

AGREEMENT

THIS AGREEMENT is made and entered into as of the date set forth on the City signature page, below, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado ("City"), Party of the First Part, and **VIRGIN AMERICA INC** a corporation authorized to do business in Colorado ("Airline"), Party of the Second Part.

WITNESSETH:

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

WHEREAS, Airline intends to commence additional regular passenger service at DEN on or about March 15, 2016; and

WHEREAS, the City's Air Service Incentive Program is intended to support new air service to DEN, in part through marketing new passenger service; and

WHEREAS, the City wishes to obtain marketing services to specifically promote public and industry awareness and use of DEN facilities and Airline's new regular passenger services between San Francisco, California, and Denver, Colorado; and

WHEREAS, the Airline is ready, willing and able to provide the professional services required by the City, and to perform the services called for hereunder subject to the conditions hereinafter set out;

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

1. LINE OF AUTHORITY:

The Chief Executive Officer of the Airport (the "CEO"), or her designee or successor in function authorizes and directs all work performed under this Agreement. Until otherwise notified by the CEO, the Airport's Manager of Air Service Development ("Director") is designated as the authorized representative of the CEO through whom services performed under this Agreement shall be directed and coordinated. The Director may designate a Project Manager, if applicable, under this Agreement. Administrative reports, memoranda, correspondence and other submittals required of the Airline shall be processed in accordance with the Director's directions.

2. **SCOPE OF SERVICES:** All work performed under this Agreement shall be done in a manner consistent with the spirit and intent of the Air Service Incentive Program, attached hereto as *Exhibit A*. The Airline agrees that it will provide to the City a comprehensive marketing strategy in writing (attached hereto as *Exhibit B* "Scope of Services"), and that upon approval of the strategy by the City, and approval by the City of the amount or amounts to be paid by the City for the publications, events, materials, advertising campaigns, marketing programs, and advertisements, the Airline will promptly undertake, perform and furnish the services hereinafter described in this Agreement including the following tasks:

- A. Initiation and implementation of promotional events, advertising campaigns and marketing programs directed toward promoting public and industry awareness of the new services offered by Airline at DEN, in a manner consistent with advertising norms and customs in the United States.
- B. Development of support materials promoting the benefits of DEN to targeted travelers in specific markets selected by Airline, highlighting Denver and DEN as the international gateway to the Rocky Mountain region; and, highlighting the characteristics making DEN the gateway of choice for the region for an increasing number of passengers.

Nothing in this Agreement shall preclude the Airline from undertaking any advertising, marketing, or promotional program that it, in its sole discretion, deems appropriate. It is agreed, however, that if the particular advertising, marketing or promotional activity is not approved by the City pursuant to this Agreement, it will not be included in the Airline's invoices to the City.

3. NATURE OF SERVICES TO BE PERFORMED: The Airline shall consult with and receive the approval of the City in the development of the campaign, promotional events, advertising, and marketing program consistent with the requirements of this Agreement, and agrees to diligently and professionally perform all the work described herein, and provide services consistent with the following:

A. Publications: The Airline agrees that when printed materials are used, the name "Denver International Airport" or "DEN" shall appear prominently on the material.

(1) Collateral. The Airline may produce and distribute brochures promoting the benefits of DEN to targeted travelers in specific markets selected by the Airline, highlighting Denver and DEN as the international gateway to the Rocky Mountain region; and, highlighting the characteristics making DEN the gateway of choice for the region for an increasing number of passengers.

(2) Direct Mail. The Airline may produce and distribute a direct mail piece for distribution in Denver to announce the Airline's new non-stop service at DEN.

(3) Press Kits. The Airline may create a press kit to be distributed to the media featuring the Airline's new service at DEN.

B. Promotional Events: The Airline agrees that when special events, promotions or receptions are selected as the promotional vehicle, the Director shall be involved in approving targeted audiences.

C. Advertising Campaign: The Airline agrees that for any advertising created for this purpose, the name "Denver International Airport," "DEN," or the Airport logo shall appear prominently in any such advertising. The Airline will produce and implement an advertising

campaign related to the new service planned at DEN. This campaign should include, but is not limited to, print and media costs associated with advertising projects which promote DEN and the Airline's new service both to the traveling public and to trade members of the airline industry.

