



## VISION AIRLINES AIR SERVICE AGREEMENT

This Air Service Agreement (the "Agreement") is made this June 26, 2014 between the Peninsula Airport Commission ("PAC"), an independent body corporate and politic of the Commonwealth of Virginia, and Vision Airlines, Inc. ("Vision"), a Nevada corporation.

Whereas, PAC has offered certain incentives in exchange for scheduled air service to destinations that are consistent with PAC plans for expanded air service;

Whereas, Vision desires to provide scheduled air service at the Newport-News/Williamsburg International Airport ("PHF") and Vision is willing to provide scheduled air service in accordance with the terms and conditions of this Agreement.

Now, therefore, the parties agree as follows:

### 1. **Vision's OBLIGATIONS**

- A. **Service at PHF.** Effective June 30, 2014, Vision will begin providing a minimum of once-daily scheduled air service with Boeing B-737-300 aircraft (or similar aircraft in Vision's fleet) having a configuration of at least 136 seats between PHF and Newark/New York (EWR) or Boston (BOS). ("Flights"). The initial flight schedule is attached as Exhibit A.
- B. **Flight Schedule.** Vision will determine the schedule for the Flights in its sole discretion, provided that Vision will use reasonable efforts to schedule the Flights in a manner that will maximize Vision's passenger revenue and competitive position in southeast Virginia.
- C. **Pricing and Sales.** Vision will determine the fares, seat allocations, overbooking levels and conditions of carriage for Flights in its sole discretion, provided that Vision will use reasonable efforts to price and yield manage the PHF market in a manner that will maximize passenger revenues. Vision acknowledges PAC's desire for Flights to be priced in a manner that will result in the lowest average prices at PHF as compared to competing airlines providing services at other airports in the southeast Virginia region to BOS and EWR on schedules and with flights comparable with those to be provided by Vision under this Agreement ("Competing Airlines"). Vision will use commercially reasonable efforts to publish the schedule in the same manner as Competing Airlines publish schedules and the initial schedule will be available for sale at least twenty-five (25) calendar

days in advance prior to June 30, 2014 or earlier start date.

- D. Reporting of Revenue and Costs.** Vision will provide PAC with monthly reports containing the following information: (i) number of passengers carried on the Flights, (ii) the average local, prorated segment and average origin and destination fares paid by passengers, and (iii) actual onboard revenues (revenue collected from fares, cargo and ancillary fees) and (iv) block hour operating costs (an inclusive list of contemplated costs being listed in **Exhibit A**). Reporting will begin on August 1, 2014 or earlier and continue through the term of this Agreement. Reporting from Vision is due to PAC in no event later than the 15<sup>th</sup> of the following month. Vision shall provide to PAC upon written request, a copy of any agreement entered into by Vision that results in a cost to the operation of the Flights.
- E. Accounts Payable.** Upon execution of this Agreement, Vision shall be current in all payables due to the PAC through June 2014. Vision shall pay all obligations to the PAC through the term of this Agreement. Failure to timely pay such payables shall constitute an event of default under this Agreement.
- F. Certificated Air Carrier Status.** Upon execution of this Agreement, Vision shall furnish proof of status with the U.S. DOT as a United States certificated air carrier with the ability to provide scheduled air transportation.

## **2. PAC's OBLIGATIONS**

- A. Revenue Guarantee.** PAC has received, and hereby commits to Vision, Nine Hundred Fifty Thousand Dollars (\$950,000.00) through a Small Community Air Service Development grant ("SCASD"), awarded to the PAC by the United States Department of Transportation (U.S. DOT). Additionally, both parties acknowledge that the total payment to Vision for committing to the Flights defined herein is One Million Six Hundred Fifty Thousand Six Hundred Fifty Dollars (\$1,650,650.00). In addition to the SCASD grant, the Regional Air Service Enhancement ("RAISE") committee has agreed to contribute matching funds of Seven Hundred Thousand Six Hundred Fifty Dollars (\$700,650.00). PAC's individual obligation under this agreement only includes (i) the \$950,000.00 from the SCASD grant, which is expressly subject to U.S. DOT's funding of the grant, and (ii) the RAISE funds, to the extent such funds are actually received by PAC.

