

AIRPORT BAGGAGE SYSTEM LICENSE AGREEMENT

Between

CITY AND COUNTY OF DENVER

and

AEROVIAS de MEXICO, S.A. dba AEROMEXICO

at

DENVER INTERNATIONAL AIRPORT



93

## TABLE OF CONTENTS

<b>PART I</b> .....	<b>1</b>
<b>DEFINITIONS</b> .....	<b>1</b>
1.01 "AFFILIATED AIRLINE" .....	1
1.02 "AIRLINE BAGGAGE SUBCOMMITTEE" .....	1
1.03 "AIRPORT USE AND LEASE AGREEMENT" .....	1
1.04 "BAGGAGE SYSTEM" OR "BAGGAGE SYSTEM FACILITIES" .....	2
1.05 "BAGGAGE SYSTEM COST CENTERS" .....	2
1.06 "CONTRACTING AIRLINE" .....	2
1.07 "DESTINATION PASSENGER" .....	2
1.08 "FISCAL YEAR" .....	2
1.09 "GENERAL BOND ORDINANCE" .....	2
1.10 "MANAGER" .....	2
1.11 "NON-CONTRACTING USER" .....	3
1.12 "OPERATION AND MAINTENANCE COSTS" .....	3
1.13 "OPERATOR" .....	3
1.14 "ORIGINATING PASSENGER" .....	3
1.15 "SIGNATORY AIRLINE" .....	3
<b>PART II</b> .....	<b>3</b>
<b>BAGGAGE SYSTEM FACILITIES</b> .....	<b>3</b>
2.01 BAGGAGE SYSTEM LICENSE AND RIGHT OF USE .....	3
2.02 COMMON RIGHT OF USE AND ACCESS .....	4
2.03 CONDITIONS OF USE .....	4
2.04 RESERVATION OF RIGHTS .....	4
2.05 EFFICIENCY-IN-USE AND REASSIGNMENTS .....	5
2.06 PAYMENT OF RATES, FEES AND CHARGES FOR THE USE OF THE BAGGAGE SYSTEM .....	5
<b>PART III</b> .....	<b>6</b>
<b>CONTRACTING AIRLINES AND NON-CONTRACTING USERS</b> .....	<b>6</b>
3.01 AIRLINE AND CONTRACTING AIRLINE .....	6
3.02 NON-CONTRACTING USERS .....	6
3.03 ASSIGNMENTS AND GROUNDHANDLING ARRANGEMENTS .....	6
<b>PART IV</b> .....	<b>6</b>
<b>OPERATION, MAINTENANCE, REPAIRS, AND IMPROVEMENTS</b> .....	<b>6</b>
4.01 OPERATOR AGREEMENT .....	6
4.02 MAINTENANCE OF BAGGAGE SYSTEM FACILITIES .....	7
4.03 ALTERATIONS, REPAIRS, AND IMPROVEMENTS .....	8
4.04 RIGHT TO ENTER AND MAKE REPAIRS .....	8
4.05 ABANDONMENT OF BAGGAGE SYSTEM LICENSE AREA .....	8
4.06 DESTRUCTION OF PREMISES .....	8
<b>PART V</b> .....	<b>9</b>
<b>GENERAL PROVISIONS</b> .....	<b>9</b>
5.01 AGREEMENTS WITH THE UNITED STATES .....	9
5.02 BOND ORDINANCES .....	9
5.03 LAWS, REGULATIONS, AND AGREEMENTS TO BE OBSERVED .....	9
<b>PART VI</b> .....	<b>10</b>
<b>RATE-MAKING PROCEDURES AND REESTABLISHMENT</b> .....	<b>10</b>
6.01 GENERAL PROVISIONS .....	10
6.02 PROJECTION OF RENTALS, RATES, FEES AND CHARGES .....	11
6.03 FINAL AUDIT .....	11
<b>PART VII</b> .....	<b>11</b>
<b>TERM OF THE AGREEMENT</b> .....	<b>11</b>
7.01 TERM OF AGREEMENT .....	11
7.02 TERMINATION OF LICENSE BY CITY .....	11
7.03 TERMINATION OF LICENSE BY AIRLINE .....	12
7.04 EFFECTIVE DATE OF TERMINATION .....	13
7.05 HOLDING OVER .....	14
7.06 TERMINATION OF HOLDOVER .....	14



93

PART VIII.....	14
PERFORMANCE BOND, INDEMNIFICATION AND INSURANCE.....	14
8.01 PERFORMANCE BOND.....	14
8.02 INDEMNIFICATION.....	15
8.03 INSURANCE MAINTAINED BY AIRLINE.....	16
8.04 LIENS.....	16
8.05 LOSS OR DAMAGE TO PROPERTY.....	17
8.06 FORCE MAJEURE.....	17
8.07 INSURANCE MAINTAINED BY THE CITY.....	17
PART IX.....	19
INCONVENIENCE DURING CONSTRUCTION.....	19
9.01 INCONVENIENCE DURING CONSTRUCTION.....	19
PART X.....	20
MISCELLANEOUS PROVISIONS.....	20
10.01 LICENSE BINDING.....	20
10.02 PARAGRAPH HEADINGS AND INDEX.....	20
10.03 SIGNS.....	20
10.04 NON-DISCRIMINATION.....	20
10.05 NO PERSONAL LIABILITY.....	20
10.06 NOTICES.....	20
10.07 PLACE AND MANNER OF PAYMENTS.....	20
10.08 SEVERABILITY.....	21
10.09 SECURITY.....	21
10.10 WAIVERS.....	21
10.11 AIRLINE BOOKS AND RECORDS.....	22
10.12 CITY BOOKS AND RECORDS.....	22
10.13 CITY SMOKING POLICY.....	22
10.14 USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS.....	22
10.15 THIRD PARTIES.....	22
10.16 SUPPLEMENTAL INFORMATION TO BE SUPPLIED BY AIRLINE.....	23
10.17 CITY NON-DISCRIMINATION.....	23
10.18 DISPUTES.....	23
10.19 AMENDMENTS TO EXHIBITS AND APPENDICES.....	23
10.20 ENTIRE AGREEMENT; AMENDMENT.....	23
10.21 CONDITION, FINAL APPROVAL.....	24

Appendix 1 - Standard Federal Assurances and Nondiscrimination

Appendix 2 - Disadvantaged Business Enterprises - Required Statements

Exhibit A - Baggage System

Exhibit B - Baggage System Cost Centers and Allocation Methodology for Operation and Maintenance Costs



9B

## BAGGAGE SYSTEM LICENSE AGREEMENT

THIS BAGGAGE SYSTEM LICENSE AGREEMENT (the "Agreement"), made and entered into as of the date indicated on the City's signature page, 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 Aerovias de Mexico, S.A., dba AEROMEXICO., a corporation organized and existing under and by virtue of the laws of Mexico, and authorized to do business in the State of Colorado, hereinafter referred to as (the "AIRLINE"), Party of the Second Part;

### WITNESSETH:

WHEREAS, the City owns and operates Denver International Airport (the "Airport") and has the power to grant rights and privileges with respect thereto, as hereinafter provided; and

WHEREAS, the Airline is engaged in the business of transporting persons, property, cargo and mail, or one or more thereof, by aircraft; and

WHEREAS, the parties desire to enter into this Agreement for the use of certain Baggage System Facilities at the Airport all as more fully hereinafter set forth;

NOW THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, the City and the Airline do hereby mutually undertake, promise and agree, each for itself and its successors, as follows:

### PART I DEFINITIONS

#### 1.01 "AFFILIATED AIRLINE"

(i) any wholly owned-subsiidiary Airline or majority-owned Airline, or (ii) any regional Airline operating under the name of the AIRLINE or under the name of AIRLINE'S wholly owned subsidiary, or (iii) any Airline flying under its own livery; and in any of the three abovementioned situations is (i) also not selling any seats in its own name and all seats are being sold in the name of the Signatory Airline that the Airline is under contract to and (ii) only if such Airline has been designated in writing by AIRLINE as an "Affiliated Airline" of AIRLINE.

#### 1.02 "AIRLINE BAGGAGE SUBCOMMITTEE"

The Airline Baggage Subcommittee of the Denver Airlines-Airport Affairs Committee or any successor entity established by the Contracting Airlines in place of such Subcommittee for the purpose of coordinating common use of and establishing cost allocation matters relating to the Baggage System.

#### 1.03 "AIRPORT USE AND LEASE AGREEMENT"

That primary agreement between the City and Airline governing the use and occupancy of the airfield area, demised premises, and preferential use and joint use areas of the Airport. In the event any provision of this Agreement conflicts with a provision of the Airport Use and



98

Lease Agreement such that it is impossible to give effect to both, the Airport Use and Lease Agreement shall control.