D. Placement of Advertising: The Airline shall place no advertisement created pursuant to this Agreement in any media without the prior written approval by the Director of the content and placement of the advertisement. Nothing in this Agreement shall preclude the Airline from undertaking any advertising, marketing, or promotional program that it, in its sole discretion, deems appropriate. It is agreed, however, that if the particular advertising, marketing or promotional activity is not approved by the City pursuant to this Agreement, it will not be included in the Airline's invoices to the City.

E. Use of Funds: Funds provided under this Agreement may be used for other advertising, special events, promotional items, or marketing activities only with the prior written approval of the Director.

3. **COMPENSATION AND FEES:**

A. Compensation for Services: The City agrees to pay to the Airline, and the Airline agrees to accept as its sole compensation for its complete costs incurred and services rendered hereunder, amounts approved in advance pursuant to this Agreement, to reimburse the Airline for certain costs incurred in undertaking the development of the campaign or promotional event, placing and publishing advertising, and developing a marketing program, consistent with the requirements of this Agreement. All such sums shall be paid subject to these provisions and to the refund and surety provisions of Section 29 of this Agreement.

B. Prorata Compensation: The compensation stated herein will be prorated to reflect less than daily new passenger service between San Francisco, California and Denver. In the event the frequency of service is adjusted by Airline during the Term of the Agreement, the compensation stated herein will be adjusted accordingly, provided the service is not discontinued or reduced to less than fifty percent (50%) of the amount of scheduled service provided in Paragraph 5A of this Agreement.

C. Invoices: The Airline shall submit invoices for payment, which shall be stated in U.S. dollars, and which shall include the following items:

- (1) The date and nature of the services rendered; and
- (2) Adequate documentation to support the invoice, including documentation of the content of any advertisements placed and published pursuant to this Agreement, and currency exchange rate calculation for any services paid in foreign currency, which calculation shall be based on USD/the relevant foreign currency mid-rate for the date of the transaction.

The Airline shall promptly provide on request from the City additional supporting documentation in connection with any invoice submitted by the Airline for payment under this Agreement.

4. PAYMENT FOR PARTIAL SERVICES: If the Agreement is terminated without cause pursuant to paragraph 29A, the Airline's total compensation shall be limited to the sum of invoices which have already been submitted, audited and approved at the time of termination, plus the reasonable value of those costs and services which have been incurred and rendered prior to termination, but have not been approved for payment at the time of termination. The reasonable value of any such subsequent billed cost or service shall be determined in the sole discretion of the Director. If upon termination any amounts are due and owing to Airline under this Agreement, Airline agrees that the City shall be entitled to offset amounts due and owing to Airline under this Agreement against any amounts due and owing from Airline for landing fees under the Landing Fees Incentive Agreement.

5. MAXIMUM CONTRACT LIABILITY; FUNDING:

A. Any other provisions of this Agreement notwithstanding, in no event shall the City be liable for payment under this Agreement for any amount in excess of Five Hundred Thousand Dollars and No Cents (\$500,000.00), based upon the number of flights operated per week, which amounts are prorated amounts of the total marketing incentive available for daily service (seven days per week) for a full 12 months:

The current published schedule is three departures per day, seven days per week. If the service is adjusted during the Term of this Agreement, the Maximum Amount shall be adjusted accordingly, provided the service is not discontinued or reduced to less than fifty percent (50%) of the amount of scheduled service set forth in the preceding sentence.

B. Payment under this Agreement shall be paid from the City's Airport System Capital Improvement and Replacement Fund. The City hereby represents and warrants that the City's Airport System Capital Improvement and Replacement Fund has and will have sufficient funds for the City to meet its financial obligations under this Agreement. The City has no obligation to make payments from any other source, nor to issue additional revenue bonds to satisfy such costs. The City is not under any obligation to make any future encumbrances or appropriations for this Agreement nor is the City under any obligation to amend this Agreement to increase the Maximum Contract Liability above.

6. TERM:

The Term of this Agreement shall commence on December 1, 2015, and terminate on March 15, 2017, unless sooner terminated in accordance with this Agreement. The Term of this Agreement may only be increased by amendment to this Agreement, subject to the following exception: if the Term will expire prior to the completion by the Airline of all Work previously authorized by the City and commenced by the Airline, in the City's sole discretion this Agreement shall remain in full force and effect for an additional period of time sufficient to permit completion of any such

Work. The Airline shall accept such an extension so that the requirements of this Agreement can be fulfilled.