- B. PAC shall maintain all governmental and regulatory licenses necessary to fulfill its obligations under this Agreement. Without limitation of the foregoing, PAC represents, warrants and covenants that it is and shall remain authorized under the SCASD grant described in Section 3 below to pay such funds to Vision as described in this Agreement.

### **3. PAYMENT OF GRANT FUNDS**

Vision agrees to reimburse the PAC any unvested funds granted by ("SCASD") program in the event Vision fails to provide the Flights required under this Agreement (subject to the terms and conditions set forth herein including Section 7.G). PAC will pay Vision Six Hundred Fifty Thousand Dollars (\$650,000.00) ("Initial Payment") of the Small Community Air Service Development ("SCASD") funds upon execution of this Agreement. The Initial Payment also is contingent upon PAC's prior receipt of certain funds from People Express Airlines, Inc. in the amount of Five Hundred Sixty-Five Thousand Dollars (\$565,000.00). The Initial Payment will vest and become non-refundable upon Vision's completion of the first Flight to be performed on June 30, 2014. The remaining One Million Dollars (\$1,000,000.00), representing the remainder of the SCASD grant and the RAISE contribution, will be granted to Vision upon commencement of Flights, but will be retained in escrow by PAC until PAC's guaranty under that certain loan (represented by a Letter of Commitment issued to People Express Airlines, Inc. by TowneBank and dated June 6, 2014) (the "Guaranty") is released by TowneBank. Upon PAC's release from the Guaranty, the funds in the escrow account will be released to Vision within five (5) business days, and will vest and become non-refundable upon release. While in escrow and held by PAC, the escrowed funds shall be used for no other purposes.

### **4. TERM**

The active term of this Agreement shall begin on June 30, 2014, and shall continue through June 30, 2015, unless terminated sooner by either party as provided herein. Ninety (90) days prior to the end of the Term, the parties shall re-assess the relative costs and benefits of the arrangement and shall determine at that time whether to renew the Agreement, and, if so, to make any modifications to the Agreement. Notwithstanding the foregoing, Vision shall have the right to terminate this Agreement, without further liability to PAC, in the event of (a) a default by People Express Airlines, Inc. under (i) the Letter of Commitment referred to above or any other circumstance in which PAC is required to make any payment on the Guaranty or (ii) that certain General Sales and Agency Agreement between Vision and People Express Airlines, Inc. dated the date hereof, or (b) any circumstance in which PAC is required to repay the grant funds to SCASD or in which the RAISE funds become unavailable for use by Vision under this Agreement.

## 5. COVENANTS

- A. **Publicity.** Vision shall not issue a press release or make any public statement concerning this Agreement or the Flights without receiving the prior written consent of the PAC; provided that no such consent shall be required for Vision's regular marketing, advertising and distribution programs.
- B. **Confidentiality.** Each party shall, and shall cause each entity under its control to, hold in confidence all confidential information relating to or obtained from the other party, and each party shall refrain from disclosing, publishing, releasing, transferring, or otherwise making available to any person any confidential information of the other party in any form. Each party may, however, disclose to its officers, directors, contractors, advisors, or employees such confidential information to the extent that such disclosure is reasonably necessary for the performance of the disclosing party's obligations under this Agreement; *provided, however,* that the disclosing party shall cause such officers, directors, contractors, advisors, or employees to comply with this Section and to preserve the confidentiality of such confidential information in accordance with this Section. The obligations in this Section do not prohibit disclosure to the extent required by law, but any party making any such required disclosure pursuant to a subpoena or other legal process shall provide to the other party with advance notice of such requirement and with an opportunity to seek a court order or other relief preventing such disclosure. The parties acknowledge that PAC is a public body subject to public disclosure under applicable law and statutes, including the Virginia Freedom of Information Act. In the event that PAC receives a request for public disclosure under applicable law, PAC shall so notify Vision and provide Vision with an opportunity to seek a court order or other relief preventing such disclosure. Notwithstanding the foregoing, either party may disclose confidential information as required by law, rule or regulation to be furnished to the DOT, the FAA, or any other governmental agency having jurisdiction over the operations contemplated by this Agreement.
- C. **Compliance with Law.** In performing its obligations under this Agreement, each party shall, at its own cost and expense, fully comply with, and have all licenses under, all applicable federal, state, and local laws, including rules and regulations promulgated by the National Transportation Safety Board, Department of Transportation, Federal Aviation Administration, Department of Homeland Security and the Department of Defense. If any party has notice that a provision of this Agreement is contrary to any applicable law or governmental regulation, then that party shall immediately notify the other party of such perceived violation in writing and shall provide a description of the perceived violation and any supporting written materials that might facilitate the other party's investigation of such

