

City of Salem
AIR CARRIER OPERATING AGREEMENT

This Air Carrier Operating Agreement (the "Agreement") is executed to be effective the ___ day of _____ 2023 (the "Effective Date") between the City of Salem ("CITY"), authorized under the laws of the State of Oregon, and (REDACTED) Airlines, Inc. ("CARRIER"). CITY and CARRIER may be referred to collectively as "Parties," and each separately may be referred to as a "Party."

WITNESSETH:

WHEREAS, CITY is the owner and operator of the Salem Municipal Airport generally located at 2990 25th St SE, Salem, OR 97302 (the "Airport"); and

WHEREAS, CITY has the right to enter into Agreement, license and grant the use of property and facilities on the Airport and has full power and authority to enter into this Agreement in respect thereof; and

WHEREAS, CARRIER provides commercial airline services, charters, flight crews, aircraft and desires to use the Airport facilities for commercial operations; and

WHEREAS, CARRIER desires to obtain certain non-exclusive rights to use the common use areas of the passenger terminal, services and privileges in connection with the use of the Airport and its facilities, and CITY is willing to grant the same to CARRIER upon the terms and conditions hereinafter stated; and

WHEREAS, the Parties agree to enter into this Agreement, specifying the rights and obligations of the Parties with respect to the operation of the Airport by CITY and the use and/or occupancy of the Airport by CARRIER;

NOW, THEREFORE, for good and valuable consideration, the mutual covenants and conditions herein set forth and the sufficiency of which is agreed to by the Parties, the Parties hereby agree as follows:

1. PERMITTED ACTIVITIES AND CONDITIONS OF AIRPORT USE.

- 1.1 CARRIER shall have the right to use, in common with others, the passenger terminal, taxiways, runways and air navigational aids of the Airport for the purpose of conducting its FAR Part 129 scheduled international operations, Part 121 commercial operations, public charter, private charter, and the landing and taking off of aircraft incidental thereto, and provided, however, such activities and services are performed in strict accordance with applicable CITY Minimum Standards, upon terms and conditions as herein provided.
- 1.2 CARRIER shall not engage in any other commercial or revenue producing activity at the Airport (excluding charter activities by CARRIER, and charter activities requested by CITY) without first applying for and receiving written approval for such activity from CITY. In the event any other commercial or revenue producing activity is engaged in by CARRIER prior to obtaining such approval, without waiver or limitation of any other remedies available to CITY at law or equity, CARRIER hereby agrees to remit to CITY the sum equal to TEN PERCENT (10%) of gross billings for such unauthorized activity, plus any expenses incurred by CITY in the course of any audit conducted for all of CARRIER's activities.

- 1.3 CARRIER shall at all times comply with all Federal, State and local laws, ordinances, rules and regulations which are applicable to its operations or the Premises itself (including but not limited to the Americans with Disabilities Act), including all laws, ordinances, rules and regulations adopted after the Effective Date.

2. TERM.

- 2.1 Initial Term. Subject to earlier termination as provided herein, the term of this Agreement shall be ten (10) years, commencing on the Effective Date (the "Term").
- 2.2 Renewal Term. Provided CARRIER is not then in default of this Agreement, the Term may be extended for five (5) years, without action by the Parties, unless otherwise terminated as provided herein.

3. NONEXCLUSIVE RIGHTS.

CARRIER shall have the non-exclusive right to occupy and use the designated areas of the Airport while in compliance with the terms and conditions of this Agreement. All rights granted to CARRIER under this Agreement are nonexclusive, except by express written agreement herein. CITY may, in its sole discretion and at any time, permit third parties to conduct any and all business activities at the Airport that CITY deems appropriate, or conduct such activities itself, provided that such activities do not require or materially interfere with CARRIER's use of the Airport.