7. SUBCONTRACTORS:

A. Although the Airline may retain, hire and contract with outside subcontractors, any final agreement or contract with an approved subcontractor must contain a valid and binding provision whereby the subcontractor waives any and all rights to make any claim of payment against the City or to file or claim any lien or encumbrance against any City property arising out of the performance or non-performance of the contract.

B. Because the Airline's represented professional qualifications are a consideration to the City in entering into this Agreement, the Director shall have the right to reject any proposed outside subcontractor deemed by her, in her sole discretion, to be unqualified or unsuitable for any reason to perform the proposed services, and the Director shall have the right to limit the number of outside subcontractors or to limit the percentage of Work to be performed by them, all in her sole and absolute discretion.

C. The Airline shall not retain any subcontractor to perform work under this Agreement if the Airline is aware, after a reasonable written inquiry has been made, that any conflict of interest exists.

8. PERSONNEL ASSIGNMENTS:

A. The Airline shall assign a lead Project Manager to this Project that has relevant experience and knowledge acceptable to the City. The Project Manager shall be the contact person in dealing with the City's Project Manager on matters concerning this Project and shall have the full authority to act for the Airline's organization and at the direction of the Director or her designated representative. Airline's designated Project Manager shall remain assigned to the Work under this Agreement during the entire contract term, while in the employ of the Airline, or, until such time that its performance is deemed unsatisfactory by the City and a formal written request is submitted which requests the removal of the Airline's Project Manager.

B. The Airline may submit and the City will consider a request for reassignment of a Project Manager, should the Airline deem it to be in the best interest of the City, the best interest of the Airline's organization or in the best interest of the Airline's Project Manager.

C. If the City allows the removal of a Project Manager, the replacement Project Manager must have, at least, similar or equal experience and qualifications to that of the original Project Manager.

D. All key professional personnel identified by the Airline will be assigned by the Airline or subcontractors to perform work under this Scope of Work. It is the intent of the parties hereto that all key professional personnel be engaged to perform their specialty for all such services required by this Scope of Work and that the Airline's and the subcontractor's key professional

personnel be retained for the life of this Agreement to the extent practicable and to the extent that such services maximize the quality of work performed hereunder.

E. If, during the term of this Agreement, the Director determines that the performance of approved key personnel is not acceptable, he shall notify the Airline, and he may give the Airline notice of the period of time, which the Director considers reasonable to correct such performance. If the Director notifies the Airline that certain of its key personnel should be reassigned, the Airline will use its reasonable efforts to obtain adequate substitute personnel within ten days from the date of the Director's notice.

9. STATUS OF AIRLINE:

It is agreed and understood by and between the parties hereto that the status of the Airline shall be that of an independent contractor retained on a contractual basis to perform professional or technical services for limited periods of time as described in Section 9.1.1 (E)(x) of the Charter of the City and County of Denver, and it is not intended, nor shall it be construed, that the Airline or its personnel are employees or officers of the City under Chapter 18 of the Revised Municipal Code for any purpose whatsoever.

10. NO AUTHORITY TO BIND CITY TO CONTRACTS:

The Airline has no authority to bind the City on any contractual matters. Final approval of all contractual matters which obligate the City must be by the City as required by Charter and Ordinance.

11. ASSIGNMENT:

The Airline shall not assign, pledge or transfer its duties and rights under this Agreement, in whole or in part, without first obtaining the written consent of the CEO. Any attempt by the Airline to assign or transfer its rights hereunder without such prior written consent shall, at the option of the CEO, automatically terminate this Agreement and all rights of the Airline hereunder. Such consent may be granted or denied at the sole and absolute discretion of the CEO.

12. CONFLICT OF INTEREST:

The Airline agrees that it and its subsidiaries, affiliates, subcontractors, principals, or employees will not engage in any transaction, activity or conduct which would result in a conflict of interest. The Airline represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities, or conduct that would affect the judgment, actions or work of the Airline by placing the Airline's own interests, or the interest of any party with whom the Airline has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, shall determine the existence of a conflict of interest and may terminate this Agreement if such a conflict exists, after it has given the Airline written notice which describes such conflict. The Airline shall have thirty days after the notice is received in which to eliminate or cure the conflict of interest in a manner which is acceptable to the City.

13. NO DISCRIMINATION IN EMPLOYMENT:

In connection with the performance of work under this Agreement, the Airline agrees not to fail or refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation, terms, conditions or privileges of employment 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 to insert the foregoing provision in all subcontracts hereunder.