perceived violation.

- D. **Audit Rights.** PAC reserves the right to cause an independent third-party auditor to audit Vision's books and records or receipts, in each case with respect to this Agreement, at any time for the purpose of verifying revenue and cost reporting hereunder; provided that such third-party auditor enters into a confidentiality agreement reasonably acceptable to Vision, such audit is conducted with minimal interruption to Vision's normal business operations, and not more than two audits are made during any twelve (12) month period.

## 6. INDEMNIFICATION

- A. **Indemnification by Vision.** Vision shall indemnify, defend, and hold harmless PAC and its respective officers, directors, employees, agents, and representatives from and against all losses, penalties, fines, costs, damages (and any interest due thereon), liabilities, amounts paid in settlements and offsets and any reasonable out-of-pocket costs, expenses and attorneys' fees, including any of the foregoing incurred in connection with the investigation, response to and defense or settlement of a claim (including any such reasonable costs, expenses and attorneys' fees incurred in enforcing a party's right to indemnification against any indemnifying party or with respect to any appeal) and penalties and interest (collectively, "Losses") suffered or incurred by a PAC indemnified party arising from or in connection with: (a) a material breach of any representation or warranty made by Vision under this Agreement; or (b) Vision's failure to comply in any material respect with any of its covenants, agreements, or obligations under this Agreement (subject to the terms and conditions hereof including Section 7.G). Notwithstanding a decision by PAC to defend the claim, Vision will remain obligated under this section to reimburse and indemnify a PAC indemnified party for all costs and expenses, including attorneys' fees, of such defense.
- B. **Indemnification by PAC.** PAC shall indemnify, defend, and hold harmless Vision and its respective officers, directors, employees, agents, and representatives from and against all Losses suffered or incurred by a PAC indemnified party arising from or in connection with: (a) a material breach of any representation or warranty made by PAC under this Agreement; or (b) PAC's failure to comply in any material respect with any of its covenants, agreements, or obligations under this Agreement. Notwithstanding a decision by Vision to defend the claim, PAC will remain obligated under this section to reimburse and indemnify a Vision indemnified party for all costs and expenses, including attorneys' fees, of such defense.
- C. **Limitation on Liability.** Notwithstanding the foregoing, except in connection with indemnification obligations arising from a third party

claim for amounts paid or owing to such third party each party agrees that no party will be liable under this Agreement for exemplary, special or punitive damages, whether such damages are asserted in an action brought in contract, in tort or pursuant to some other theory and whether the possibility of such damages was made known or was foreseeable.

