

**BY AUTHORITY**

ORDINANCE NO. \_\_\_\_\_  
SERIES OF 2012

COUNCIL BILL NO. CB12-0131  
COMMITTEE OF REFERENCE:  
BUSINESS, WORKFORCE, & SUSTAINABILITY

**A BILL**

**For an Ordinance approving a proposed Agreement between the City and County of Denver and Icelandair for Landing Fee Incentives at Denver International Airport.**

**BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:**

**Section 1.** The proposed Agreement between the City and County of Denver and ICELANDAIR in the words and figures contained and set forth in that form of Agreement available in the office and on the web page of City Council, and to be filed in the office of the Clerk and Recorder, Ex-Officio Clerk of the City and County of Denver, under City Clerk's Filing No. 2012-0062, is hereby approved.

COMMITTEE APPROVAL DATE: February 17, 2012

MAYOR-COUNCIL DATE: February 21, 2012

PASSED BY THE COUNCIL: \_\_\_\_\_, 2012  
\_\_\_\_\_ - PRESIDENT

APPROVED: \_\_\_\_\_ - MAYOR \_\_\_\_\_, 2012

ATTEST: \_\_\_\_\_ - CLERK AND RECORDER,  
EX-OFFICIO CLERK OF THE  
CITY AND COUNTY OF DENVER

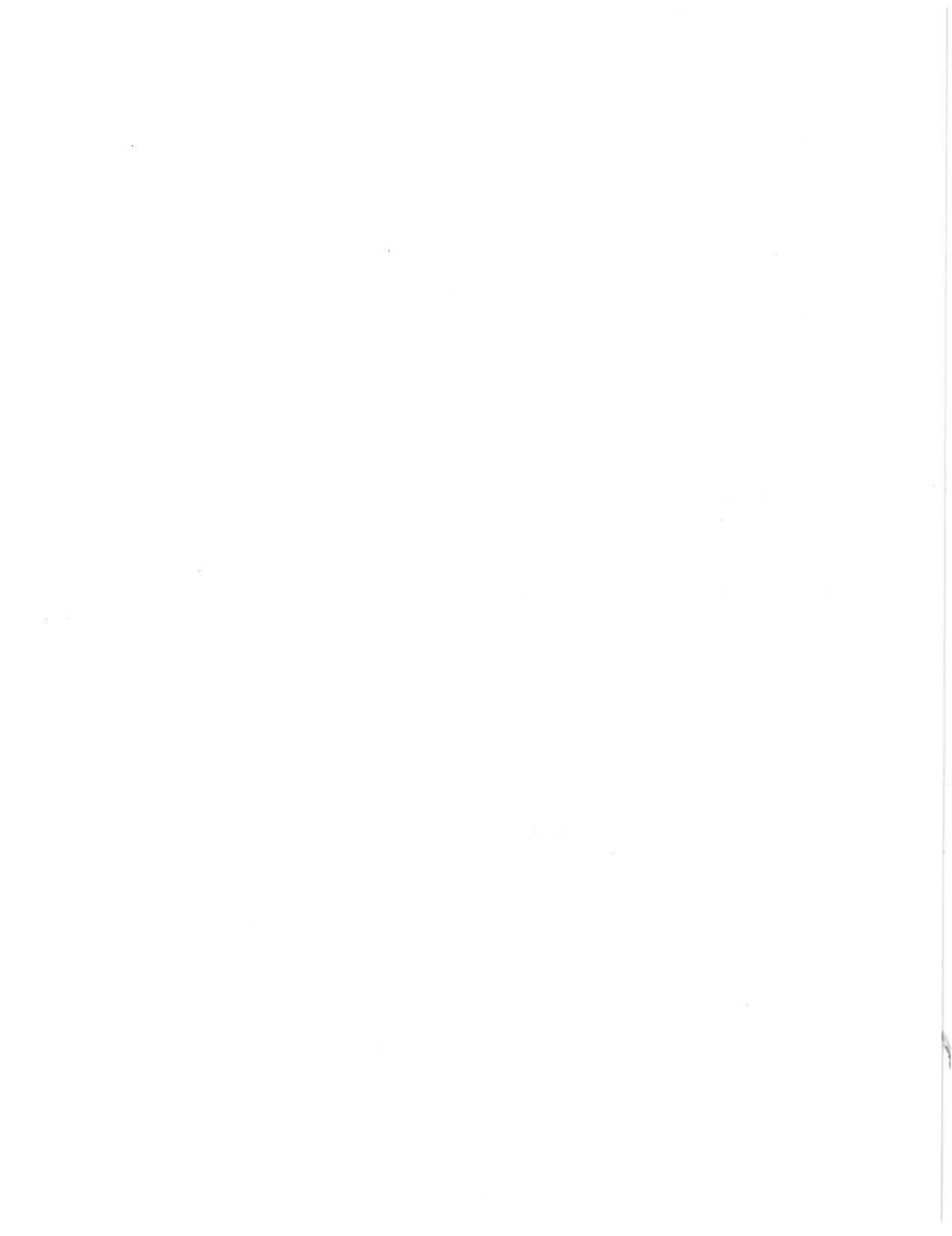
NOTICE PUBLISHED IN THE DAILY JOURNAL: \_\_\_\_\_, 2012; \_\_\_\_\_, 2012