14. PROMPT PAY

The Airline is subject to D.R.M.C. § 20-112 wherein the Airline is to pay its subcontractors in a timely fashion. A payment is timely if it is mailed to the subcontractor no later than seven days after receipt of any payment from City. Any late payments are subject to a late payment penalty as provided for in the prompt pay ordinance (D.R.M.C. §§ 20-107 through 20-118).

15. DEFENSE AND INDEMNIFICATION:

A. Airline hereby agrees to defend, indemnify, and hold harmless City, its appointed and elected officials, agents and employees against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement ("Claims"), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Airline or its subcontractors either passive or active, irrespective of fault, including City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

B. Airline's duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Airline's duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City's negligence or willful misconduct was the sole cause of claimant's damages.

C. Airline will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.

D. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Airline under the terms of this indemnification obligation. The Airline shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

E. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

16. COORDINATION OF SERVICES:

The Airline agrees to perform its work under this Agreement in accordance with the operational requirements of DEN, and all work and movement of personnel or equipment on areas included within the DEN site shall be subject to the regulations and restrictions established by the City or its authorized agents.

17. COMPLIANCE WITH ALL LAWS AND REGULATIONS:

All of the work performed under this Agreement by the Airline shall comply with all applicable laws, rules, regulations and codes of the United States and the State of Colorado, the charter, ordinances and rules and regulations of the City and County of Denver, and all Denver International Airport Rules and Regulations.

18. COMPLIANCE WITH PATENT, TRADEMARK AND COPYRIGHT LAWS:

A. The Airline agrees that all work performed under this Agreement shall comply with all applicable patent, trademark and copyright laws, rules, regulations and codes of the United States. The Airline will not utilize any protected patent, trademark or copyright in performance of its work unless it has obtained proper permission and all releases and other necessary documents. If the Airline prepares any design documents which specify any material, equipment, process or procedure which is protected, the Airline shall disclose such patents, trademarks and copyrights in the construction drawings or specifications.

B. The Airline further agrees to release, indemnify and save harmless the City, its officers, agents and employees, pursuant to Paragraph 16, "Indemnification," from any and all claims, damages, suits, costs, expenses, liabilities, actions or proceedings of any kind or nature whatsoever, of or by anyone whomsoever, in any way resulting from, or arising out of, directly or indirectly, the performance of work under this Agreement which infringes upon any patent, trademark or copyright protected by law, except in cases where the Airline's personnel are working under the direction of City personnel and do not have direct knowledge or control of information regarding patents, trademarks, and copyrights.

19. TAXES AND COSTS:

The Airline, at its own expense, shall promptly pay, when due, all taxes, bills, debts and obligations it incurs performing work under this Agreement and shall allow no lien, mortgage, judgment or execution to be filed against land, facilities or improvements owned by the City.

20. OWNERSHIP OF WORK PRODUCT:

Each party agrees that it has no ownership interest in and will not infringe or interfere with any trademark, servicemark, symbol, logo, trade dress or intellectual property of the other party, but

may use such upon the express written permission of the party owning the protected property. It is understood and agreed that all drawings, promotion media and other documents which are created by the Airline shall remain the property of the Airline, and the City may use such drawings, promotion media or other documents with the express written permission of the Airline; however, the Airline shall not be held liable for damage resulting from any use of said documents other than the original intended use.

21. ADVERTISING AND PUBLIC DISCLOSURES:

The Airline shall not include any reference to this Agreement or to work performed hereunder in any of its advertising or public relations materials without first obtaining the written approval of the Director. Any oral presentation or written materials related to DEN shall include only presentation materials, work product, and technical data which have been accepted by the City, and designs and renderings, if any, which have been accepted by the City. The CEO shall be notified in advance of the date and time of any such presentations. Nothing herein, however, shall preclude the Airline's use of this Agreement and its component parts in GSA form 254 or 255 presentations, or the transmittal of any information to officials of the City, including without limitation, the Mayor, the CEO, any member or members of City Council, and the Auditor.

22. COLORADO OPEN RECORDS ACT:

The Airline acknowledges that the City is subject to the provisions of the Colorado Open Records Act, C.R.S. §24-72-201 et seq., and the Airline agrees that it will fully cooperate with the City in the event of a request or lawsuit arising under such act for the disclosure of any materials or information which the Airline asserts is confidential and exempt from disclosure. Any other provision of this Agreement notwithstanding, including exhibits, attachments and other documents incorporated into this Agreement by reference, all materials, records and information provided by the Airline to the City shall be considered confidential by the City only to the extent provided in the Open Records Act, and the Airline agrees that any disclosure of information by the City consistent with the provisions of the Open Records Act shall result in no liability of the City.

23. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS:

The Airline and Airline's agents shall cooperate and comply with the provisions of the City and County of Denver Executive Order No. 94 and Attachment A thereto concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City's barring the Airline and Airline's agents from City facilities or participating in City operations.

24. CITY SMOKING POLICY:

Airline acknowledges that smoking is not permitted in Airport buildings and facilities except for designated Airport Smoking Concessions, and so agrees that it will prohibit smoking by its employees and the public in indoor areas and within 15 feet of entryways of the Airport Premises, except as may otherwise be permitted by the Colorado Clean Indoor Air Act, C.R.S. §§ 25-14-201 to 209. Airline and its officers, agents, and employees shall cooperate and comply with the

provisions of the Denver Revised Municipal Code, §§ 24-301 to 317 et. seq., the Colorado Clean Indoor Air Act, C.R.S. §§ 25-14-201 to 209, City's Executive Order No. 99 dated December 1, 1993, and Executive Order No. 13 dated July 31, 2002.

25. EXAMINATION OF RECORDS:

A. The Airline agrees that the City's duly authorized representatives shall, until the expiration of three (3) years after the final payment under this Agreement, have access to and the right to examine any directly pertinent books, documents, papers and records of the Airline involving this Agreement to audit or review said books, documents, papers and records to assure they are in compliance with the terms and conditions of this Agreement.

B. In connection with any services performed hereunder the CEO of Aviation, the City Auditor and any other authorized official of the City and County of Denver, the Federal Aviation Administration, the Comptroller General of the United States, and any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Airline which are directly pertinent to a specific grant program for the purpose of making audit, examination, excerpts and transcriptions. The Airline further agrees that such records will contain information concerning the personnel, hours and specific tasks performed, along with the applicable federal project number.

26. INFORMATION FURNISHED BY CITY:

The City will furnish to the Airline available information concerning DEN and any such other matters that may be necessary or useful in connection with the work to be performed by the Airline under this Agreement. The Airline shall be responsible for the verification of the information provided to the Airline, and DEN will work with the Airline in good faith to assist in such verification.

27. CITY REVIEW OF PROCEDURES:

The Airline agrees that, upon request of the Director, at any time during the term of the Agreement or three years thereafter, it will make full disclosure to the City of the means, methods, and procedures used in performance of services hereunder.

28. TERMINATION:

A. Termination: Either party may cancel and terminate this Agreement without cause by giving not less than thirty (30) days prior written notice to the other party, and may cancel and terminate this Agreement with cause by giving not less than ten (10) days prior written notice to the other party. Any such notice shall state the effective date of such cancellation and termination. If the CEO elects to cancel or terminate the Agreement, immediately upon receipt of the notice, the Airline shall cease all further work, take all reasonable and necessary steps or procedures to curtail and hold additional cost occurrence to a minimum, and commence an orderly termination of the Agreement.

B. Refund of Payments: If the City or the Airline terminates this Agreement for cause, including but not limited to if the Airline does not initiate and operate regularly scheduled passenger service at DEN, commencing on or about March 15, 2016, and continuing at an average of 10.5 times per week for a period of not less than 12 consecutive months, then all amounts paid to the Airline by the City under this Agreement shall be refunded to the City within 30 days of the date of the notice of termination. This provision shall survive the termination of this Agreement or expiration of the Term.

29. SURVIVAL OF CERTAIN AGREEMENT PROVISIONS:

The parties understand and agree that all terms and conditions of this Agreement, including any warranty provision, which by reasonable implication contemplate continued performance or compliance beyond the termination of this Agreement (by expiration of the term or otherwise) shall survive such termination and shall continue to be enforceable as provided herein.

30. NOTICES:

Notwithstanding any other provision of this Agreement, 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

And by City to: Virgin America Inc.
555 Airport Boulevard
Burlingame, California 94010
Attn: Legal Department

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

31. RIGHTS AND REMEDIES NOT WAIVED:

In no event shall any payment 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 the Airline, and the making of any such payment when any such breach or default shall exist shall not impair or prejudice any right or remedy available to the City with respect to such breach or default; and no assent, expressed or implied, to any breach of any one or more covenants, provisions or conditions of this Agreement shall be deemed or taken to be a waiver of any other breach.

