

**AIR SERVICES AGREEMENT  
BETWEEN  
(REDACTED) AIRLINES  
AND  
CITY OF SALEM, OREGON**

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This Air Services Agreement (this “**Agreement**”) is entered into on February \_\_\_\_\_, 2023 by and between (REDACTED) Airlines, Inc. (“**AIRLINE**”) and City of Salem, Oregon (“**Guarantor**”).

**WHEREAS**, Guarantor has requested that Airline commence operating scheduled non-stop air service between the any or all of the following locations: the Los Angeles, California basin; San Francisco, California Bay area; Phoenix, Arizona area; and Las Vegas, Nevada, (“**DESTINATION**”) and McNary Field Airport, Salem, Oregon (“**ORIGIN**”), and, in consideration thereof, Guarantor shall compensate Airline as provided herein; and

**WHEREAS**, subject to the foregoing and to the obtainment of appropriate governmental authorizations, Airline is willing to operate scheduled air service between **DESTINATION** and **ORIGIN**;

**NOW, THEREFORE**, in consideration of the mutual promises made herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Schedule to be Operated.

- A. This agreement covers flights between Salem, Oregon and Los Angeles, California basin; San Francisco, California Bay area; Phoenix, Arizona area; Las Vegas, Nevada, and other markets as may be agreed upon.

Each flight between **DESTINATION** and **ORIGIN** referenced above shall be referred to as the “**ORIGIN Flight**” and collectively, be referred to as the “**ORIGIN Flights.**”

B. At its discretion, Airline may change the schedule or aircraft operating the **ORIGIN Flights**; provided, however, Airline will schedule a minimum of 2 weekly frequencies between **DESTINATION(S)-ORIGIN** during the Term (as defined in Section 7) of this Agreement. The **ORIGIN Flights** will be operated under the direction and control of Airline and Guarantor shall have no right to make decisions with respect to the operation of the **ORIGIN Flights**. Without limiting the generality of the foregoing provisions of this paragraph and the provisions of Section 2 below, Airline agrees to use good faith efforts to consider Guarantor’s comments on issues related to marketing, pricing, and revenue management of the **ORIGIN Flights**.

C. In addition to the **ORIGIN Flights**, Airline may, at its discretion, reduce the frequency or duration of the **ORIGIN Flights** during the Term of this Agreement and the parties shall amend Section 1.A. of this Agreement to reflect such decrease in frequency or duration. Further, Airline and the Guarantor may mutually agree to increase the frequency or duration of the flights operated to or from **ORIGIN**. If Airline and the Guarantor so agree, any such increase in frequency or duration of the flights to be operated to or from **ORIGIN**, to which Airline and Guarantor mutually agree, shall be considered part of the **ORIGIN Flights** and shall be subject to the terms of this Agreement, including with respect to Guarantor’s obligation to make the Guaranty Payments, as provided below, which Guaranty Payment(s), together with the Minimum Revenues, the MRG Cap and other provisions of this Agreement shall be adjusted, upon the mutual agreement of the parties, to account for any such increase and any such adjustment shall be reflected in an amendment to this Agreement; provided, however, and for the avoidance of doubt, Guarantor acknowledges that if Airline unilaterally or without Guarantor’s agreement decides to operate flights to or from **ORIGIN** in

addition to the ORIGIN Flights or operates other flights to or from ORIGIN after the end of the Term, such other flights shall not be governed by or operated under the terms of this Agreement.

D. The parties acknowledge that due to operating conditions, including weather related issues, Airline may operate the ORIGIN Flights with fewer passengers than the capacity of the aircraft used for operating the ORIGIN Flights.

E. Notwithstanding anything contained herein to the contrary, Airline's obligations under this Agreement, including its obligation to operate the ORIGIN Flights, shall be conditioned upon the Guarantor, on or prior to execution and commencement of service, (i) having approved, authorized, reserved, restricted and allocated funds for the Guarantor's payment of and to secure Guarantor's obligation to pay all amounts Guarantor may be required to pay to Airline under this Agreement (but in all cases in an amount not less than the MRG Cap), and (ii) the Guarantor timely providing and maintaining the letter of credit (or other security approved by Airline). Further, without limiting the generality of any provision of this Agreement, Airline shall have no obligation to publish the ORIGIN Flights for sale until Guarantor has complied with the provisions of this Section 1.E.