**1.04 "BAGGAGE SYSTEM" OR "BAGGAGE SYSTEM FACILITIES"**

Collectively, all structures, improvements, equipment, belts, carts, walkways, impact protection, EDS modules, carousels, parts inventories, spare parts, tools, hardware and software, and other components of the baggage systems in the Terminal for processing, screening, and delivering checked baggage, as illustrated on the attached Exhibit A.

**1.05 "BAGGAGE SYSTEM COST CENTERS"**

Those costs and expenses of the Baggage System which are grouped together for the purpose of accounting for operation and maintenance costs and allocating and billing such costs to users of the Baggage System. The cost centers and allocation methodology are illustrated in Exhibit B of this agreement.

**1.06 "CONTRACTING AIRLINE"**

A Signatory Airline that is also party to a Baggage System License Agreement ("Agreement").

**1.07 "DESTINATION PASSENGER"**

A passenger whose air travel terminates at the Airport or a passenger making a connection from an international flight with baggage that must be processed through the Baggage System.

**1.08 "FISCAL YEAR"**

January 1 through December 31.

**1.09 "GENERAL BOND ORDINANCE"**

The 1984 Airport System General Bond Ordinance approved by the City Council of the City and County of Denver on November 29, 1984, Ord. 626, Series of 1984, as supplemented or succeeded.

**1.10 "MANAGER"**

The Manager of the City's Department of Aviation or the Manager's successor in function having jurisdiction over the management, operation and control of the Airport. "Manager's authorized representative" or words of similar import shall mean the officer or employee of the City designated in writing by the Manager as the Manager's authorized representative, until notice otherwise is thereafter given to the Airline.



98

**1.11 "NON-CONTRACTING USER"**

An airline which has access to or use of the Baggage System but is a Non-Signatory Airline or an Itinerant as defined in Airport Rules and Regulations, or is a Signatory Airline which has failed or refused to sign this Agreement within 60 days of receipt as provided for in Section 3.01.

**1.12 "OPERATION AND MAINTENANCE COSTS"**

Those costs incurred by the City and the Operator, and chargeable to and paid by the Contracting Airlines and Non-Contracting Users, associated with the management, operation, maintenance, repair (emergency or otherwise) of the Baggage System at the Airport, including costs of providing labor, equipment, spare parts and materials in connection herewith, but excluding space rental charges and capital costs, modification and improvements of equipment and space provided by the City and subject to allocation under the Airport Use and Lease Agreements.

**1.13 "OPERATOR"**

The company selected by the City or the Airline Baggage Subcommittee, or both, to operate and maintain the Baggage System on behalf of the Airlines.

**1.14 "ORIGINATING PASSENGER"**

A passenger whose air travel originates from the Airport.

**1.15 "SIGNATORY AIRLINE"**

At any time, the Airline and any other airline meeting the definition of Signatory Airline as specified in the Rules and Regulations of the Denver Municipal Airport System.

**PART II  
BAGGAGE SYSTEM FACILITIES**

**2.01 BAGGAGE SYSTEM LICENSE AND RIGHT OF USE**

The City hereby agrees to make available for Airline's use the Baggage System Facilities as illustrated on the attached Exhibit A, and hereby grants to Airline a nonexclusive license to use those portions of the Baggage System Facilities reasonably required for the purpose of loading and unloading baggage, screening bags, and accessing the Baggage System for activities reasonably necessary or convenient in connection with the foregoing. Such license and right of use is conditioned upon and subject to Airline complying with all terms and conditions of this Agreement. The Airline is not granted any leasehold or other property interest by this Agreement. The Airline shall have the right to perform its own baggage handling services or to have such services performed by another Contracting Airline or a handling company, (provided



9B

such person is a person authorized by the Manager and the Airline Baggage Subcommittee to perform baggage services at the Airport).

## 2.02 COMMON RIGHT OF USE AND ACCESS

The Airline's right of use shall be in common with all other Contracting Airlines, Non-Contracting Users, or others authorized by the City to do so, and is conditioned upon the payment of Baggage System rates, fees, and charges and upon compliance with reasonable and nondiscriminatory terms and conditions upon which the Baggage System is made available for such use, and in accordance with Airport Rules and Regulations.

The Airline's use of and access to the Baggage System shall be conducted so as not to interfere with the safe and efficient operation of the Baggage System by the Operator or the Transportation Security Administration.

Airline agrees not to prevent or interfere with the exercise of any right of use or obligation of the City, the Transportation Security Administration, other Contracting Airlines, Non-Contracting Users, or the Operator as provided for in this Agreement, the Airport Use and Lease Agreement, or the Operator Agreement.

## 2.03 CONDITIONS OF USE

Airline shall use the Baggage System in accordance with all reasonable and nondiscriminatory Airport Rules and Regulations and in accordance with any applicable reasonable standards of care, procedures, or rules established by the Airline Baggage Subcommittee. The City will provide not less than 30 days' notice to Airline when any rule or regulation affecting Airline's use of the Baggage System is proposed, and will post rules and regulations when final.

Airline's use of the Baggage System is conditioned on timely payment of Baggage System fees, rates, and charges in accordance with this Agreement.

Airline shall use and shall cause its officers, employees, agents, and contractors to use a commercially reasonable degree of care when using the Baggage System and shall follow all reasonable safety and security rules and instructions set forth herein or established by the City, the Transportation Security Administration, the Operator or the Airline Baggage Subcommittee.

## 2.04 RESERVATION OF RIGHTS

It is expressly agreed and understood that the foregoing right of use is not a property right and shall not be assigned, subleased or otherwise alienated or hypothecated in any manner whatsoever by the Airline; except that, in the case of a merger of Airline with another airline or the acquisition of substantially all of Airline's assets by another airline, Airline's right of use shall be transferable to the surviving airline.

The Airline acknowledges and agrees that the Baggage System shall be managed, operated, and maintained for the benefit of the air carriers by the Operator. The Airline's use of



96

and access to the Baggage System shall be conducted so as not to interfere with the safe and efficient operation of the Baggage System by the Operator.

The City may from time to time make alterations to, or reconstruct, or modify the Baggage System installations or design or any portion or portions of them, either temporarily or permanently, provided that reasonably equivalent Baggage System Facilities are made available to the Airline.

#### 2.05 EFFICIENCY-IN-USE AND REASSIGNMENTS

The Airline agrees that its use of the Baggage System is in common with others and agrees to allow any other incoming or incumbent airline the opportunity to share use of its assigned portions of the Baggage System. The City retains the right to allow other airlines the use of the Baggage System.

After consultation with the Airline Baggage Subcommittee, in order to maximize the highest and best use of the City's Baggage System Facilities, the Manager may at his or her sole discretion, relocate and reassign the Airline's use of any Baggage System assigned areas upon 30 days' advance written notice.

The City reserves the right to immediately reassign Baggage System assigned areas as may be necessary in case of emergency, by reason of accident and repairs, security issues, or other happenings beyond the control of the City.

The City will reasonably allocate the costs related to any such relocations and/or reassignments after consultation with the Airline Baggage Subcommittee.

Should the Airline refuse another airline the opportunity to use the Baggage System or any portions thereof, the Manager, the Airline Baggage Subcommittee, or both, may review the Airline's usage, and should the Manager or the Airline Baggage Subcommittee reasonably determine the Airline unreasonably refused usage by such other airline, the Manager may immediately require the Airline to permit the incoming or incumbent airline to use the Baggage System.

#### 2.06 PAYMENT OF RATES, FEES AND CHARGES FOR THE USE OF THE BAGGAGE SYSTEM

The fees and charges for the operation and maintenance of the Baggage System shall be as established from time to time in accordance with this Agreement. Fees and charges for the Baggage System shall be paid in twelve (12) equal monthly installments, and shall be due and payable, in advance, without notice on or before the first day of the then current month.



9B



**PART III  
CONTRACTING AIRLINES AND NON-CONTRACTING USERS**

**3.01 AIRLINE AND CONTRACTING AIRLINE**

Any airline planning to use the Baggage System shall be entitled to become a Contracting Airline if the airline meets the following conditions:

- (i) The airline is a Signatory Airline,
- (ii) The airline has provided to the City its estimated annual Originating and Destination Passenger numbers, and
- (iii) The airline has executed this Agreement within 60 days of receipt of a signature copy in the format approved by the City and the Airline Baggage Subcommittee.

The date on which the Airline and any other Signatory Airline shall be deemed to be a Contracting Airline for purposes of signatory rates in Exhibit B shall be on the date the Airline became a Signatory Airline under its current Airport Use and Lease Agreement, provided the Airline has executed this Agreement within 60 days of receipt of a signature copy in the format approved by the City and the Airline Baggage Subcommittee. ("the Grace Period"). A Signatory Airline which executes this Agreement after the Grace Period shall be entitled to the signatory rates in Exhibit B effective on the date of execution of this Agreement indicated on the City's signature page.