## 7. MISCELLANEOUS

- A. **Cooperation.** During the Term, the parties shall cooperate and communicate in good faith to ensure the performance of the Flights; provided that no party shall be required to incur any material obligation or liability without its consent. In addition, Vision agrees that it will include the Flights in its published flight schedules and in its regular marketing, advertising and distribution programs.
- B. **Assignment.** No party may assign its rights or delegate its obligations under this Agreement without the prior written consent of the other party; provided, however, that Vision may: (a) assign any or all of its rights and interests under this Agreement to one or more of its Affiliates; and (b) designate one or more of its Affiliates to perform its obligations under this Agreement, and (c) PAC may assign any or all of its rights and interests to any successor in interest. This Agreement is binding upon, and inures to the benefit of, the parties and each of their respective successors and permitted assigns.
- C. **Notices.** All notices, requests, demands, claims, and other communications made under this Agreement must be in writing. Any notice, request, demand, claim, or other communication made under this Agreement is duly given either: (a) when delivered personally to the recipient; (b) one business day after being sent to the recipient by reputable overnight courier service (charges prepaid); (c) one (1) business day after being sent to the recipient by facsimile transmission or electronic mail; or (d) four (4) business days after being mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid, and addressed to the intended recipient as set forth below:

Vision:

Vision Airlines, Inc.  
attn: Brian Daggett, SVP  
2705 Airport Drive  
North Las Vegas, NV 89032

PAC:

Peninsula Airport Commission  
900 Bland Blvd  
Newport News, VA 23602  
Attn: Executive Director

Any party may change the address to which notices, requests, demands, claims, and other communications under this Agreement are to be delivered by giving the other party notice of such change by any method set forth above.

- D. **Relationship.** With respect to provision of the Incentives or the Flights under this Agreement, each party is an independent contractor and is not an agent or representative of the other party. Nothing in this Agreement is deemed to create a partnership, joint venture, or other similar relationship.
- E. **Incorporation of Exhibits.** All Exhibits to this Agreement are incorporated into this Agreement by reference and are made a part of this Agreement.
- F. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia. It is hereby agreed that either party may enforce this Agreement in any court of competent jurisdiction, and hereby irrevocably submits to the jurisdiction of any such court, including the courts located within the Commonwealth of Virginia for such purpose.
- G. **Force Majeure.** Except for obligations under Sections 1 and 2 above, neither party shall be liable to the other for any delay whatsoever resulting, directly or indirectly, from one or more of the following: an Act of God; seizure under legal process; governmental sanctions; quarantine restrictions; fire, fog, flood, or other weather-related reason; failure or refusal on the part of any government or governmental agency to grant or issue approvals, clearances, exemptions, permits or operating authority,

or recession or revocation thereof by any government or governmental agency; inability to secure insurance at commercially reasonable rates; damage to or destruction of aircraft or other flight equipment; mechanical issues with aircraft; unavailability of fuel; riots or civil commotion; strikes, lockouts or labor disputes (whether resulting from disputes between either party and its employees or between other parties); U.S. military or airlift emergency or substantially expanded U.S. military airlift requirements as determined by the U.S. government; activation of the U.S. Civil Reserve Air Fleet; war or hazards or dangers incident to a state of war; or any other acts, matters or things, whether or not of a similar nature, which are beyond the control of either party and which shall directly or indirectly, prevent, delay, interrupt, or otherwise adversely affect the furnishing, operation or performance of such transportation.

Vision shall have the right to suspend performance of the terms of this Agreement forthwith in the event of and for the duration of an airlift emergency as determined by the United States Secretary of Defense or his designee or by the Commander of the United States Military Airlift Command, or if the United States Civil Reserve Air Fleet is activated by order of the Secretary of Defense. Each party will immediately advise the other party regarding any event of force majeure, as described above, that may affect its performance hereunder and will keep the other party apprised of efforts made to remedy the problem.

## **8. DEFAULT AND TERMINATION RIGHTS**

The following events shall be deemed event of default by Vision:

- A. The conduct of any business or performance of any acts at PHF not specifically authorized in this Agreement or by other agreements between PAC and Vision which are not reasonably necessary to the fulfillment of Vision's obligations hereunder, and its failure to discontinue that business or those acts within thirty (30) days of receipt by Vision of PAC's written notice to cease said business or acts.
- B. Sixty (60) days after the appointment of a Trustee, custodian, or receiver of all or a substantial portion of Vision's assets.
- C. The divestiture of Vision's estate herein by operation of law, by dissolution, or by liquidation, (not including a merger or sale of assets or an approved assignment).