2. Air Fares.

Airline agrees to establish fares for the ORIGIN Flights that are consistent with Airline's current internal pricing strategies while remaining competitive within the airline industry generally; provided, however, for the avoidance of doubt, Airline shall have no obligation to establish fares for the ORIGIN Flights that are the same as, or similar to fares established by other airlines.

3. Financial Performance Guaranty.

During the period that Airline is operating the ORIGIN Flights, the Guarantor will unconditionally guaranty that Airline will receive "Minimum Revenues" (as such term is defined below) for operating the ORIGIN Flights, which shall be calculated as follows:

Los Angeles Area - US \$25,667 for each round-trip (the "Per Round-Trip Cost") for a (Aircraft Type). Should a (Aircraft Type) become operationally viable a different rate will be calculated.

Bay Area - US \$20,167 for each round-trip (the "Per Round-Trip Cost") for a (Aircraft Type). Should a (Aircraft Type) become operationally viable a different rate will be calculated.

Phoenix Area- US \$31,167 for each round-trip (the "Per Round-Trip Cost") for (Aircraft Type). Should a (Aircraft Type) become operationally viable a different rate will be calculated.

Las Vegas, Nevada- US \$23,833 for each round-trip (the "Per Round-Trip Cost") for a (Aircraft Type). Should a (Aircraft Type) become operationally viable a different rate will be calculated.

4. Revenues; Guaranty Payment; and MRG Cap.

A. For purposes of this Agreement, "Revenues" shall mean the total segment revenues (including passenger revenue and surcharges, cargo revenue and any other revenue, but excluding revenues estimated to be accrued with respect to and/or under this Agreement) received by Airline from the operation of the ORIGIN Flights, as measured by (and using the methodology used by) Airline's Flight Profitability System ("FPS"); provided, however, and for the avoidance of

doubt "Revenues" shall exclude any revenues not directly attributable to the operation of the ORIGIN Flights.

B. To the extent that Airline receives less than the Guaranteed Amount in Revenues from the ORIGIN Flights in any given Period (as described below), Guarantor will pay to Airline an amount equal to the difference between the Guaranteed Amount applicable to the ORIGIN Flights in such Period and the amount of Revenues received by Airline from operating the ORIGIN Flights in such Period (the aggregate difference being the "**Guaranty Payment**"). If aggregate Revenues in a given Period exceed the aggregate Minimum Revenues in such Period, then no Guaranty Payment by Guarantor will be due to Airline for such Period.

C. To the extent that a Guaranty Payment is owed for any Period, the Guarantor will pay to Airline in U.S dollars the amount of the Guaranty Payment for such Period within thirty (30) days of Guarantor's receipt of an invoice for the Guaranty Payment. Airline will render invoices for the Guaranty Payment for the following periods (each a "**Period**" and collectively, the "**Periods**") Each period shall consist of one calendar month. Should the first period consist of less than twenty calendar days that period will be combined with the second period:

i. PERIODS

Airline will render an invoice for the Guaranty Payment for each Period after the end of such Period. Notwithstanding anything contained herein to the contrary, no failure or delay by Airline to render the invoice as provided hereinabove shall prejudice Airline's right to receive or the Guarantor's obligation to pay the Guaranty Payments upon Airline rendering the invoice for the Guaranty Payment for the Period.

D. The Guaranty Payment Guarantor will be required to pay for the ORIGIN Flights under the terms of this Agreement shall not exceed US \$1,150,000 ("**MRG Cap**" \$1,200,000 minus \$50,000 for marketing) for the Term.

E. The Guarantor's obligation to make payments in accordance with the provisions of this Agreement shall survive the expiration or earlier termination of this Agreement.

5. Cost of Service.

A. Airline shall bear all costs of providing the service described and provided for in this Agreement, including by way of illustration but not by way of limitation, the costs of all required aircraft, equipment and facilities (including facilities for ticketing, baggage handling, and like services); personnel; ground costs, including landing fees and use charges; credit card commissions; travel agent commissions; deicing; and fuel ferrying.