**3.02 NON-CONTRACTING USERS**

Non-contracting Users of the Baggage System will be charged at a 25% premium over the signatory rate charged to Contracting Airlines.

**3.03 ASSIGNMENTS AND GROUNDHANDLING ARRANGEMENTS**

The Airline may assign or otherwise transfer its rights to use the Baggage System only to a handling company (including an airline) that has been approved by the Manager and the Airline Baggage Subcommittee to provide baggage services for the Airline. An airline's status as a handling company shall not relieve the Airline from its obligations under this Agreement.

**PART IV  
OPERATION, MAINTENANCE, REPAIRS, AND IMPROVEMENTS**

**4.01 OPERATOR AGREEMENT.**

The City, on behalf of and in coordination with the Airline Baggage Subcommittee, has entered into an Operation and Maintenance Services Agreement providing for the operation, maintenance, and management of the Baggage System Facilities. The City may extend the



93

Operator Agreement as necessary, or replace the Operator Agreement from time to time through a competitive selection process, with the participation of the Airline Baggage Subcommittee in the selection of the Operator.

The Operator Agreement shall set forth the Operator's responsibilities with respect to the Baggage System, and shall include the following duties and responsibilities of the Operator:

- (a) the obligation to operate the Baggage System and to pay all costs incurred in connection therewith;
- (b) the obligation to keep complete and accurate records of the use of the Baggage System, prepare and submit management reports recording the performance of the Baggage System, and report costs to the City and the Airline Baggage Subcommittee in a timely manner and in a form approved by the City and the Airline Baggage Subcommittee in order that the costs may be fairly allocated among the airlines in accordance with the methodology set forth in Exhibit B or any other reasonable allocation methodology that may be proposed by the Airline Baggage Subcommittee;
- (c) the obligation to maintain and manage the Baggage System in good, safe, and sanitary operation condition and repair and in accordance with approved operation and maintenance manuals and applicable laws and regulations governing the Baggage System and the Airport promulgated by the City or the Transportation Security Administration;
- (d) At the request of the City, provide summaries of all interruptions to normal services with an explanation of the cause and duration of any such interruptions, in an approved format and frequency within the limitations of the Baggage System software;
- (e) the obligation to maintain a parts inventory and provide inventory control and performance reporting, and
- (f) the obligation to provide indemnification and maintain insurance policies in the manner and kind required by the City.

#### 4.02 MAINTENANCE OF BAGGAGE SYSTEM FACILITIES

(A) The Operator shall provide services and maintenance of the Baggage System and Baggage System Facilities as indicated in the Operator Agreement, and the Airline shall pay its pro rata share of such costs pursuant to Exhibit B and the provisions of this Agreement.

(B) The Airline agrees that it will at all times keep those portions of the Baggage System that it uses in a neat, clean, safe and orderly condition, in compliance with the requirements of 42 U.S.C. § 12101 *et seq.*, 49 U.S.C. § 41705, and 14 C.F.R. Part 382, and in keeping with the general decor of the area in which they are situated, and that it will perform those maintenance services shown on Exhibit E of the Airline's Airport Use and Lease Agreement to be performed by the Airline and be responsible for payment of the maintenance services to be performed by the Operator.



9B

(C) The Airline specifically agrees to keep the baggage make-up areas and carousels in the Terminal clean, neat, safe and free of trash and debris.

(D) The Airline agrees to pay or reimburse the City for the repair of any damages caused by the misuse or abuse by the Airline, its Affiliated Airlines, or its agents to any portion of the Baggage System. This excludes normal wear and tear.

#### 4.03 ALTERATIONS, REPAIRS, AND IMPROVEMENTS

The City agrees that it shall perform or have performed by the Operator or other contractors such capital additions, modifications and improvements as may be reasonably determined necessary by the City after consultation with the Airline Baggage Subcommittee or as may be reasonably requested by the Airline Baggage Subcommittee and approved by the City, with the cost of such improvements to be charged as provided for in the terms and conditions of the Airport Use and Lease Agreement governing the calculation of rates and charges. Title to any improvements, parts, components, or items of the Baggage System, whether installed or in use on the Baggage System or held in inventory shall be and shall remain in the City at all times.

#### 4.04 RIGHT TO ENTER AND MAKE REPAIRS

The City and the Operator and their authorized officers, employees, agents, contractors, subcontractors, TSA employees and other representatives shall have the right (at such times as may be reasonable under the circumstances and with as little interruption to the Airline's operations as is reasonably practicable) to for the following purposes:

- (A) To inspect the Baggage System Facilities,
- (B) To perform maintenance and make repairs and replacements in any case where the City or the Operator is obligated to do so, or where either of them in their reasonable judgment, determine that it is necessary or desirable to do so,
- (C) To test or maintain the EDS modules and related screening equipment, and
- (D) For emergency purposes in the exercise of the City's police power.

#### 4.05 ABANDONMENT OF BAGGAGE SYSTEM LICENSE AREA

If the Airline ceases to occupy and use any assigned portion of the Baggage System for a continuous period of six (6) consecutive months or longer, the City, acting by and through the Manager, may consider such portion of the Baggage System area abandoned, and if needed for another use may, upon not less than thirty (30) days' written notice to the Airline, terminate the license for such portion of the Baggage System.

#### 4.06 DESTRUCTION OF PREMISES

If by reason of any cause the Baggage System, or any portion thereof, is damaged or destroyed by fire or other casualty, then:



9B

(A) The City, after consultation with the Contracting Airlines, shall forthwith repair, reconstruct and restore the damaged or destroyed portions of the Baggage System to substantially the same condition, character, utility and value as existed prior to such damage or destruction, unless the City and the Contracting Airlines agree that no such reconstruction is necessary, or that reconstruction to some other condition, character, utility and value is appropriate or desired; and

(B) If such Baggage System is damaged to such an extent that the System is unusable, the City, acting by and through the Manager, will make all reasonable efforts to provide substantially equivalent substitute facilities, and such substitute facilities will be made available to Airline consistent with those rentals, fees and charges for the use of the Airport established and modified from time to time by the City in accordance with this Agreement and the Airport Use and Lease Agreement.

## PART V GENERAL PROVISIONS

### 5.01 AGREEMENTS WITH THE UNITED STATES

This agreement is subject and subordinate to the provisions of any agreements between the City and the United States relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to the City for airport purposes, or to the expenditure of federal funds for the extension, expansion or development of the Airport, including the expenditure of federal funds for the development of the Airport in accordance with the provisions of the Airport and Airway Improvement Act of 1982, as amended. The provisions in the attached Appendices 1 and 2 are incorporated herein by reference.

### 5.02 BOND ORDINANCES

The parties to this Agreement acknowledge and agree that all property subject to this Agreement which was financed by the net proceeds of tax-exempt bonds is owned by the City, and Airline agrees not to take any action that would impair, or omit to take any action required to confirm, the treatment of such property as owned by the City for purposes of Section 142(b) of the Internal Revenue Code of 1986, as amended. In particular, the Airline agrees to make, and hereby makes, an irrevocable election (binding on itself and all successors in interest under this Agreement) not to claim depreciation or an investment credit with respect to any property subject to this Agreement which was financed by the net proceeds of tax-exempt bonds and shall execute such forms and take such other action as the City may request in order to implement such election.

### 5.03 LAWS, REGULATIONS, AND AGREEMENTS TO BE OBSERVED

(A) The Airline shall not use, or authorize the use by any other person or party, of all or any portion of the Baggage System, or any part of the Airport to which it is granted a right of use or occupancy by this Agreement, for any purpose or use other than those authorized by this



9B

Agreement, or hereafter authorized in writing by the Manager. No use shall be considered authorized by this Agreement if such use would adversely affect the tax-exempt status of Airport Revenue Bonds.

(B) The Airline shall comply with and shall cause its officers and employees and any other persons over whom it has control to comply with such reasonable rules and regulations governing the use of the Baggage System and any other portion of the Airport as may from time to time be adopted and promulgated by the City for the management, operation and control of the Airport, including those pertaining to the operation of automobile and vehicular traffic and parking facilities thereon, and with such reasonable amendments, revisions, additions and extensions thereof as may from time to time be adopted and promulgated; provided, however, such rules and regulations shall not be inconsistent with the rights herein granted to the Airline; provided, further, that nothing herein shall be considered to restrict the police power of the City.

(C) The Airline shall, at all times, faithfully obey and comply with all existing laws, rules and regulations adopted by federal, state, local or other governmental bodies and applicable to or affecting the Airline and its operations and activities in and at the Airport, including 49 U.S.C. § 41705 (the Air Carrier Access Act) and implementing regulations at 14 C.F.R., Part 382, and 42 U.S.C. § 12101 et seq. (the Americans with Disabilities Act) and implementing regulations.

