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Item No. 8F_Attach
Meeting Date: November 8, 2022

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement ("Agreement"), dated as of August 10, 2022 ("Effective Date"), is made by and between the Port of Seattle, a Washington municipal corporation ("Port"), that owns, and operates the Seattle Tacoma International Airport ("Airport") and Seattle Tacoma Airline Consortium, LLC, a Washington limited liability company ("STAC").

RECITALS

WHEREAS, the United States Transportation Security Administration ("TSA") is responsible for the security of and staffing enforcement personnel at the Airport's exit lanes ("Exit Lanes"), including preventing access via the Exit Lanes into the sterile area of the Airport;

WHEREAS, due to unprecedented personnel shortages, TSA has advised the Port and STAC that staffing the Exit Lanes with TSA personnel will require reduced staffing of security checkpoints at the Airport, causing potential congestion and passenger processing delays at the security checkpoints;

WHEREAS, in connection with the above, particularly during the summer season when the Airport experiences its largest volume of passengers, TSA has requested that STAC provide personnel to staff certain of the Exit Lanes, as further described below;

WHEREAS, it is in the best interests of the Port, STAC, and all airlines and other users utilizing the Airport, including the traveling public, to avoid congestion and delays at the security check points, while also allowing TSA to ensure appropriate staffing of the Exit Lanes through the assistance of STAC;

WHEREAS, in connection with providing such personnel to TSA to staff the Exit Lanes, STAC has requested reimbursement for the cost of providing such personnel from the Port; and

NOW, THEREFORE, in consideration of the promises, the terms and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Port and STAC, agree as follows:

1. General. STAC agrees to provide TSA with personnel to staff, and shall staff, the Concourse A Exit Lane (adjacent to checkpoint 1) and the Concourse C Exit Lane (adjacent to checkpoint 3) at the Airport, as indicated on Exhibit A hereto (together, the "Covered Exit Lanes") on a 24-7 basis through the duration of this Agreement. The parties acknowledge and agree that STAC will provide the personnel to staff the Covered Exit Lanes as described in this Agreement through a subcontract with VIP Hospitality LLC ("VIP").

2. Responsibilities of STAC. With respect to staffing the Covered Exit Lanes as described in Section 1 above, STAC shall perform in accordance with the following:

- a. STAC, through its subcontractor, VIP, shall provide TSA with properly vetted, badged and credentialed Exit Lane Personnel to staff the Covered Exit Lanes in accordance with this Agreement.
- b. STAC shall at all times comply (and shall ensure that VIP and all Exit Lane Personnel comply) with all requirements and directives of TSA in STAC's performance of the Exit Lane staffing and related obligations described herein, including all considerations for required staffing, placement, alarm response, special circumstances, breach protocols, and safety guidelines.
- c. Without limitation to the provisions of Section 2.b above, STAC shall ensure during the duration of this Agreement (1) that Exit Lane Personnel are assigned and in place on a 24/7 basis in full accordance with TSA's requirements and directives; (2) that the Covered Exit Lanes are never left unattended; and (3) that no one enters the sterile area of the Airport through the Covered Exit Lanes.

d. STAC shall ensure that all Exit Lane Personnel are furnished with proper equipment (uniforms, radios, etc.) to perform their duties safely, efficiently and continuously as described herein.

e. STAC will be reimbursed for its costs in providing the Exit Lane Personnel for Phase 1 of this Agreement and, if applicable pursuant to Section 3.b below, for Phase 2 of this Agreement, pursuant and subject to the provisions of Section 5 below.