PREPARED BY: Helen E. Berkman, Assistant City Attorney DATE: February 23, 2012

Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed ordinance. The proposed ordinance is submitted to the City Council for approval pursuant to § 3.2.6 of the Charter.

Douglas J. Friednash, City Attorney for the City and County of Denver

BY: \_\_\_\_\_, Assistant City Attorney DATE: February 23, 2012



## **AGREEMENT FOR LANDING FEE INCENTIVES**

**THIS AGREEMENT** is made and entered as of the date indicated on the City's signature page, by and between the **CITY AND COUNTY OF DENVER**, hereinafter referred to as the "City," and **ICELANDAIR EHF**, a certified air carrier with its principal place of business in Reykjavikflugvollur, Reykjavik, Iceland, with company number: 461202-3490, hereinafter referred to as the "Airline."

### **W I T N E S S E T H**

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

**WHEREAS**, the Airline will initiate new regular passenger service between Reykjavik, Iceland and Denver, Colorado (new passenger service) on or about May 10, 2012; and

**WHEREAS**, DIA assesses landing fees for the Airline's use of DIA, payable to the Denver Municipal Airport System Enterprise Fund (the "Airport Revenue Fund"); and

**WHEREAS**, a factor in Airline's decision to initiate new passenger service is an offer by DIA of promotional benefits to any air carrier initiating qualified scheduled passenger service on or before December 31, 2012 consistent with the terms and conditions of the City's Incentive Program attached hereto as Exhibit A;

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

1. **INCENTIVE/INCENTIVE PAYMENT MECHANISM:**

**A. Credits.** If the Airline establishes and continues for at least two years new passenger service between Reykjavik, Iceland and Denver, Colorado beginning on or about May 10, 2012, the City will provide the following credit from airport revenues against the landing fees Airline would owe to the Airport Revenue Fund: 100% for the first year of operation and 50% for the second year of operation.

**B. RON Credits.** The City will also provide the following credit from airport revenues against RON (remain overnight) fees the Airline would owe to the Airport Revenue Fund: 100% for the first year of operation and 0% for the second year of operation.

**C. Accounting for Credits.** The credits will be accounted for in the City's Airport Revenue Fund in accordance with DIA rate-making procedures. If the service is

discontinued or reduced to less than three times per week, then the credits will be terminated in accordance with paragraph 4 below.

2. **MAXIMUM CONTRACT AMOUNT:** It is expected that the total amount of the fee incentive offered to Airline shall not exceed the following amounts based upon projected 2012-2014 landing fees and dependent upon the number of flights operated per week:

<b><u>Freq/Week</u></b>	<b><u>Estimated Max. Amt.</u></b>
7x	\$500,000
6x	\$430,000
5x	\$360,000
4x	\$290,000

The current published schedule for the service is four times a week. The actual total amount of the fee incentive shall be determined based on DIA rate-making procedures, and may be adjusted, consistent with this Agreement, in the event Airline's schedule is adjusted during the term of this Agreement.

3. **TERM:** The term of the Agreement shall begin on the date of commencement of service on or about May 10, 2012 and shall expire twenty-four (24) months thereafter. The incentive credits shall be accounted for and reconciled in accordance with DIA rate-making procedures outlined in Part VI of the Airport Use and Lease Agreement.