(D) It is agreed that any disputes regarding laws, ordinances, rules and regulations regarding the Airport issued by the City shall first be presented to administrative hearing before the Manager or the Manager's authorized representative following the procedure outlined in Denver Revised Municipal Code Section 5-17. It is further agreed that no action shall be brought against the City contesting any such laws, ordinances, rules and regulations until there has been full compliance with the terms of said section 5-17. Nothing herein shall be construed to prevent Airline from contesting in good faith any laws, ordinances, rules or regulations without being considered in breach hereof during such time as is required to exhaust the administrative hearing procedures, so long as such contest is diligently commenced and prosecuted by Airline.

## PART VI RATE-MAKING PROCEDURES AND REESTABLISHMENT

### 6.01 GENERAL PROVISIONS

The City agrees that it will establish and fix the rates, fees and charges for the use of the Baggage System in accordance with the cost-accounting concepts and rate-making procedures described in attached Exhibit B. Further, the City agrees that said rates, fees and charges shall be reasonable in relation to the cost of providing, operating and maintaining the services or facilities used or leased by the Airline.

The City, acting by and through its Manager, may from time to time reestablish the rates, fees and other charges for the use of Baggage System in accordance with the concepts and rate-making procedures provided for herein.



9B

The City, acting by and through its Manager, may from time to time, amend the rate-making concepts and procedures set forth in Exhibit B and this Agreement with the written consent of a majority-in-interest of the Signatory Airlines as defined in the Airport Use and Lease Agreement.

#### 6.02 PROJECTION OF RENTALS, RATES, FEES AND CHARGES

Not later than forty five (45) days prior to the end of each Fiscal Year during the term of this Agreement, City shall furnish Airline with a projection of the rates, fees and charges for the next ensuing year for the Baggage System operation and maintenance. Such projection will include the Airport proposed expense budget, and projection of passenger enplanements for the ensuing year. The City shall convene a meeting with the airlines operating at the Airport not later than thirty (30) days prior to the end of each Fiscal Year to consult and review with the airlines the projection of rentals, fees and charges for the next ensuing year.

#### 6.03 FINAL AUDIT

Upon release by the City's independent auditors of the audited financial statements of Airport, the City shall furnish Airline with a copy of the annual audit report, prepared in accordance with Generally Accepted Accounting Principles and certified by an independent accountant, covering the operation of the Airport for such preceding fiscal year. As soon as practical following the release of the annual audit report, the City will prepare an analysis of additional charges or credit due for the Baggage System to Airline for the preceding audited fiscal year. If the fees and charges paid by Airline for the Baggage System were greater than the respective amounts chargeable to Airline, Airline shall receive credits promptly in the amount of such overpayment against future rentals, fees and charges. If the fees and charges paid by Airline were less than the respective amounts chargeable to Airline for the Baggage System, Airline shall pay promptly the amount of any such deficiency.

### PART VII TERM OF THE AGREEMENT

#### 7.01 TERM OF AGREEMENT

The term of this Agreement shall commence on January 1, 2012 or on a date which is co-terminus with the commencement date of the Airline's Airport Use and Lease Agreement, whichever is later, and shall terminate on December 31, 2016, unless this Agreement is earlier cancelled or terminated, or extended as hereinafter provided.

#### 7.02 TERMINATION OF LICENSE BY CITY

The City, acting by and through its Manager, may declare this Agreement terminated in part or in its entirety, as the Manager deems appropriate, upon the happening of any one or more of the following events:



98

(A) If the rates, fees, charges or other money payment which the Airline herein agrees to pay, or any part thereof, shall be unpaid after the date the same shall become due; or

(B) If the Airline shall use or permit the use of the Baggage System Facilities at any time for any purpose for which the use thereof at that time is not authorized by this Agreement or by the subsequent written consent of the Manager, or shall use or permit the use thereof in violation of any law, rule or regulation to which the Airline has agreed in this Agreement to conform; or

(C) If Airline's Airport Use and Lease Agreement shall have been terminated; or

(D) If, during the term of this Agreement, the Airline shall (a) apply for or consent to, in writing signed on behalf of the Airline by any of its officers or its duly authorized attorney, the appointment of a receiver, trustee or liquidator of the Airline or of all or a substantial part of its assets, (b) file a voluntary petition in bankruptcy, or admit in writing its inability to pay its debts as they come due, (c) make a general transfer for the benefit of creditors, (d) file a petition or an answer seeking reorganization or arrangement with creditors or to take advantage of an insolvency law, or (e) file an answer admitting the material allegations of a petition filed against the Airline in any bankruptcy, reorganization or insolvency proceeding, or if during the term of this Agreement an order, judgment or decree shall be entered by any court of competent jurisdiction, on the application of a creditor, adjudicating the Airline as bankrupt or as insolvent, or approving a petition seeking a reorganization of Airline or of all or a substantial part of its assets, and such order, judgment, or decree shall continue unstayed and in effect for any period of ninety (90) consecutive days, then, and in any of such events, the City may give to the Airline a notice of intention to end the term of this Agreement in its entirety after the expiration of thirty (30) days from the date of service of such notice, and on the date set forth in said notice the term of this Agreement and all right, title and interest of Airline hereunder shall expire as fully and completely as if that day were the date herein specifically fixed for the expiration of the term, and the Airline will then voluntarily and peaceably quit and surrender the Baggage System Facilities and any assigned portions thereof, but the Airline shall remain liable as herein provided.

### 7.03 TERMINATION OF LICENSE BY AIRLINE

The Airline, at its option, may declare this Agreement terminated in part or in its entirety upon the happening of any one or more of the following events:

(A) If by any reason of any action or non-action of any federal or other governmental agency having jurisdiction to grant a certificate of convenience and necessity, or similar document, authorizing the Airline to operate aircraft in or out of the Airport (including action in the nature of alteration, amendment, modification, suspension, cancellation or revocation of any such certificate, permit or document), the Airline shall cease to have authority to operate aircraft in and out of the Airport pursuant to such a certificate or document, provided that (1) such governmental action or non-action was not requested by the Airline, and the Airline made all reasonable efforts to prevent such governmental action or non-action, or in the alternate, (2) the City had a reasonable opportunity to appear before such federal or governmental agency and be heard in opposition to such governmental action or non-action prior to the occurrence, if it



9B

desired to do so or, in the alternate, (3) the Airline gave the City reasonable advance notice that such governmental action or non-action was being requested or might occur, and the Airline made a reasonable effort to the end that the City might have an opportunity to appear and be heard as aforesaid; or

(B) If by legislative action of the United States the Airline is deprived of such certificate of similar document; or

(C) If a court of competent jurisdiction issues an injunction or restraining order against the City or any successor body to the City preventing or restraining the Airport for airport purposes in its entirety, or the use of any part thereof which may be used by the Airline and which is substantially necessary to the Airline for its operations, and if such injunction remains in force for a period of ninety (90) days or more and is not stayed by appeal or a writ of error; or

(D) If the City's operation of Airport is substantially restricted by action of any federal or other governmental agency having jurisdiction with respect thereto, or the occurrence of any fire or other casualty substantially and adversely affects, for a period of at least ninety (90) days, Airline's use of Airport in the conduct of its air transportation business; provided, however, none of the foregoing is due primarily to any fault of Airline; or

(E) If Airline's Airport Use and Lease Agreement terminates or expires.

#### 7.04 EFFECTIVE DATE OF TERMINATION

Notwithstanding anything to the contrary in this Agreement, no termination declared by either party shall be effective until not less than thirty (30) days have elapsed after written notice to the other specifying the date upon which such termination shall take effect and the cause for which it is being terminated (and if such termination is by reason of a default under this Agreement for which termination is authorized, specifying such default with reasonable certainty). No such termination shall be effective if such cause shall have been cured or obviated during such thirty (30) day period, or in the event such cause is a default under this Agreement (for which termination is authorized) and if by its nature such default cannot be cured within such thirty (30) day period, such termination shall not be effective if the party in default commences to correct such default within said thirty (30) days and corrects the same as promptly as reasonably practicable; provided that the thirty (30) day period shall not apply to termination declared for failure of Airline to make money payments hereunder, for which termination may be declared by the City upon fifteen (15) days' written notice, unless Airline remedies such default within such fifteen (15) day period; and provided further that the Airline will be allowed only two (2) notices of default with respect to money payments in any one year which it may cure. Upon termination of this Agreement, the parties hereto shall be relieved from all obligations hereunder except as provided for in Section 7.04 of the Airport Use and Lease Agreement. The right of any party hereto to terminate this Agreement shall not in any manner affect or limit such party's right to exercise any other right or remedy it may have rather than its right of termination.