6. Government Authority and Slot Availability. Airline's ability and willingness to operate the ORIGIN Flights is contingent on Airline being able to maintain all necessary governmental approvals to operate the ORIGIN Flights, access to departure and arrival slots that are acceptable to Airline and ticket counter and other facilities that are acceptable to Airline.

7. Term. The term (the "**Term**") of this Agreement shall commence as indicated above and shall continue, unless sooner terminated as provided herein, until and including two years after commencement of service.

8. Termination; Flight Cancellation/Diversion; Renegotiation.

A. In addition to the rights of either party enumerated elsewhere in this Agreement or available to either party at law and/or in equity, either party may terminate this Agreement upon written notice if the other party fails to perform any of its material obligations under this Agreement

and such failure continues unremedied during the ten (10) day period following the receipt by the other party of the notice of termination. The effective date of any such termination shall be the date provided in the notice from the party terminating this Agreement but may not be less than the ten (10) day period provided above.

B. Airline may terminate this Agreement upon no less than sixty (60) days' prior written notice to the Guarantor if Airline believes the MRG Cap, as calculated by Airline's FPS (including any such calculations that are reported prior to any monthly close out of the FPS), is achieved at any time (without regard to the timing of the monthly close-out of Airline's FPS) during the Term.

C. This Agreement will automatically terminate if Airline ceases to hold the governmental authorities or slots necessary to operate the ORIGIN Flights.

D. Airline and Guarantor acknowledge that Airline may be required to cancel or divert flights due to mechanical problems, weather conditions, or other circumstances beyond the reasonable control of Airline. If circumstances or conditions result in canceled or diverted ORIGIN Flights, Airline, at its sole cost, shall have the obligation to provide alternate air and/or ground transportation to ORIGIN or DESTINATION, from the airport to which such ORIGIN Flight is diverted, for passengers who are ticketed on the ORIGIN Flights, in compliance with Airline's standard procedures for such circumstances.

9. Remedies Upon Termination.

A. Any termination or expiration of this Agreement shall not affect the Authority's obligation to pay Airline all amounts to Airline as of the effective date of such expiration or termination.

B. In the event of a termination of this Agreement prior to its natural expiration for any reason, in accordance with the provisions of this Agreement, the Authority shall pay amounts owed to Airline, as of the effective date of the termination, within ten (10) days after receipt of an invoice from Airline.

The provisions of this Section 9 shall survive the expiration or earlier termination of this Agreement.

10. Marketing Support. Guarantor providing marketing funds to support the ORIGIN Flights. Airline will coordinate with Guarantor to create the marketing plan to promote flights to and/or from ORIGIN. Additionally, Guarantor agrees to provide a minimum of \$50,000 marketing the ORIGIN Flights. Airline shall provide to Guarantor invoices and other documentation reasonably requested by Guarantor to evidence and substantiate the funds Guarantor has expending on such marketing and Airline will be reimbursed such funds.

11. Force Majeure. Airline shall have no obligation to operate the ORIGIN Flights, where cessation of such flights is due to an event or events beyond Airline's reasonable control, including, without limitation, equipment failures, air traffic control, governmental actions, strikes and Acts of God.

12. Audit. Upon reasonable notice, the Guarantor, at its expense, shall have the right to audit and inspect, at Airline's offices during normal business hours, Airline's books and records as they relate to the determination of Revenue on the ORIGIN Flights for the sole purpose of ensuring that, in determining the amount of Revenue, Airline is utilizing the same methodology as is applied to all of Airline's similar routes.

13. Confidentiality. No party hereto may disclose to a third party any part of this Agreement any information pertaining to the specific contents of this Agreement or any proprietary information received from the other party pursuant to this Agreement unless such information shall have already become publicly known without breach of this provision or unless required to do so pursuant to applicable law, regulation,

governmental order or subpoena, provided that in the case of any such law, regulation, governmental order or subpoena the parties will consult in good faith as to how to proceed with the aim of taking all appropriate action to limit the scope of such governmental order or subpoena and/or obtain confidential treatment for any material required to be disclosed in response thereto. The parties shall agree upon the timing and content of any public disclosure or press release relating to this Agreement or the ORIGIN Flights and no such public disclosure or press release shall be made or issued that has not been agreed upon by the parties hereto. Neither party shall have the right to use the other party's name, logo or other marks without the express written permission of the other party. Notwithstanding the foregoing, Guarantor may disclose this Agreement and the terms thereof to Guarantor's airport consultant, so long Guarantor requires such airport consultant to execute a non-disclosure/confidentiality agreement that requires such airport consultant to keep the terms of this Agreement confidential to the same extent the Guarantor is required to keep such terms confidential in accordance with the terms of this Agreement.