32. NO THIRD PARTY BENEFICIARIES:

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 the 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 Agreement. It is the express intention of the City and the Airline that any person other than the City or the Airline receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

33. GOVERNING LAW; BOND ORDINANCES; VENUE

A. This Agreement is made under and shall be governed by the law of Colorado. Each and every term, provision or condition herein is subject to the provisions of Colorado law, the Charter of the City and County of Denver, and the ordinances and regulations enacted pursuant thereto.

B. This Agreement is in all respects subject and subordinate to any and all City bond ordinances applicable to the Denver Municipal Airport System and to any other bond ordinances which amend, supplement, or replace such bond ordinances.

C. Venue for any action arising hereunder shall be in the City and County of Denver, Colorado.

34. NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT.

A. The Agreement is subject to Article 17.5 of Title 8, Colorado Revised Statutes, and Den. Rev. Mun. Code 20-90 and the Airline is liable for any violations as provided in said statute and ordinance.

B. The Airline certifies that:

(1) At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.

(2) It will participate in the E-Verify Program, as defined in § 8 17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

C. The Airline also agrees and represents that:

(1) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(2) It shall not enter into a contract with a subcontractor or subconsultant that fails to certify to the Airline that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(3) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the E-Verify Program.

(4) It is prohibited from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and it has complied with all federal requirements regarding the use of the E-Verify program, including, by way of example, requirements related to employee notification and preservation of employee rights.

(5) If it obtains actual knowledge that a subcontractor or subconsultant performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subcontractor and the City within three days. The Airline will also then terminate such subcontractor or subconsultant if within three days after such notice the subcontractor or subconsultant does not stop employing or contracting with the illegal alien, unless during such three day period the subcontractor or subcontractor provides information to establish that the subcontractor or subconsultant has not knowingly employed or contracted with an illegal alien.

(6) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S. or the City Auditor under authority of Den. Rev. Mun. Code 20-90.3.

35. PARAGRAPH HEADINGS

The captions and headings set forth herein are for convenience of reference only, and shall not be construed so as to define or limit the terms and provisions hereof.

36. CONTRACT DOCUMENTS; ORDER OF PRECEDENCE

This Agreement consists of Sections 1 through 45 which precede the signature page, and the following attachments which are incorporated herein and made a part hereof by reference (the "Contract Documents"):

| | |
|-------------|-----------------------------------|
| Appendix A: | Standard Federal Assurances |
| Exhibit A: | DEN Air Service Incentive Program |
| Exhibit B: | Scope of Services |

In the event of an irreconcilable conflict between a provision of Sections 1 through 46 and any of the listed attachments or between provisions of any attachments, such that it is impossible to give

effect to both, the order of precedence to determine which document shall control to resolve such conflict, is as follows, in descending order:

Appendix A
Sections 1 through 45 hereof
Exhibit A
Exhibit B

37. AGREEMENT AS COMPLETE INTEGRATION; AMENDMENTS

This Agreement is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written amendatory or other agreement properly executed by the parties. This Agreement and any amendments shall be binding upon the parties, their successors and assigns.

38. INUREMENT:

The rights and obligations of the parties herein set forth shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns permitted under this Agreement.

39. FORCE MAJEURE:

Neither party shall be liable for any failure to perform any of its obligations hereunder due to or caused by, in whole or in part, fire, strikes, lockouts, unusual delay by common carriers, unavoidable casualties, war, riots, acts of terrorism, acts of civil or military authority, acts of God, judicial action, or any other causes beyond the control of the parties. Both parties shall have the duty to take reasonable actions to mitigate or prevent further delays or losses resulting from such causes.

40. ADMINISTRATIVE HEARING:

Disputes arising under or related to this Agreement or the services which are the subject of 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. The parties hereto agree that the CEO's determination resulting from said administrative hearing shall be final, subject only to the Airline's right to appeal the determination under Colorado Rule of Civil Procedure, Rule 106.

41. FEDERAL PROVISIONS:

This Agreement is subject and subordinate to the terms, reservations, restrictions and conditions of any existing or future agreements between the City and the United States, 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, and the expenditure of federal funds for the extension, expansion or development of the Airport. The provisions of the attached Appendices 1 and 3 are incorporated herein by reference.

