per Enplanement							
Period	Year	Month	Route	Enplanements	Refund	Amount	Remaining Credit
							\$ 1,500,000.00
1	2016	June	YUL-DEN		\$ 25.00	\$ -	1,500,000.00
2	2016	July	YUL-DEN		25.00	-	1,500,000.00
3	2016	August	YUL-DEN		25.00	-	1,500,000.00
4	2016	September	YUL-DEN		25.00	-	1,500,000.00
5	2016	October	YUL-DEN		25.00	-	1,500,000.00
6	2016	November	YUL-DEN		25.00	-	1,500,000.00
7	2016	December	YUL-DEN		25.00	-	1,500,000.00
8	2017	January	YUL-DEN		25.00	-	1,500,000.00
9	2017	February	YUL-DEN		25.00	-	1,500,000.00
10	2017	March	YUL-DEN		25.00	-	1,500,000.00
11	2017	April	YUL-DEN		25.00	-	1,500,000.00
12	2017	May	YUL-DEN		25.00	-	1,500,000.00
13	2017	June	YUL-DEN		25.00	-	1,500,000.00
14	2017	July	YUL-DEN		25.00	-	1,500,000.00
15	2017	August	YUL-DEN		25.00	-	1,500,000.00
16	2017	September	YUL-DEN		25.00	-	1,500,000.00
17	2017	October	YUL-DEN		25.00	-	1,500,000.00
18	2017	November	YUL-DEN		25.00	-	1,500,000.00
19	2017	December	YUL-DEN		25.00	-	1,500,000.00
20	2018	January	YUL-DEN		25.00	-	1,500,000.00
21	2018	February	YUL-DEN		25.00	-	1,500,000.00
22	2018	March	YUL-DEN		25.00	-	1,500,000.00
23	2018	April	YUL-DEN		25.00	-	1,500,000.00
24	2018	May	YUL-DEN		25.00	-	1,500,000.00
25	2018	June	YUL-DEN		25.00	-	1,500,000.00
Total					\$ 25.00	\$ -	\$ 1,500,000.00