4. **TERMINATION:** If the Airline does not provide regularly scheduled non-stop service between Reykjavik and Denver at least three times a week for a period of twenty-four (24) consecutive months immediately following the commencement of service, then the incentives shall terminate and all landing fees and RON fees which would have been due and owing to the City without the application of the credits shall be payable to the City's Airport Revenue Fund within 30 days of the discontinued or reduced service. If upon such termination any amounts are due and owing to Airline on account of Airline's Advertising and Promotional Incentives Agreement with the City, Airline agrees that the City shall be entitled to offset any amounts due and owing to Airline under that agreement against amounts due and owing from Airline for landing fees under this paragraph.

5. **STATUS OF AIRLINE:** The Airline acknowledges and agrees that it will duly execute an Airport Use and Lease Agreement at least 60 days before the commencement of

service and the application of the incentives is conditioned upon the execution of an Airport Use and Lease Agreement such that the Airline becomes a Signatory Airline as defined in DIA's Rules and Regulations. It is further understood and agreed that the status of Airline shall be that of an independent contractor, and it is not intended, nor shall it be construed, that the Airline or its employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code or for any purpose whatsoever.

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

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

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

9. **EXAMINATION OF RECORDS:** The Airline agrees that the Manager and the Auditor of the City or any of their duly authorized representatives, until the expiration of three (3) years after the final credit has been accounted for under this Agreement, shall have access to and the right to examine any books, documents, papers and records of 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. **WHEN RIGHTS AND REMEDIES NOT WAIVED:** In no event shall any action by the City hereunder constitute or be construed to be a waiver by the City of any breach of covenant or default which may then exist on the part of Airline, and the City's action or inaction when any such breach or default exists shall not impair or prejudice any right or remedy available to the City; and no assent, expressed or implied, to any breach of any one or more

covenants, provisions or conditions of the Agreement shall be deemed or taken to be a waiver of any other breach.

**11. CONSTRUCTION:** This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado, and the Charter and Revised Municipal Code of the City and County of Denver, and the ordinances, regulations, and Executive Orders enacted and/or promulgated pursuant thereto. Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver, Colorado.

**12. NO DISCRIMINATION IN EMPLOYMENT:** In connection with the performance of work under this Agreement, Airline agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and the Airline further agrees to insert the foregoing provision in all subcontracts hereunder.

**13. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS:** This Agreement is intended as the complete integration of all understandings between the parties as regards the amount of the Airline's credit against landing fees and the City's method of crediting. No prior, contemporaneous or subsequent addition, deletion, or other amendment hereto shall have any force or effect, unless embodied herein in writing, and executed in the same manner as this Agreement.

**14. LEGAL AUTHORITY:**

**A.** Airline assures and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement.

**B.** The person or persons signing and executing this Agreement on behalf of Airline do hereby warrant and guarantee that he/she or they have been fully authorized by Airline to execute this Agreement on behalf of Airline and to validly and legally bind Airline to all the terms, performances and provisions herein set forth.

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

obligated to Airline for any performance of the provisions of this Agreement in the event that the City has suspended or terminated this Agreement as provided in this Section.

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

[END OF PAGE]

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the day and year indicated on the City's signature page.

**Contract Control No.** \_\_\_\_\_

**Airline Name:** \_\_\_\_\_

**ICELANDAIR EHF**  
Company number: 461202-3490

By:

\_\_\_\_\_

Title:

\_\_\_\_\_

**ATTEST:**

By:

\_\_\_\_\_

**"AIRLINE"**



## EXHIBIT A

### **Denver International Airport (DEN) Air Service Marketing and Incentive Program:**

In order to increase nonstop international service at Denver International Airport (DEN), the airport is offering promotional benefits to any air carrier initiating qualifying scheduled passenger service on or before December 31, 2012. The promotional benefits include both fee waivers and a marketing incentive. Incentives are available per market. A carrier is eligible for a maximum of two incentivized markets.

#### **Promotional Period:**

The Promotional Period is defined as the first consecutive 24 months immediately following the start of a new route.