98



#### 7.05 HOLDING OVER

Holding over by Airline following the expiration of the term of this Agreement or any extension thereof, without an express agreement as to such holding over, shall be deemed and taken to be a month-to-month license. The Airline shall be subject to all the terms and conditions of this Agreement as amended from time to time or any extension thereof. Fees and charges for each month of such holding over shall be paid as provided herein and in a sum equal to the monthly rental required for the month prior to the end of the term of this Agreement or as reestablished as provided for herein. In the event Airline fails to surrender any portion of the Baggage System Facilities upon termination or expiration of this Agreement, or such month-to-month license, then Airline shall indemnify City against loss or liability resulting from any delay of Airline in not surrendering same.

#### 7.06 TERMINATION OF HOLDOVER

If Airline holds over pursuant to Section 7.05 hereof, either party may, with or without cause, cancel or terminate said license by giving not less than thirty (30) days written notice to the other party. Said notice shall set out the date of such cancellation and termination.

### PART VIII PERFORMANCE BOND, INDEMNIFICATION AND INSURANCE

#### 8.01 PERFORMANCE BOND

Unless otherwise provided by Airport Rules and Regulations, upon the commencement of the term of this Agreement, the Airline shall have delivered to the Manager for the City and County of Denver, and shall maintain in effect at all times during the term of this Agreement, including a period of six (6) months after expiration (or earlier termination of the letting of the Demised Premises hereunder) of said Agreement, a valid corporate Performance Bond, or an irrevocable Letter of Credit, in the amount of and accordance with the terms of the Airline's Airport Use and Lease Agreement. The Airline acknowledges and agrees that the Performance Bond or irrevocable Letter of Credit required by the Airport Use and Lease Agreement shall also guarantee to the City full and faithful performance of the obligations of the Airline under this Agreement, and the City agrees that a separate Performance Bond for this Agreement is not required.

Notwithstanding the foregoing, if at any time during the term hereof, the Manager deems the amount of the surety insufficient to properly protect the City from loss hereunder because the Airline is or has been in arrears with respect to such obligations or because the Airline has, in the opinion of the Manager, violated other terms of this Agreement, the Airline agrees that it will, after receipt of notice, increase the surety to an amount required by the Manager; provided however, the percentage increase in the amount of surety shall not exceed the annual percentage increase that has occurred with respect to the Airline's rental and fee rates in effect under this Agreement.



9B

## 8.02 INDEMNIFICATION

The Airline agrees to indemnify and save harmless the City, its officers, and employees, from and against (A) any and all loss of or damage to property, or injuries to, or death of, any person or persons, including property and officers, employees and agents of the City; and (B) all claims, damages, suits, costs, expense, penalties, liability, actions or proceedings of any kind or nature whatsoever, of or by anyone whomsoever; which, with respect to clauses (A) and (B) hereof, in any way result from, or arise out of, Airline's operations in connection herewith, or its use or occupancy of any portion of the Airport and the acts, omissions, or wrongful conduct of officers, employees, agents, contractors or subcontractors of the Airline including without limitation, the provision or failure to provide security as herein required and the use, disposal, generation, transportation or release of pollutants, including but not limited to oil, glycol, toxic or hazardous materials at Denver International Airport by the Airline, its contractors, employees, agents, customers, or anyone claiming or acting by or through the Airline.

Airline further agrees that if a prohibited incursion into the Air Operations Area occurs, or the safety or security of the Air Operations Area, the Airfield, the Baggage System or other sterile area safety or security area is breached by or due to the negligence or willful act or omission of any of Airline's employees, agents, or contractors and such incursion or breach results in a civil penalty action being brought against the City by the U.S. Government, Airline agrees to reimburse the City for all expenses, including attorney fees, incurred by the City in defending against the civil penalty action and for any civil penalty or settlement amount paid by the City as a result of such incursion or breach of airfield or sterile area security. The City shall notify Airline of any allegation, investigation, or proposed or actual civil penalty sought by the U.S. Government for such incursion or breach. Civil penalties and settlement and associated expenses reimbursable under this Paragraph include but are not limited to those paid or incurred as a result of violation of Federal Aviation Administration (FAA) regulations or Transportation Security Administration (TSA) regulations, as they may be amended, or any similar law or regulations intended to replace or complement such regulations.

Without limitation, the terms of this indemnity include an agreement by Airline to indemnify, defend and hold harmless the City from and against any and all expense, loss, claim, damage, or liability suffered by City by reason of Airline's breach of any environmental requirement existing under federal, state or local law, regulation, order or other legal requirement in connection with any of Airline's acts, omissions, operations or uses of property relating to this Agreement, or such a breach by the act or omission of any of Airline's officers, employees, agents, or invitees, whether direct or indirect, or foreseen or unforeseen, including (but not limited to) all cleanup and remedial costs actually and reasonably incurred to satisfy any applicable remediation obligation required by federal, state or local law, and reasonable legal fees and costs incurred by City in connection with enforcement of this provision, but excluding damages solely relating to diminution in value of City real property.

Provided however, the City agrees that (I) the Airline need not save harmless or indemnify the City against damage to or loss of property, or injury to or death of persons, caused by the negligence or willful acts of the City, its officers, employees, contractors and agents, and (II) the City will give prompt written notice to the Airline of any claim or suit and the Airline



9B

shall have the right to assume the defense and compromise or settle the same to the extent of its own interest. Provided, however, the indemnity provided for herein shall apply only to the extent the City is not reimbursed out of insurance proceeds.

#### 8.03 INSURANCE MAINTAINED BY AIRLINE

At all time during the term of this Agreement, unless otherwise required by federal or state governmental law or regulation, the Airline is required and agrees, at its own cost and expense, to provide and keep in force for the benefit of the Airline and the City, a policy, or policies, of insurance in the amount and in accordance with the terms of the Airline's Airport Use and Lease Agreement.

#### 8.04 LIENS

Except to the extent inconsistent with other provisions of this Agreement, the Airline covenants and agrees to pay promptly all lawful taxes, excises, license fees and permit fees applicable to its operations at the Airport and to take out and keep current all licenses, municipal, state or federal, required for the conduct of its business at and upon said Airport, and further agrees not to permit any of said taxes, excises or license fees to become delinquent. The Airline further covenants and agrees at all times to maintain adequate Worker's Compensation Insurance in accordance with any present or future Colorado law with an authorized insurance company, or through the Colorado State Compensation Insurance Fund, or through an authorized self-insurance plan approved by the State of Colorado insuring the payment of compensation to all its employees at the Airport. The Airline also covenants and agrees not to permit any mechanic's or materialman's or any other lien to be foreclosed upon the Airport and improvements thereto or thereon, or any part or parcel thereof, by reason of any work or labor performed or materials furnished at the request of the Airline by any mechanic or materialman. The Airline further covenants and agrees to pay promptly when due all bills, debts and obligations incurred by it in connection with its operation of said business on the Airport, and not to permit the same to become delinquent and to suffer no lien, mortgage, judgment or execution to be filed against said premises or improvements thereon which will in any way impair the rights of the City under this Agreement. The Airline shall have the right on giving the City prior written notice to contest any such mechanic's, materialman's or any other lien, and the Airline shall not, pending the termination of such contest, be obligated to pay, remove or otherwise discharge such lien or claim. The Airline agrees to indemnify and save harmless the City from any loss as a result of the Airline's action as aforesaid.

If the Airline shall in good faith proceed to contest any such tax, assessment or other public charge, or the validity thereof, by proper legal proceedings which shall operate to prevent the collection thereof or to prevent the appointment of a receiver because of nonpayment of any such taxes, assessments or other public charges, the Airline shall not be required to pay, discharge or remove any such tax, assessment or other public charge so long as such proceeding is pending and undisposed of; provided, however, that the Airline, not less than five (5) days before any such tax, assessment or charge shall become delinquent, shall give notice to the City of the Airline's intention to contest its validity. If such notice is so given by the Airline to the City and such contest is conducted in good faith by the Airline, the City shall not, pending the



9B

termination of such legal proceedings, pay, remove or discharge such tax, assessment or other charge.

#### 8.05 LOSS OR DAMAGE TO PROPERTY

The City shall not be liable for any loss of property by theft or burglary from the airport or for any damage to person or property on said Airport resulting from airport operations including but not limited to operating the elevators or electric lighting, or wind, water, rain or snow, which may come into or issue or flow from any part of said Airport, or from the pipes, plumbing, wiring, gas or sprinklers thereof or that may be caused by the City's employees or any other cause whatsoever, and the Airline hereby covenants and agrees to make no claim for any such loss or damage at any time.