- 3.1 CITY shall provide CARRIER with preferential use of existing gates, aircraft parking spaces (and other such gates and aircraft parking as they are added to the facility or newly constructed terminal, if constructed) and additional ticketing positions as needed. In addition, CARRIER shall have preferential access to available additional ticket counters, gate hold rooms, and the baggage claim area for scheduled flight operations.
- 3.2 If and when CITY implements additional Common Use Facilities. CITY may modify procedures from time-to-time, as it deems necessary as agreed upon with CARRIER.
- 3.3 CITY has implemented an Airport Security Program in a form acceptable to the Transportation Security Administration. CITY reserves the right to modify said program from time-to-time, as it deems necessary to accomplish its purposes. CARRIER shall at all times comply with the Airport Security Program.
- 3.4 CARRIER may perform routine aircraft maintenance activities at the terminal without curfew restrictions.
- 3.5 CITY shall allow CARRIER's aircraft operations without curfew restrictions.
- 3.6 CITY will provide or permit sufficient fuel farm, fuel farm alternative, or allow development of alternative fuel farm and/or competitive fixed base operators.
- 3.7 CITY will provide at no incremental cost such items as needed with the growth of the facility and operation including, but not limited to: sufficient customer parking and shuttle, if necessary, access to potable water, deicing location and glycol recovery (if required by law), ground service equipment fuel supply on field, ramp drain spill protection (if required by law) and sufficient employee parking at no charge. The CITY will provide or allow to be developed sufficient jet A fuel storage and lavatory dump/waste disposal (as defined by code).

4. RENTALS, FEES, AND CHARGES

- 4.1 General. Rent for use of any exclusive use space due and payable at the beginning of each month. All other fees are assessed at the time of each use, flight, or service, as applicable, and are due and payable no later than the twentieth (20th) day of the following month in which the use or activity occurred (“Fee Due Date”). The CARRIER shall self-report its flight activity monthly to CITY pursuant to Section 5. Any ground handling services requested of CITY or other authorized service provider by Carrier shall be governed by a separate agreement. In any event, CARRIER shall be the responsible party for the purposes of this Air Carrier Operating Agreement, and therefore CARRIER shall pay, or cause to be paid, to CITY, the fees and charges for those services.
- 4.2 Landing Fees. Carrier shall pay a landing fee at a rate as outlined in the Air Carrier Fee Schedule, Appendix A, Table 1. The rate shall be based per/1000 lbs. MGLW. The weight used to determine the landing fee for all aircraft shall be its maximum certificated gross landing weight (MGLW), as certified by the Federal Aviation Administration.
- 4.3 Fuel Flowage Fees. Carrier shall pay a fuel flowage fee at a rate as outlined in the Air Carrier Fee Schedule, Appendix A, Table 2.
- 4.4 Terminal Use Fees. Terminal Use includes ticket counter(s) and lobby area, common use secure hold room and boarding area podium, aircraft parking position, baggage claim area. Exclusive-use terminal rental rates are outlined in the Air Carrier Fee Schedule, Appendix A, Table 3.
- 4.5 Aircraft Parking Fees. CARRIER shall pay CITY a fee of \$250, including terminal gates and remote parking positions, for more than five hours. This fee shall be waived if the Carrier has an aircraft base at the airport (aircraft base includes: a crew base, aircraft mechanics, flight attendants, additional aircraft parts, and including daily overnight maintenance). In the case of irregular operations this fee will be waived. All fees include use of terminal ramp and aircraft parking positions. Should CARRIER desire to secure additional operational support space and no space is available CITY may develop or allow CARRIER to develop appropriate space as agreed upon by the Parties.
- 4.6 Other Fees. Unless specified otherwise herein, CARRIER shall pay CITY for its usage or rental of CITY equipment and the performance of services by CITY within THIRTY (30) days of CARRIER’s receipt of an invoice (the “Due Date”) for same from CITY. The amount of such fees shall be as provided in this agreement. No fees outside of this agreement to be charged and no new fees unless required by Federal Law. Utilities and normal services such as janitorial are included.
- 4.7 With regard to the fees and charges specified in SECTION 4 above, the following conditions and considerations shall apply:
- 4.7.1 Books and Records. CARRIER shall maintain permanent books, records and ledgers accurately reflecting the total passengers, and total number of monthly aircraft landings for all aircraft subject to a landing fee indicating the make, type (including model designation), registration number, maximum certificated gross landing weight, and arrival and departure time of each aircraft involved. These records shall be made available to CITY upon request. CITY may audit the books, records and ledgers maintained by CARRIER in accordance with this SECTION

4.