14. Indemnification and Hold Harmless. Each party (the "**Indemnifying Party**") shall indemnify and hold harmless the other party, and its officers, directors, employees and agents (each an "**Indemnified Party**" and collectively, the "**Indemnified Parties**") from and against all liabilities, damages, losses, claims, suits, judgments, costs and expenses, including reasonable attorneys' fees incurred by the Indemnifying Party as a result of claims by third parties as the result of or arising out of the negligence or willful misconduct of the Indemnifying Party in connection with this Agreement, to the extent permitted by applicable law, except to the extent caused by any Indemnified Party's negligence or willful misconduct. The provisions of this Section 14 shall survive the expiration or earlier termination of this Agreement.

15. Insurance.

A. Airline. At all times during the Term of this Agreement, Airline shall carry and maintain, at its sole cost and expense, airline liability insurance with aggregate limits in an amount not less than \$10,000,000 USD for bodily injury (including death of any person) and any damage to (including destruction of) property.

B. Guarantor. At all times during the Term of this Agreement, Guarantor shall carry and maintain, at its sole cost and expense, commercial general liability insurance (including advertisers liability insurance) in an amount not less than \$10,000,000 USD covering all liability arising out of any bodily injury (including death of any person) and any damage to (including destruction of) property.

C. Each party will furnish to the other, through its insurance company(s) or broker(s), certificate(s) of insurance, evidencing the insurance policies required herein properly endorsed, are in full force and effect prior to the commencement of services and upon annual renewal of insurance policies during the Term of this Agreement. Each party will be provided by the other thirty (30) days advance written notice in the event of cancellation, termination or adverse material modification of the required insurance coverages contained herein.

16. Attorneys' Fees. In the event of any litigation between the parties hereto concerning this Agreement and the enforcement hereof, the prevailing party in such action shall be entitled to receive from the other party all reasonable costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in such action.

17. Counterparts and Headings. This Agreement may be executed in multiple counterparts, which together shall constitute one and the same instrument, and any party hereto may execute this Agreement by PDF or other electronic signature, which shall be effective as an original signature for all intents and purposes. The headings used to identify sections are for reference purposes only and shall have no bearing on the interpretation of this Agreement.

18. Notice. All notices and other communications required or permitted under this Agreement shall be in writing and shall be deemed given (A) upon delivery by hand, (B) one (1) day after delivery to a commercial courier (example, FedEx) for next business day delivery properly addressed and prepaid, or (C)

within three (3) days after placement in the U.S. mail properly addressed and with sufficient postage for certified mail, return receipt requested to the addresses set forth in the first paragraph of this Agreement or such address as a party may designate in writing pursuant to this notice provision (provided, however, and notwithstanding the foregoing, any invoices rendered by Airline may be sent to Guarantor via electronic communication.

19. Miscellaneous.

A. This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof.

B. This Agreement or any provision of this Agreement may not be amended, modified or waived except by a written agreement signed by both parties hereto. This Agreement may not be assigned by either party hereto without the written consent of the other party.

C. THIS AGREEMENT SHALL BE INTERPRETED AND CONSTRUED IN ACCORDANCE WITH THE SUBSTANTIVE LAW OF THE STATE OF OREGON.

D. The parties hereto represent that they have the authority to enter into this Agreement.

**IN WITNESS WHEREOF** the parties have caused this Agreement to be signed in their respective names by their duly authorized representatives as of the dates set forth below:

GUARANTOR:  
City of Salem

AIRLINE:  
(REDACTED) Airlines

\_\_\_\_\_  
Keith Stahley, ICMA-CM      Date  
City Manager

\_\_\_\_\_  
(Name), (Title)      Date