#### 8.06 FORCE MAJEURE

Neither the City nor the Airline shall be deemed to be in breach of this Agreement by reason of failure to perform any of its obligations under this Agreement if, while and to the extent that such failure is due to embargoes, shortages of materials, acts of God, acts of the public enemy, acts of superior governmental authority, sabotage, strikes, boycotts, labor disputes, weather conditions, riots, rebellion and any circumstances for which it is not responsible and which are not within its reasonable control. This provision shall not apply to failures by the Airline to pay rents, fees or other charges, or to make any other money payment whatsoever required by this Agreement, except in those cases where provision is made in this Agreement for the abatement of such rents, fees, charges or payments under such circumstances.

#### 8.07 INSURANCE MAINTAINED BY THE CITY

Miscellaneous Insurance. The City shall at all times carry with a responsible insurance company or companies authorized and qualified under the laws of the State to assume the risk thereof:

(A) Fire and Extended Coverage Insurance. From and after the time when any contractors engaged in connection with the Airport, or any part thereof, shall cease to be responsible pursuant to the provisions of their respective contracts for loss or damage thereto occurring from any cause, the City shall insure and at all times keep the Airport insured to the extent possible with a responsible insurance company, companies or carriers authorized and qualified under the laws of the State of Colorado assume the risk thereof against direct physical damage or loss from fire and so-called extended coverage perils in an amount not less than 80% of the replacement value of the Facilities so insured, less depreciation; but such amount of insurance shall at all times be sufficient to comply with any legal or contractual requirement which, if breached, would result in assumption by the City of a portion of any loss or damage as co-insurer; and also if at any time the City shall be unable to obtain such insurance to the extent above required at reasonable cost as determined by the Manager, the City shall maintain such insurance to the extent reasonably obtainable. Insurance against any other risks or type of loss as are or shall be customarily covered may be obtained, under a standard "all risk policy" with extended coverage for public property, or otherwise, including, without limitation, insurance against loss or damage to the Airport by flood or other waters, elements of weather, explosion of



9B

any nature, earthquake, and volcanic eruption (or any combination thereof), when, if, and to the extent any such insurance can be procured at reasonable rates in the sole opinion of the Manager.

(B) Loss of Use Insurance. To the extent not provided for in leases and other agreements between the City and others relating to the Airport, insurance covering loss of revenues from Airport facilities by reason of necessary interruption, total or partial, in the use thereof, resulting from damage thereto or destruction thereof, however caused, in such amount as is estimated to be sufficient to provide a full normal income during the period of suspension; but

(1) Such insurance shall cover a period of suspension of the period of reconstruction as estimated by the Airport Engineer, but not less than twelve months;

(2) Such insurance may exclude losses sustained by the City during the first seven days of any total or partial interruption of use; and

(3) If at any time the City shall be unable to obtain such insurance to the extent above required, it shall carry such insurance to the extent reasonably obtainable at reasonable rates in the sole option of the Manager.

In any calculation of the full normal income for such insurance, consideration shall be given to the expected, as well as current and prior, revenues from such Airport facilities, or from other sources, and may also make allowances for any probable decrease in the operation and maintenance expenses or any other charges and expenses while use is interrupted. Any proceeds of such insurance shall be deposited to the credit of the Revenue Fund and shall be subject to the uses of and shall be applied as provided for moneys in the Revenue Fund.

(C) Liability Insurance. Insurance in the form and amount recommended by the Manager and reasonably sufficient to insure against liability to any individual sustaining bodily injury or any person sustaining property damage or the death of any individual by reason of any defect or want of repair in or about the Airport, or by reason of the negligence of any employees, and against such other liability for individuals, including workmen's compensation insurance, to the extent attributed to ownership and operation of the Airport, and damage to property of persons; but in the case of the company or companies insuring the Airport under a general liability policy against loss from bodily injury or property damage, or both, the total liability of such company or companies for all damages because of all bodily injury and all property damage arising out of continuous or repeated exposure to substantially the same general conditions to which the policy applies as the result of any one occurrence, subject to such exclusions generally made to such a policy, shall be not less than \$75,000,000.00 under a single limit of liability endorsement or other like provision of the policy, regardless of the number of:

- (1) Insureds under the policy,
- (2) Individuals who sustain bodily injury or persons who sustain property damage,
- (3) Claims made or suits brought on account of bodily injury or property damage, or



9B

(4) Occurrences.

(D) Maintenance of Policies. All such insurance policies designated in Subparagraphs (A) and (B) hereof shall be filed with the Manager and shall be subject to inspection at all reasonable times by Airline. If the Manager determines that certain insurance required in Subparagraphs (A) and (B) hereof cannot be obtained to the extent therein required at reasonable rates, the Manager shall prepare a written memorandum to that effect, designating each such type of insurance in question and stating in each such case that the insurance was not obtainable or that designated insurance was required in substitution for the required insurance, the reason or reasons for its substitution, and when and to the extent that the substituted insurance was procured at reasonable rates, as the case may be. Each such memorandum shall be filed with the policies on file with the Manager and shall also be subject to such inspection.

PART IX

INCONVENIENCE DURING CONSTRUCTION

9.01 INCONVENIENCE DURING CONSTRUCTION

The Airline recognizes that from time to time during the term of this Agreement it will be necessary for the City to initiate and carry forward extensive programs of construction, reconstruction, expansion, relocation, maintenance and repair in order that the Airport and its facilities may be suitable for the volume and character of air traffic and flight activity which will require accommodation, and that such construction, reconstruction, expansion, relocation, maintenance and repair may inconvenience the Airline in its operations at the Airport. The City shall consult with Airline prior to taking any such action which would adversely affect the

Airline's operations at the Airport unless such action is necessitated by circumstances which in the opinion of the Manager pose an immediate threat to the health and safety of persons using the Airport. The Airline agrees that no liability shall attach to the City, its officers, agents, employees, contractors, subcontractors and representatives by reason of minor inconvenience or minor discomfort as a result of such action and, for and in further consideration of the right of use granted under this Agreement, the Airline waives any right to claim damages or other consideration for such minor inconvenience of minor discomfort.

PART X

MISCELLANEOUS PROVISIONS

10.01 LICENSE BINDING

This Agreement shall be binding on and extend to any successors of the parties hereto.

10.02 PARAGRAPH HEADINGS AND INDEX

The paragraph or Section headings and index or table of contents contained herein are for convenience and reference only and are not intended to define or limit the scope of any provision of this Agreement.



93

### 10.03 SIGNS

The Airline agrees that no signs, posters, logos, advertising, or similar devices shall be painted on, erected, or displayed in any manner upon the Baggage Facilities without the prior written approval of the Manager and the Operator. Signs identifying the Airline, or for any other purpose, must conform to reasonable standards that may be established by the Manager, Operator, or Airline Baggage Subcommittee.

### 10.04 NON-DISCRIMINATION

The Airline, for itself, its successors and assigns, as a part of the consideration hereof does hereby agree as follows:

(A) As more fully set forth in Appendix 1 attached hereto and incorporated herein by reference, if facilities are constructed, maintained or otherwise operated at the Airport for purposes in which federal financial assistance is extended under a Department of Transportation program or activity, or for another purpose involving the provision of a similar service or benefit, the Airline shall maintain and operate such facilities and services in compliance with all requirements of 49 C.F.R. Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended.

(B) The Airline will in all of its operations and activities in and at the Airport comply with all requirements of the Air Carrier Access Act, 49 U.S.C. § 41705, and regulations implementing such Act at 14 C.F.R. Part 382, and the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. and all regulations implementing such Act.

### 10.05 NO PERSONAL LIABILITY

No director, officer or employee of either party shall be held personally liable under this Agreement or because of its execution or attempted execution.

### 10.06 NOTICES

All notices required to be given to the City hereunder shall be in writing and shall be sent by certified mail, return receipt requested, addressed to and in accordance with the notice provisions of the Airline's Airport Use and Lease Agreement.

### 10.07 PLACE AND MANNER OF PAYMENTS

In all cases where the Airline is required by this Agreement to pay any rentals, fees or other charges or to make other payments to the City, such payments shall be due and payable without notice and shall be sent to: Airport Revenue Fund, Denver International Airport, P. O. Box 492065, Denver, Colorado 80249-2065, overnight express mail shall be addressed to: Airport Revenue Fund, Denver International Airport, Attn. Accounts Receivable, 8500 Peña Boulevard, Denver, CO 80249-6340 or at such other place in the City and County of Denver as the City may hereafter designate by notice in writing to the Airline. All payments shall be made



9B

in legal tender of the United States. Any check or electronic payment shall be received by the City subject to collection, and the Airline agrees to pay any bank charges for use of electronic payment methods or for the collection of any payments.