5. REPORTING REQUIREMENTS

5.1 CARRIER shall file with CITY written reports for the items specified below no later than the TENTH (10th) day of the calendar month following the month in which the specified activities occurred (the "Due Date"). Such reports shall cover all of CARRIER's Airport activities during said month.

5.1.1 A complete listing of all CARRIERS's scheduled aircraft landings and actual aircraft landings at the Airport, including aircraft type and MGLW; and a listing, by destinations, of the number of flights that qualify under applicable waiver agreements for any landing fee waivers.

5.1.2 A complete listing of monthly CARRIER's Enplaned Passengers.

5.2 Payments. All payments due and payable hereunder shall be paid in lawful money of the United States of America, without set off, by check made payable to the City of Salem and delivered to:

City of Salem
Attn.: Accounts Receivable
555 Liberty ST SE, Rm. 230
Salem, OR 97301

6. INSURANCE

6.1 General. Carrier shall procure and maintain the following types and amounts of insurance for its operations at the Airport throughout the Term of this Agreement and any Extension thereto:

Aircraft Liability insurance covering third party bodily injury and property damage, and passenger and contractual liabilities which shall protect and indemnify CITY from any and all claims arising in connection with aircraft movement on the Airport in amounts as are customarily carried by a carrier of like kind and size, but in no event less than \$250,000,000.00 per occurrence.

Airport Premises Liability insurance third party bodily injury and property damage, including coverage for "premises/operations," "products and completed operations," "host liquor" and "blanket contractual" liabilities in an amount not less than \$250,000,000.00 per occurrence.

Comprehensive Automobile Liability insurance for all owned, non-owned and hired vehicles operated airside on the Airport that are assigned to or used in the performance of commercial activities in the amount of \$25,000,000.00 per occurrence or combined single limit. If any hazardous materials are transported in conjunction with Carrier's business operations at or on the Airport, an MSC 90 endorsement shall be required in addition thereto.

Workers' Compensation insurance, as required by law, and *Employer's Liability* insurance in the amount of \$1,000,000.

6.2 Additional Insurance. At any time during the Term of this Agreement, including any Extension thereto, CITY may, if in its reasonable determination the insurance coverage required by this SECTION 4 is no longer adequate, require CARRIER to increase its coverage to commercially reasonable amounts.

6.3 Blanket Insurance. CARRIER's insurance obligations under this Agreement may be satisfied by means of the general corporate "blanket" policies carried by it and evidenced by the insurance carrier's standard certificates thereof.

6.3.1 Use of Proceeds. Proceeds of any liability and property damage insurance required under this SECTION 5 shall be applied toward extinguishing, satisfying or remedying the liability, loss or damage with respect to which such proceeds

may be paid.

- 6.4 Indemnity. To the fullest extent permitted by law CARRIER (as "indemnitor") shall indemnify, defend, hold and save CITY, its board members, and its member governments, officers, officials, employees, and agents (as "indemnitee") free and harmless of, for, from and against any and all Losses caused in whole or in part by (a) any act or omission of CARRIER (including indemnitor's officers, officials, agents, employees, contractors or invitees), (b) CARRIER's operations at the Airport, (c) CARRIER's violations of said Security Program caused, or alleged to be caused, by the acts, errors or omissions of CARRIER, its employees, agents, invitees or contractors, or (d) any default by CARRIER hereunder. This indemnification shall exclude responsibility for any consequential damages and for claims arising by reason of the negligent or unlawful act of CITY or its employees, contractors or agents. For purposes hereof "Losses" shall mean any and all losses, liabilities, judgments, suits, claims, damages, fines, penalties, costs and expenses (including reasonable attorneys and consultant fees, investigation costs, monitoring costs, remediation costs, and court costs), of any kind or nature." In carrying out the defense of any claim subject to its indemnification obligations hereunder, CARRIER shall use counsel reasonably acceptable to CITY.