42. SEVERABILITY; ENTIRE AGREEMENT:

If any part, portion or provision of this Agreement shall be found or declared null, void, or unenforceable for any reason whatsoever by any court of competent jurisdiction or any governmental agency having applicable authority, only such part, portion, or provision shall be affected thereby and all other parts, portions and provisions of this Agreement shall remain in full force and effect. The Contract Documents form the entire agreement between the parties and are fully binding on the parties. No oral representations or other agreements have been made except as specifically stated in the Contract Documents.

43. PREVAILING WAGE:

Airline shall comply with the City's Prevailing Wage Ordinance, Section 20-76 *et seq.* of the Denver Revised Municipal Code ("D.R.M.C."), to the extent such Ordinance applies to Airline's activities under this Agreement. The Contractor is prohibited from hiring any subcontractor that is currently debarred by the City in accordance with D.R.M.C § 20-77.

44. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:

Airline consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

45. CITY EXECUTION OF AGREEMENT:

This Agreement is expressly subject to and shall not be or become effective or binding on the City until it has been approved by City Council, if so required by law, and fully executed by all signatories of the City and County of Denver.

[END OF AGREEMENT; APPENDIX, SIGNATURE PAGES, AND EXHIBITS FOLLOW]

APPENDIX A

COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS

NOTE: As used below the term "Contractor" shall mean and include 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 will comply with the Title VI List of Pertinent Non-Discrimination Statutes and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made part of this Agreement.

2. **Nondiscrimination.** The Contractor, with regard to the work performed by it during this Agreement, will not discriminate on the grounds of race, creed, color, national origin, or sex in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and Regulations, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

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 will be notified by the Contractor of the Contractor's obligations under this Agreement and the Acts and Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

4. **Information and Reports.** The Contractor will provide all information and reports required by the Acts, Regulations or directives issued pursuant thereto and will 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 Acts, Regulations, 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 or the FAA, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance.** In the event of a Contractor's noncompliance with the nondiscrimination provisions of this Agreement, the sponsor will 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 this Agreement until the Contractor complies, and/or;
- b. Cancelling, terminating, or suspending this Agreement, in whole or in part.

6. **Incorporation of Provisions.** The Contractor will include the provisions of

paragraphs one (1) through six (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations or directives issued pursuant thereto. The Contractor will take 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, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the sponsor to enter into such litigation to protect the interests of the sponsor. In addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Contract Control Number: PLANE-201525865-00

Contractor Name: VIRGIN AMERICA INC

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:

D. Scott Martinez, Attorney for the
City and County of Denver

By _____

By _____

By _____



Contract Control Number: PLANE-201525865-00

Contractor Name: VIRGIN AMERICA INC

By: _____

Name: _____
(please print)

Title: _____
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



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

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

EXHIBIT B

JANUARY 25, 2016

**VIRGIN AMERICA
DENVER LAUNCH SUPPORT - FUNDED PLACEMENTS**



TOTAL FUNDING BREAKOUT

January – March

Digital Media in both SF and DEN - \$100K
OOH Media in both SF and DEN - \$192,298
OOH Production in both SF and DEN - \$50K
Airport Launch event: \$25K

April – May

OOH Media in SF and DEN - \$50K

Q3

OOH Media in DEN: \$82,702

Total: \$500K

SAN FRANCISCO OOH MEDIA



HWY 101: WHIPPLE AVE / SAN CARLOS DIGITAL BULLETIN

Location

Digital Bulletin located north-facing on the US 101 freeway, south of SFO / north of Redwood city.

Recommended flight / total cost

1/11/16 - 3/6/16 (8 weeks) / \$32,458.82

Denver messaging approx. 30-40% rotation



Creative



DIGITAL TRANSIT SHELTER NETWORK

Location

Network of 40 digital transit shelters across key San Francisco neighborhoods including Downtown SF, SoMa, Marina, Pacific Heights and the Castro.

Recommended flight / total cost

1/4/16 - 2/7/16 (5 weeks) - \$68,058.82

2/15/16 - 3/13/16 (4 weeks) - \$47,117.65

Denver messaging approx. 30-40% rotation



Creative



DENVER OOH MEDIA



VIDEO TOWERS

Location

Great hall video towers facing the security line at the Denver International Airport, targeting departures at the checkpoint.

:10 spot / 6 advertisers

Recommended flight / cost

1/18/16 - 3/20/16 (9 weeks) / \$76,566.17



Creative



VIDEO WALL

Location

Video wall located on the soffits above the center core of Concourse A at the Denver International Airport.