Any payment not made to the City or Airline when due shall accrue interest at the rate of 18% per annum commencing five (5) business days after such due date.

#### 10.08 SEVERABILITY

In the event any covenant, condition or provision contained in this Agreement is held by any court of competent jurisdiction to be invalid, the invalidity of any such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained if the invalidity of any such covenant, condition or provision does not materially prejudice either party hereto in its respective rights and obligations contained in the valid covenants, conditions or provisions in this Agreement.

#### 10.09 SECURITY

It is understood and agreed by the Airline that in addition to the Airline's responsibilities to use the Baggage System Facilities as provided herein, it shall take reasonable security precautions to use and maintain the Baggage System in a manner as to keep it secure from unauthorized intrusion and shall with respect to any area of the Baggage System opening to a Restricted Area, Sterile Area, or an air operations area of the airport provide for an adequate security system designed to prevent unauthorized persons or vehicles from entering such areas. An "air operations area" is defined to mean any area of the Airport used or intended to be used for landing, takeoff or surface maneuvering of aircraft. An "adequate security system" is further defined as providing for security at a standard no less than required and set out in Transportation Security Administration regulations, including 49 CFR, Subtitle B, Chapter XII, as it may be amended, or any similar law or regulations intended to replace or complement such regulations.

It is further understood and agreed by the Airline that at any time during the term hereof when requested in writing by the Manager or his authorized representative, the Airline shall submit to the Manager the security plans that are to be used and are being used by the Airline on any or all of the Baggage System..

#### 10.10 WAIVERS

No waiver of default by either party of any of the terms, covenants or conditions hereof to be performed, kept and observed by the Airline or the City shall be construed, or operate, as a waiver of such term, covenant, or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained to be performed, kept and observed by the Airline or the City.

The subsequent acceptance of rent hereunder by the City shall not be deemed to be a waiver of any preceding breach by the Airline of any term, covenant or condition of this Agreement other than the failure of the Airline to pay the particular rental so accepted, regardless of the City's knowledge of such preceding breach at the time of acceptance of such rent.



97



#### 10.11 AIRLINE BOOKS AND 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 termination of this Agreement, shall have the right, at any reasonable time and at their own expense, to have access to and the right to examine any books, documents, papers and records of the Airline pertinent to this Agreement. The Airline, upon request by either, shall make all such books and records available for examination and copying in Denver.

#### 10.12 CITY BOOKS AND RECORDS

The City shall follow such procedures and keep and maintain in Denver such books, records and accounts as are necessary or required under the provisions of this Agreement or the General Bond Ordinance. Such books, records and accounts shall contain all items affecting the computation of airline rentals, rates, fees and charges, recorded in accordance with reasonable accounting principles or procedures. Airline shall have the right, at any reasonable time and at its own expense, until the expiration of three (3) years after the termination of this Agreement, to examine and make copies of the City's books, records and accounts pertinent to the Agreement.

#### 10.13 CITY SMOKING POLICY

The Airline agrees that it will prohibit smoking by its employees and the public in and around the Baggage System Facilities and will not sell or advertise tobacco products. Airline acknowledges that smoking is not permitted in Airport buildings and facilities except for designated smoking lounges. The Airline and its officers, agents and employees shall cooperate and comply with the provisions of the City's Executive Order No. 99 dated December 1, 1993, Executive Order No. 13 dated July 31, 2002, the provisions of Denver Revised Municipal Code, §§ 24-301 to 317 et. seq., and the Colorado Clean Indoor Air Act, C.R.S. §§ 25-14-201 et. seq.

#### 10.14 USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS

The Airline and its officers, agents and employees shall cooperate and comply with the provisions of Denver Executive Order No. 94 dated October 29, 2002, and Attachment A thereto, or any successor executive order concerning the use, possession or sale of alcohol or drugs.

#### 10.15 THIRD PARTIES

This Agreement does not, and shall not be deemed or construed to, confer upon or grant to any third party or parties (excepting parties to whom the Airline may assign this Agreement in accordance with Section 3.03 hereof, and excepting any successor to the City) any right to claim damages or to bring any suit, action or other proceeding against either the City or the Airline because of any breach hereof or because of any of the terms, covenants, agreements and conditions herein contained.



9B

#### 10.16 SUPPLEMENTAL INFORMATION TO BE SUPPLIED BY AIRLINE

Not later than fifteen (15) calendar days after the end of each month, the Airline shall complete and file with the City written activity reports for the preceding month on forms provided by the City. Information to be provided will be as required by the Airport Use and Lease Agreement and Exhibit B of this Agreement and any other information necessary for cost allocation purposes.

#### 10.17 CITY NON-DISCRIMINATION

In connection with the performance of work under this Agreement, the 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. The Airline further agrees to insert the foregoing provision in all subleases hereunder.

#### 10.18 DISPUTES

It is agreed and understood by the parties hereto that disputes under or related to this Agreement shall be resolved by administrative hearing which shall be conducted in accordance with the procedures set forth in Section 5-17, Revised Municipal Code of the City and County of Denver, or such other substantially similar ordinance as may be adopted hereafter by the City. The City, however, shall retain its right to obtain an order of eviction in accordance with applicable state laws. The parties hereto agree that the Manager's determination resulting from said hearing shall be final, subject only to the right of the parties to appeal the determination under Colorado Rule of Civil Procedure 106, or subject to rights under federal law.

#### 10.19 AMENDMENTS TO EXHIBITS AND APPENDICES

The parties acknowledge that the rights and obligations of each of them as set forth in this Agreement will extend over a period of years. The Exhibits and Appendices hereto are intended to set forth the parties' current understandings and expectations with respect to the intended interests and such understandings and expectations may change over time. Therefore, the Manager is expressly authorized to make adjustments to such exhibits and appendices from time to time to reflect agreed-upon changes, without affecting the underlying rights and obligations as set forth herein. Any such adjustments shall be evidenced in writing.

#### 10.20 ENTIRE AGREEMENT; AMENDMENT

The parties acknowledge and agree that the provisions contained in this Agreement constitute the entire agreement and understanding between the parties with respect to the subject matter thereof, and that all representations made by any officer, agent or employee of the respective parties, unless included herein, are null and void and of no effect. This Agreement cannot be changed or terminated orally. No alterations, amendments, changes or modification, unless expressly reserved to the Manager herein, shall be valid unless executed by an instrument in writing by all the parties with the same formality as this Agreement.



9B

10.21 CONDITION, FINAL APPROVAL

This Agreement is expressly subject to, and shall not be or become effective or binding on the City until fully executed by all signatories of the City and a fully executed copy has been delivered to Airline. This Agreement may be signed electronically by either party in the manner specified by the City.

[END OF DOCUMENT]

[SIGNATURE PAGES FOLLOW]



9B

Contract Control Number: PLANE-201520624-00

Contractor Name: Aerovias de Mexico, S.A. de C.V. dba  
AeroMexico, Inc.

By: *Picote. J. Quint*

Name: ANTONIO LUIS / JOSE F. QUINT  
(please print)

Title: Legal Representative  
(please print)

ATTEST: [if required]

By: *J. Bernal*

Name: JAIME BERNAL  
(please print)

Title: DIRECTOR, INTERNATIONAL AIRPORTS  
(please print)



*JB*



**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 \_\_\_\_\_



## APPENDIX NO. 1

### STANDARD FEDERAL ASSURANCES AND NONDISCRIMINATION

NOTE: As used below the term "contractor" shall mean and include the Airline, and the term "sponsor" shall mean the "City".

During the term of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. Compliance with Regulations. The contractor shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

2. Nondiscrimination. The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex, national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

3. Solicitations for Subcontractors, Including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

4. Information and Reports. The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the sponsor of the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance. In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the sponsor shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:

a. Withholding of payments to the contractor under the contract until the contractor complies, and/or

b. Cancellation, termination, or suspension of the contract, in whole or in part.

6. Incorporation of Provisions. The contractor shall include the provisions of paragraphs 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request



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the sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

7. The Airline for itself, representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this agreement for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, the Airline shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

8. The Airline for itself, representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land: (1) that no person on the grounds of race, color, sex, creed 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) that 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, sex, creed or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Airline 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, and as said Regulations may be amended.

#### 9. NONDISCRIMINATION IN AIRPORT EMPLOYMENT OPPORTUNITIES

The Airline assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.

It is unlawful for airport operators and their lessees, tenants, concessionaires and contractors to discriminate against any person because of race, color, national origin, sex, creed, or handicap in public services and employment opportunities.



97B

APPENDIX NO. 2

DISADVANTAGED BUSINESS ENTERPRISES - REQUIRED STATEMENTS

Policy. It is the policy of the Department of Transportation that disadvantaged business enterprises as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this agreement. Consequently, the DBE requirements of 49 CFR Part 26 apply to this agreement.