- D. Should Vision take the benefit of any present or future insolvency statute, shall make a general assignment for the benefit of creditor, or shall seek a reorganization or the readjustment of indebtedness under any law or statute of the United States or of any state hereof including the filing by Vision of a voluntary petition of bankruptcy or the institution of proceedings against Vision for the adjudication of Vision as bankrupt pursuant thereof, which has not been dismissed within ninety (90) days after the involuntary petition has been filed.
- E. The failure or omission by Vision to carry out duties under this Agreement in any material respect or the material breach of any terms, conditions and covenants required herein, and the failure to correct or cure the same within the periods of time provided in this Agreement, subject always to Section 7.G.
- F. Vision's non-compliance with Virginia Statutes-Concerning Criminal Activity.
- G. Failure to commence Flights by the June 30, 2014 commencement date.
- H. Vision fails to provide the Flights required under this Agreement for any material period of time, subject always to Section 7.G.

The following events shall be deemed event of default by PAC:

- A. Sixty (60) days after the appointment of a Trustee, custodian, or receiver of all or a substantial portion of PAC's assets.
- B. The divestiture of PAC's estate herein by operation of law, by dissolution, or by liquidation, (not including a merger or sale of assets or an approved assignment.
- C. Should PAC take the benefit of any present or future insolvency statute, shall make a general assignment for the benefit of creditor, or shall seek a reorganization or the readjustment of indebtedness under any law or statute of the United States or of any state hereof including the filing by PAC of a voluntary petition of bankruptcy or the institution of proceedings against PAC for the adjudication of PAC as bankrupt pursuant thereof, which has not been dismissed within ninety (90) days after the involuntary petition has been filed.
- D. The failure or omission by PAC to carry out duties under this

Agreement in any material respect or the material breach of any terms, conditions and covenants required herein, and the failure to correct or cure the same within the periods of time provided in this Agreement, subject always to Section 7.G.

- E. PAC's non-compliance with Virginia Statutes-Concerning Criminal Activity.
- F. Failure to maintain all regulatory approvals required for the Flights.

#### **9. REMEDIES UPON DEFAULT**

- A. In the event of any of the foregoing events of default enumerated in Section 7, and following thirty (30) days prior written notice by PAC and Vision's failure to take reasonable steps to commence to cure within the thirty (30) days period following receipt of said notice from PAC, PAC, at its election, may terminate this Agreement upon an additional thirty (30) days' notice to Vision and, in the event that PAC is called upon to satisfy the Guaranty, the One Million Dollars (\$1,000,000.00) held in escrow will be used to satisfy the Guaranty and any amounts owed by Vision to PAC under this Agreement, and any remaining amounts shall then be paid to Vision on a pro rata basis with respect to the then-remaining period of the Term. PAC's termination of this Agreement shall not be deemed to preclude the exercise of any other remedies of PAC contained in this Agreement or otherwise provided by statute or general law, including PAC's ability to seek damages that result from Vision's default or injunctive relief.
- B. In the event of a default by PAC, and following thirty (30) days prior written notice by Vision to PAC and PAC's failure to take reasonable steps to commence to cure within the thirty (30) days period following receipt of said notice from Vision. Vision may terminate this Agreement upon an additional thirty (30) days' notice to PAC. Vision's termination of this Agreement shall not be deemed to preclude the exercise of any other remedies of Vision contained in this Agreement or otherwise provided by statute or general law, including Vision's ability to seek damages that result from PAC's default or injunctive relief.

#### **10. CONTINUING RESPONSIBILITIES OF VISION**

Notwithstanding the occurrence of any event of default, Vision shall

remain liable to PAC for all payments payable hereunder and for all preceding breaches of any covenant of this Agreement. Furthermore, unless PAC elects to cancel this Agreement, Vision shall remain liable for and promptly pay any and all payments accruing hereunder until termination of this Agreement as set forth in this Agreement or until this Agreement is canceled by Vision.