7. **TAXES AND RELATED IMPOSITIONS.**

In the event any governmental authority shall impose a tax or imposition based upon this Agreement, upon CARRIER or its aircraft, or upon payments to be made hereunder, CARRIER shall pay such amounts either to CITY or the appropriate governmental authority on or before any delinquency date. Specifically, CARRIER shall be responsible for any transaction privilege, sales, excise, corporate activity, or other similar tax except income taxes as a result of this Agreement. CARRIER shall also pay all licensing or permitting fees necessary or required by law for the conduct of its aeronautical operations hereunder, or any other matters hereunder. CARRIER shall be responsible for any property interests created hereunder, which may constitute or be deemed to be a possessory interest for purposes of taxation.

8. **RULES, REGULATIONS AND MINIMUM STANDARDS.**

- 8.1 CARRIER shall at all times comply with all federal, State and local laws and ordinances, rules and regulations, which are applicable to its operations, or the operation, management, maintenance, or administration of the Airport, including but not limited to the Americans with Disabilities Act, and all laws, ordinances, rules and regulations adopted after the Effective Date.
- 8.2 CITY shall operate the Airport in compliance with all applicable Federal state and local laws, ordinances, rules and regulations, and shall enforce the Airport Rules and Regulations established to ensure the effective and orderly operation of the Airport.

9. **DEFAULT: TERMINATION BY CITY**

- 9.1 General Grounds. CITY may terminate this Agreement upon the occurrence of any of the following events:
- 9.1.1 Failure of CARRIER to perform any of its obligations under this Agreement, or any other contract, license, or agreement between the Parties, which failure shall not be cured within FIFTEEN (15) days after delivery by CITY to CARRIER of a written notice of such failure.
 - 9.1.2 The filing of any lien against the Airport because of any act or omission of CARRIER which is not discharged within FIFTEEN (15) days of receipt of actual

notice of such lien by CARRIER.

CARRIER may terminate this Agreement and all of its future obligations hereunder (those not accrued as of the date of termination) at any time that Airline is not in default in its payments or other obligations to include being fully licensed and authorized to provide Air Transportation, by giving Operator FIFTEEN (15) days' advance written notice, upon or after the happening of any one of the following events:

- 9.1.3 Failure of CITY to perform any of its obligations under this Agreement, or any other contract, license, or agreement between the Parties, which failure shall not be cured within FIFTEEN (15) days after delivery by CARRIER to CITY of a written notice of such failure.
 - 9.1.4 Any lawful action of the FAA or any Agency having jurisdiction over the operations of Airline at the Airport, prohibiting Airline from providing Air Transportation at the Airport not arising from the fault of Airline, and the remaining in force of such prohibition or refusal, despite diligent efforts coordinated with CITY to have it lifted, for at least ninety (90) days.
 - 9.1.5 The inability of CARRIER to use the Premises for a period exceeding ninety (90) days not caused by CARRIER and due to (i) any defect or unsafe operating condition existing at the Airport, (ii) any Law, or (iii) war or other casualty beyond the control of CARRIER.
 - 9.1.6 If Airline terminates its operations at the Airport, i.e., ceases all flights to and from the Airport and bases no employees or aircraft at the Airport. Airline will have the right to release the Leased Space upon ninety (90) days' notice to CITY and at the end of that 90 day notice period or the Exclusive Use Space being returned as though the term has reached its end, there will be no Exclusive Use Space hereunder. For the avoidance of doubt, rent may come due for the Exclusive Use Space thereafter for matters occurring prior thereto.
- 9.2 Failure to Provide Insurance. In the event CARRIER at any time fails to maintain all insurance coverage required by this Agreement, CITY shall have the right, upon written notice to CARRIER, to immediately terminate this Agreement or secure the required insurance at CARRIER's expense.
- 9.3 No Waiver by CITY. No waiver by CITY of any default by CARRIER in the performance of its obligations under this Agreement shall be deemed to be a waiver of any subsequent default by CARRIER in the performance of any such obligations.