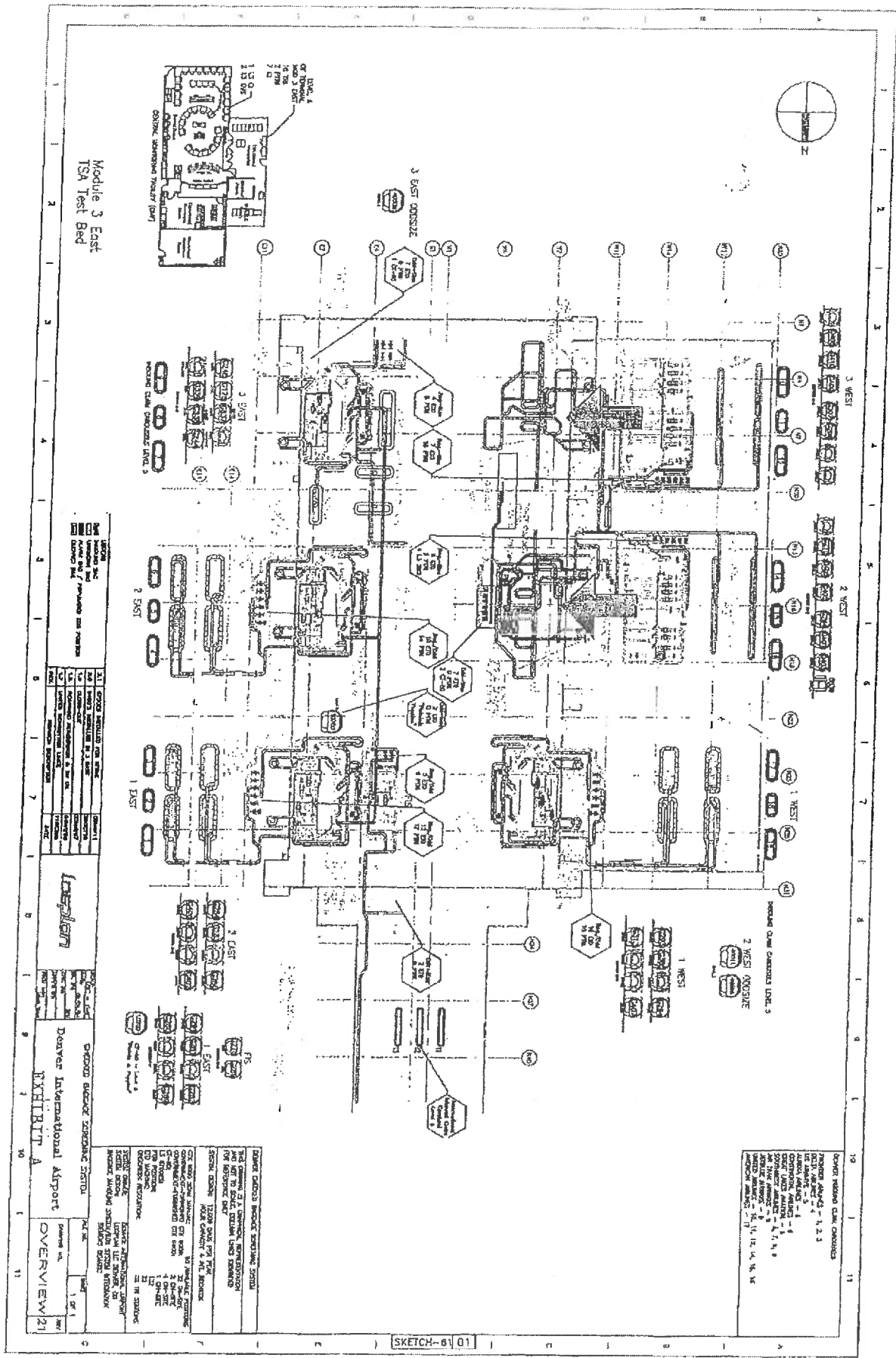
DBE Obligation. The City and its contractors agree to ensure that disadvantaged business enterprises as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds provided under this agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. The City and its contractors shall not discriminate on the basis of race, color, sex, creed or national origin in the award and performance of DOT-assisted contracts.

49 CFR 26.5 defines a DOT-assisted contract as "any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees." "Contractor" means one who participates through a contract or subcontract (at any tier) in a DOT-assisted highway, transit, or airport program.



913





Module 3 East  
TSA Test Bed

NO.	DESCRIPTION	QTY	UNIT
1	SEAT	100	EA
2	TABLE	50	EA
3	STAND	25	EA
4	STAIR	1	EA
5	DOOR	10	EA
6	WALL	100	EA
7	FLOOR	1000	SQ FT
8	CEILING	1000	SQ FT
9	ROOF	1000	SQ FT
10	FOUNDATION	1000	SQ FT

NO.	DESCRIPTION	QTY	UNIT
11	SEAT	100	EA
12	TABLE	50	EA
13	STAND	25	EA
14	STAIR	1	EA
15	DOOR	10	EA
16	WALL	100	EA
17	FLOOR	1000	SQ FT
18	CEILING	1000	SQ FT
19	ROOF	1000	SQ FT
20	FOUNDATION	1000	SQ FT

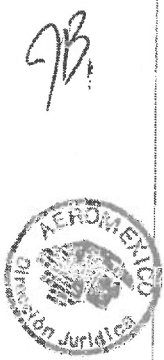
NO.	DESCRIPTION	QTY	UNIT
21	SEAT	100	EA
22	TABLE	50	EA
23	STAND	25	EA
24	STAIR	1	EA
25	DOOR	10	EA
26	WALL	100	EA
27	FLOOR	1000	SQ FT
28	CEILING	1000	SQ FT
29	ROOF	1000	SQ FT
30	FOUNDATION	1000	SQ FT

Denver International Airport  
EXHIBIT A

OVERVIEW 21

EDMUND CLARK'S ARCHITECTURE CENTER  
THE DESIGN OF A TOWER, RECEPTION  
AND RESTROOMS FOR THE  
DENVER INTERNATIONAL AIRPORT  
ARCHITECT: EDMUND CLARK ARCHITECTURE  
DATE: 1998

SKETCH-84 01



## EXHIBIT B

### BAGGAGE SYSTEM COST CENTERS AND ALLOCATION METHODOLOGY FOR OPERATION AND MAINTENANCE COSTS

The City agrees that it will establish and fix rates, fees and charges for the use of the Baggage System Facilities in accordance with cost-accounting principles. The aggregate dollar amount payable each Fiscal Year by all Users of the Baggage System shall be sufficient to pay for the Operation and Maintenance Costs. The City will annually review with the Airline Baggage Subcommittee the rates, fees, and charges, cost centers, and cost allocations for the Baggage System Facilities.

#### Cost Centers

The City, to the extent practicable, shall establish the following Baggage System Cost Centers and shall apply the cost allocation methodology described herein separately for each cost center.

**Domestic Cost Center** -- Includes Operation and Maintenance Costs (defined in Section 1.12 of this agreement) associated with the inbound and outbound Baggage System equipment located in Modules 1W, 1E, 2E and 3E of the Terminal and garage structure and all associated controls associated with both hardware and software.

**International Cost Center** -- Includes Operation and Maintenance Costs associated with the inbound system in the International arrival hall, the equipment and system that feeds this area from level three of the terminal, the International outbound recheck system and all the equipment, controls, hardware and software associated with this system.

**United Cost Center** - Includes Operation and Maintenance Costs associated with the inbound and outbound Baggage System equipment located in Modules 2W and 3W of the Terminal and garage structure and all associated controls associated with both hardware and software.

#### Cost Center Allocations

The net requirement of the Domestic Cost Center will be assessed based on domestic originating passengers for those airlines operating in Modules 1W, 1E, 2E and 3E of the Terminal and garage structure.

The net requirement of the International Cost Center will be assessed based on international destination passengers for those airlines utilizing the International inbound and outbound baggage system.

The net requirement of the United Cost Center will be assessed based on domestic originating passengers for those airlines operating in Modules 2W and 3W of the Terminal and garage structure.



9B

Allocation of Costs to Cost Centers

Labor costs including the operator of the baggage system and the City's baggage system consultant and minor capital equipment costs will be allocated to the baggage system cost centers based on the following percentages:

Domestic – 56.7%

International – 6.3%

United – 37.0%

Parts

Parts costs will be allocated separately to the Domestic and International Cost Centers and to the United Cost Center. The Domestic Cost Center will be allocated 90% and the International Cost Center 10% of the Domestic and International Cost Center parts costs. United Cost Center will be allocated a separate parts costs.

The City expects to bill parts at cost, based on actual supported expenditures, 30 days in arrears.



9B