#### **Qualifying Criteria:**

Carriers must offer daily nonstop service from Denver International Airport (DEN) to the eligible destination; if service is less than daily but three or more times per week, the marketing benefit will be prorated accordingly. If service is less than three times per week, the carrier is not eligible for the fee waivers or the marketing benefit. The carrier must provide the service for 24 consecutive months. New seasonal service is also eligible, but marketing funds will be prorated accordingly. New seasonal service operating less than three times per week is not eligible. Charter operations, including scheduled charters, are not eligible. All conditions for receiving benefits will be documented in a contract between the City and County of Denver and the qualifying carrier and are subject to approval by the appropriate officials of the City and County of Denver.

If the carrier does not operate regularly scheduled passenger service at Denver International Airport for a period of 24 consecutive months immediately following the start of a route then all amounts paid to the carrier by the City and County of Denver for marketing activities shall be refunded to the City and County of Denver, and all fee waivers credited to the carrier shall be refunded to the City and County of Denver.

#### **Promotional Incentive:**

##### *Operational Incentive*

The carrier will qualify for a 100% waiver of landing fees and remain overnight (RON) parking fees during the first 12 months of the promotional period. The carrier will qualify for a 50% waiver of landing fees during the second 12 months of the promotional period.

##### *Marketing Incentive*

The carrier will qualify for a marketing incentive to be administered through reimbursements. In the first 12 months of the promotional period, the carrier will qualify for US\$1 million, and in the second 12 months of the promotional period, the carrier will qualify for US\$500,000.

All marketing initiatives must comply with Federal Aviation Administration (FAA) policy. The carrier is required to enter into a contractual agreement with Denver International Airport to cooperatively market the new route. The carrier will be reimbursed for promotional marketing supported by receipts and other related documentation. As part of the agreement, the carrier will:

- Provide a comprehensive marketing strategy in writing for approval by the City and County of Denver;
- Produce and implement an advertising campaign related to the new service at Denver International Airport;
- Initiate and implement promotional events, advertising campaigns and marketing programs directed toward promoting public and industry awareness of the new services offered by the carrier at Denver International Airport;
- Agree that when printed materials are used, the name "Denver International Airport", with or without its logo and web site address, shall appear prominently in the material;
- Agree that for any advertising created the name "Denver International Airport" shall appear prominently in any such advertising;
- Develop support materials promoting the benefits of Denver International Airport to targeted travelers in specific markets selected by the carrier;
- Develop support materials promoting Denver International Airport as the international gateway to the Rocky Mountain region;
- Develop support materials highlighting the increased number of passengers using Denver International Airport as a gateway to/from their destination;
- Allow Denver's Manager of Aviation to approve targeted audiences when special events, promotions or receptions are selected as the promotional vehicle;
- Not place any advertisement created pursuant to this program without the prior written approval of the Manager of Aviation of the content and placement of the advertisement; and
- Use the funds for advertising campaigns, special events, direct mail, promotional items or other agreed upon marketing activities.

In addition, as part of the agreement, the carrier may:

- Produce and distribute brochures promoting the benefits of Denver International Airport;
- Produce and distribute direct mail pieces for distribution in Denver to announce the new service;
- Create a press kit to be distributed to the media featuring the new service.

#### **Eligible markets:**

All international markets that do not receive nonstop service from Denver International Airport as of May 1, 2011 are eligible for the incentives, except for the following: markets that were served within the prior 24 months, and destinations in Canada, Mexico and the Caribbean. If a market is served by more than one airport, the incentive is available for only one airport in the market area (e.g., the London market includes five airports and Heathrow is already served nonstop from Denver; therefore, London is not eligible). Denver International Airport is the sole authority to determine whether a market destination is already served. Domestic markets are not eligible.

Note: This air service marketing and incentive program will not impact the rate base.

**Contract Control Number:** PLANE-201103738-00

**Contractor Name:** Icelandair

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:

DOUGLAS J. FRIEDNASH, Attorney  
for the City and County of Denver

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year indicated on the City's signature page.

Contract Control No. \_\_\_\_\_

Airline Name: \_\_\_\_\_

ICELANDAIR EHF

Company number: 461202-3490

By:

  
\_\_\_\_\_

Title:

Director Network Planning

ATTEST:

By:

\_\_\_\_\_

"AIRLINE"