#### **11. COMPLIANCE WITH LAWS, REGULATIONS, ORDINANCES, RULES**

Vision and its subcontractors shall at all times comply with applicable federal, state, and local laws and regulations, Airport rules, regulations and operating directives as are now or may hereinafter be prescribed by PAC, all applicable health rules and regulations and other mandates whether existing or as promulgated from time to time by the federal, state, or local government, or PAC, including, but not limited to, permitted and restricted activities, security matters, parking, ingress and egress, environmental and storm water regulations and any other operational matters related to the operation of the Airport. A copy of the Rules and Regulations for the Newport News/Williamsburg International Airport adopted by Resolution Number 97-1 on the 18<sup>th</sup> day of April, 1997, as amended, can be obtained from the PAC.

Vision, its employees, agents, subcontractors, and those under its control, shall comply with security measures required of Vision or PAC by the Transportation Security Administration ("TSA"), contained in any Airport master security plan approved by the TSA to include an Airport Tenant Security Program as outlined in TSA 1540 and 1542, as amended. If Vision, its employees, agents, subcontractors or those under its control shall fail or refuse to comply with said measures and such non-compliance results in a monetary penalty being assessed against PAC, then, in addition to any other remedies available to PAC, Vision shall be responsible and shall reimburse PAC in the full amount of any such monetary penalty or other damages. This amount must be paid by Vision within ten (10) business days of written notice.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of this 26th day of June 2014.

PENINSULA AIRPORT COMMISSION

BY: \_\_\_\_\_  
Its Chairperson

Vision Airlines

By:           W S L          

          WILLIAM S. ACOR

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of this 26th day of June 2014.

PENINSULA AIRPORT COMMISSION

BY: *Ladonna Finch*  
Its Chairperson

Vision Airlines

By: \_\_\_\_\_  
\_\_\_\_\_

**Exhibit "A"  
Schedule**

MONDAY

730 PHF EWR 900  
1000 EWR PHF 1115

1930 PHF EWR 2100  
2145 EWR PHF 2300

MONDAY

600 PHF BOS 720  
820 BOS PHF 930

TUESDAY

AC #1

730 PHF EWR 900  
1000 EWR PHF 1115

1930 PHF EWR 2100  
2145 EWR PHF 2300

TUESDAY

AC #2

600 PHF BOS 720  
820 BOS PHF 930

WEDNESDAY

AC #1

730 PHF EWR 900  
1000 EWR PHF 1115

1930 PHF EWR 2100  
2145 EWR PHF 2300

WEDNESDAY

AC #2

600 PHF BOS 720  
820 BOS PHF 930

THURSDAY

AC #1

730 PHF EWR 900  
1000 EWR PHF 1115

1930 PHF EWR 2100  
2145 EWR PHF 2300

THURSDAY

AC #2

600 PHF BOS 720  
820 BOS PHF 930

FRIDAY

AC #1

730 PHF EWR 900  
1000 EWR PHF 1115

1930 PHF EWR 2100

FRIDAY

AC #2

600 PHF BOS 720  
820 BOS PHF 930

2145 EWR PHF 2300

SATURDAY

AC #1

730 PHF EWR 900  
1000 EWR PHF 1115

SATURDAY

AC #2

600 PHF BOS 720  
820 BOS PHF 930

SUNDAY

AC #1

1930 PHF EWR 2100  
2145 EWR PHF 2300

SUNDAY

AC #2

600 PHF BOS 720  
820 BOS PHF 930



**Exhibit "B"**  
**Operating Costs**

The following are examples of operating costs relating to the Flights for which the SCASD and RAISE grant funds described in this Agreement shall be used:

- A. Slot expenses at EWR
- B. Block hour and aircraft operating costs
- C. Marketing and advertising costs in southeast Virginia, New York/New Jersey and Boston areas