:10 spot / 6 advertisers

Recommended flight / cost

1/18/16 - 3/20/16 (9 weeks) / \$37,046

100% DEN-SFO messaging rotation



Creative



CONVENTION CENTER DIGITAL BULLETIN 14TH ST / CHAMPA ST

Location

Digital Bulletin sitting above the Colorado Convention Center parking structure in the heart of Downtown Denver.

:10 spot / 8 advertisers

Recommended flight / total cost

1/11/16 - 3/20/16 (10 weeks) / \$19,632.35

100% DEN-SFO messaging rotation



Creative



DENVER MEDIA FLOW

New route messaging accounts for 100% of purchased units, in locations that message both Denver residents and visitors alike.

| | JAN | | | | FEB | | | | MAR | | | | Total Imps | CPM | Total Costs | |
|---------------------------|-----|----|----|----|-----|---|----|----|-----|---|----|----|------------|-------------------|-------------|------------------|
| | 4 | 11 | 18 | 25 | 1 | 8 | 15 | 22 | 29 | 7 | 14 | 21 | 28 | | | |
| Video Towers | | | | | | | | | | | | | | 8,600,000 | \$9 | \$76,566 |
| Video Wall | | | | | | | | | | | | | | 6,574,712 | \$6 | \$37,046 |
| Convention Center Digital | | | | | | | | | | | | | | 101,000 | \$194 | \$19,632 |
| | | | | | | | | | | | | | | 15,275,712 | \$9 | \$133,244 |

SF / DEN DIGITAL MEDIA





Markets Covered:

SF Bay Area, Denver DMA

Recommended Placements:

- ROS display on WSJ.com
- Targeted display across WSJDN
 - Audience target to Business Travel Enthusiast
 - Content target to Business and Lifestyle content

Why we like it:

- Reaches the Business Traveler (304 index)
- Ability to access other Business Traveler oriented sites through the publisher network (Barron's, Marketwatch, etc.)

Plan Cost

\$45,000
IMP 1.7MM

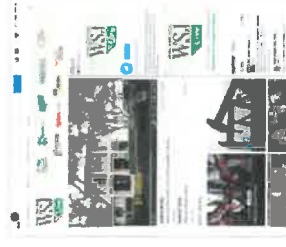
Benchmark

Business .11%



ON PLATFORM

SYNDICATION



+

WSJ

STREETVIEW

Avr/Marketwatch

Aol. YAHOO! msn





Markets Covered:

SF Bay Area, Denver DMA

Recommended Placements:

- Rotational Takeovers and ROS placements across Re/code, Vox, The Verge
- Rotational placements across SBNation for Denver

Why we like it:

- Reaches the business traveler(index 179)
- Strong historical performance
- SBNation aligns brand with Denver sports-fanatics during SB50 and NBA season

Plan Cost

\$30,000
IMP 1.56MM

Historical Benchmark

Takeover .20%
Rotation .08%



THE DENVER DAILY CAMERA POST

Markets Covered:

Denver DMA

Recommended Placements:

- Denver Post Business Traveler-targeting display
 - News and Business content
- Daily Camera geo-targeted display
 - Boulder, Longmont, Loveland and Fort Collins
- Geo-fenced display DEN (15 mile radius) + Boulder Tech

Why we like it:

- Reaches the local Denver audience (158 index)
- Relevant geo-fencing

Plan Cost

\$25,000
IMP 3.2MM

Benchmark
Display .15%
Geofence .07%



DIGITAL MEDIA FLOW (SAN FRANCISCO + DENVER)

New route messaging accounts for 100% of purchased noted publisher flights.

| | JAN | | | FEB | | | | MAR | | | | Total Imps | CPM | Total Costs | | |
|---------------------------|-----|----|----|-----|---|---|----|-----|----|---|----|------------|-----|------------------|-------------|------------------|
| | 4 | 11 | 18 | 25 | 1 | 8 | 15 | 22 | 29 | 7 | 14 | 21 | 28 | | | |
| Wall Street Journal | | | | | | | | | | | | | | 1,742,857 | \$29 | \$45,000 |
| Vox Media | | | | | | | | | | | | | | 1,560,000 | \$19 | \$30,000 |
| Denver Post / Daily Candy | | | | | | | | | | | | | | 3,168,664 | \$8 | \$25,000 |
| | | | | | | | | | | | | | | 6,471,521 | \$15 | \$100,000 |



THANK YOU!