10. GOVERNING LAW; ATTORNEY'S FEES.

The laws of the State of Oregon shall govern this Agreement and the matters set forth therein, without regard to its conflict of law principles. Venue of any action brought under this Agreement shall, at the option of CITY, lie in Marion County, Oregon. In the event of any litigation or arbitration between CITY and CARRIER arising under this Agreement, the successful party shall be entitled to recover its attorney's fees.

11. ASSIGNMENT.

CARRIER shall not assign or transfer any right or interest in this Agreement.

12. NOTICE.

12.1 All notices required or permitted under this Agreement shall not be deemed effective unless personally delivered or mailed by certified mail, return receipt requested, postage prepaid, by reputable commercial overnight courier service, or electronic mail to the following addresses:

TO CITY:	City of Salem Attn.: Airport Manager 2990 25th ST SE Salem, OR 97302
COPY TO CITY:	City of Salem Attn.: City Attorney's Office 555 Liberty ST NE, Room 225 Salem, OR 97301
TO CARRIER:	(REDACTED)

13. PRIOR AGREEMENTS AND PERMITS.

Upon execution hereof, this Agreement shall supersede and cancel any prior agreements between CITY and CARRIER with respect to the business activities governed hereby. CARRIER shall not construe CITY's execution of this Agreement as a waiver of any prior indebtedness or obligation to CITY under any prior agreement or license, nor does CITY waive any claim or cause of action arising therefrom.

14. CORPORATE AUTHORIZATION.

In executing this Agreement, CARRIER represents and warrants to CITY that if CARRIER is a corporation, CARRIER has obtained and been granted the full right, power and authority to enter into this Agreement.

15. MISCELLANEOUS.

- 15.1 Personal Liability. No member of or employee of either Party shall be charged personally or held contractually liable by or to the other Party under any term or provision of this Agreement because of any breach thereof or because of its execution or attempted execution.
- 15.2 No Waiver. No provision of this Agreement may be waived or modified except by a writing signed by the Party against whom such waiver or modification is sought.
- 15.3 Non-Waiver of Rights. No waiver or default by CITY of any of the terms, conditions, covenants or agreements hereof to be performed, kept or observed by CARRIER shall be construed or act as a waiver of any subsequent default of any of the terms, covenants, conditions or agreements herein contained to be performed, kept or observed by CARRIER, and CITY shall not be restricted from later enforcing any of the terms and conditions of this Agreement.
- 15.4 Amendment. Only a written instrument executed by the Parties may amend this Agreement.
- 15.5 Invalid Provisions. Should any provision of this Agreement or any application thereof be held invalid by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, unless one or both Parties would be substantially and materially prejudiced.
- 15.6 Headings. The headings contained herein are for convenience in reference only and are not intended to define or limit the scope of this Agreement or any term thereof.

15.7 Entire Agreement. This Agreement, including **EXHIBITS** attached hereto at the time of its execution, constitutes the entire agreement between the Parties hereto and supersedes all prior negotiations, understandings and agreements between the Parties concerning such matters.

16. INCORPORATION OF RECITALS.

The recitals set forth above are acknowledged by the Parties to be true and correct and are incorporated herein by this reference.

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective on the Effective Date specified above.

FOR CITY:

FOR CARRIER:

By: Keith Stahley, ICMA-CM

By:

Its: City Manager

Its:

Date Signed: _____

Date Signed: _____

APPENDIX A – AIR CARRIER FEE SCHEDULE

Table 1: Landing Fees

Enplanements/Month	Landing Fee	Years 1-2	Years 3-5	Years 6-10	Years 11-15
1-5,000	\$1.00	\$0.00	\$1.00	CPI %	CPI %
5,001-10,000	\$.75	\$0.00	\$.75	CPI %	CPI %
Above 10,001	\$.50	\$0.00	\$.50	CPI %	CPI %

Table 2: Fuel Flowage Fees

Gallons	Flowage Fee (All Years)
All	\$0.06

Table 3: Terminal Rental Fees

Square Feet/Month	Space Fee (Years 1-2)	Space Fee (Years 3-15)
All	\$0.00	\$1.50