3. Duration.

- a. Phase 1. This Agreement shall commence as of the Effective Date and shall continue through 12:00 pm, November 30, 2022 ("Phase 1"), unless extended pursuant to paragraph 3.b below.
- b. Phase 2. Contingent upon the Port receiving authorization from the Port Commission, the Port shall have the option of extending the term of this Agreement, commencing at 12:01 pm on the last day of Phase 1 and continuing through January 31, 2023 ("Phase 2"). If the Port Commission authorizes extension of this Agreement to Phase 2, and the Port elects to exercise its option, the Port shall exercise its option for Phase 2 by written notice to STAC no later than 30 days prior to the expiration of Phase 1 (with a copy of said notice to TSA). If the Port Commission has not provided authorization for Phase 2, or the Port elects not to exercise its option to extend this Agreement for Phase 2, this Agreement shall expire on the last day of Phase 1 and the Port will have no further obligations hereunder.
4. Security Protocols, Procedures and Training. STAC warrants and represents to the Port that TSA, using TSA certified trainers, has provided (or before assignment to Covered Exit Gates, shall provide) STAC, VIP and all Exit Lane Personnel with all mandatory and/or necessary training, assigned duties, standards, procedures and protocols for staffing the Exit Gates in full accordance with TSA's regulatory and operational requirements. The foregoing training shall include required procedures and standards for full compliance with Sensitive Security Information (SSI) regulatory requirements and, as applicable, full compliance with the Airport's TSA-approved security program, as from time to time updated. STAC further warrants and represents to the Port that any new or additional Exit Lane Personnel will also be trained and certified in accordance with the foregoing sentence prior to any Covered Exit Gate staffing assignments and that training and certification shall be updated regularly for all Exit Lane Personnel, in accordance with TSA requirements.
5. Cost Reimbursement; Maximum Port Obligation.
- a. STAC shall invoice the Port for the actual costs charged by VIP to STAC (without markup) for the Exit Lane Personnel provided by VIP as described in this Agreement, plus any applicable sales tax on such charges. These invoices will be provided to the Port no later than twenty (20) calendar days after the end of the calendar month in which the Exit Lane Personnel staff the Covered Exit Lanes. The Port shall review the charges and discuss/resolve any discrepancies with STAC within ten (10) business days of receipt of such invoice. Once both parties agree on the charges, the Port will remit payment for the agreed charges under this Section 5 to STAC via automated clearing house (ACH) transfer within thirty (30) business days following the date of invoice.
- b. Notwithstanding the provisions of Section 5.a above, in no case shall the Port's obligation to reimburse STAC for the costs of providing the Exit Lane Personnel as described herein exceed the amount of \$234,300.00 for Phase 1, and if this Agreement is extended for Phase 2 pursuant to Section 3.b above, in no case shall the Port's obligation to reimburse STAC for the costs of providing the Exit Lane Personnel exceed an additional amount of \$235,000.00 for Phase 2. For avoidance of doubt, the maximum obligation of the Port to reimburse STAC for the Exit Lane Personnel, for Phase 1 and, as applicable, Phase 2, shall be \$469,300.00, regardless of the total costs incurred by STAC.
6. Compliance with Laws. Without limitation to any other provision herein, in providing the Exit Lane Personnel as described in Section 2 above, STAC agrees to comply, and shall cause VIP to comply, with all applicable rules and regulations of the Port, whether now in existence or hereafter promulgated, pertaining to the Premises, including, without limitation, the Seattle-Tacoma International Airport Rules and Regulations and Sea-Tac Airport Tariff, as currently in effect and as from time to time updated, amended or modified in the Port's sole and absolute discretion. STAC further agrees to comply with all applicable federal, state, and municipal laws, ordinances, and regulations, including without limitation those relating to airport security. STAC also shall, at its sole cost and expense, obtain any and all certification, permits, licenses, and approvals that may be required in order to make lawful the activities by STAC and VIP at the Airport in performing the operations described herein.
7. Indemnification. STAC shall indemnify, defend and hold harmless the Port and its officers, directors, and employees (the "Port Parties") from and against any and all claims, suits, demands, judgments, losses, costs, fines, penalties, damages and expenses which may be incurred by, charged to

or recovered from any of the foregoing (a) arising in whole or part out of STAC's operations at the Airport and/or in connection with any of STAC's rights and obligations contained in this Agreement, including, but not limited to, any and all claims for damages as a result of the injury to or death of any person or persons, or damage to any property which arises as a result of any act or omission on the part of STAC or its officers, partners, employees, agents, contractors or subcontractors (including, without limitation, VIP), regardless of where the damage, injury or death occurred, unless such claim, suit, demand, judgment, loss, cost, fine, penalty, damage, liability or expense was proximately caused solely by the negligence of the Port Parties; and/or (b) arising out of the failure of STAC to keep, observe or perform any of its obligations under this Agreement. All indemnities provided in this Agreement shall survive the expiration or any earlier termination of this Agreement. Any final judgment rendered against the Port for any cause for which STAC is liable hereunder shall be conclusive against STAC as to liability and amount upon the

expiration of the time for appeal therefrom. STAC expressly agrees that its duty to defend and indemnify the Port includes negligent acts, which are concurrent, contributory, or both by the Port, resulting in said damage or injury. STAC also agrees that the foregoing indemnity specifically covers actions brought by its own employees, and thus STAC expressly waives its immunity under industrial insurance, Title 51 RCW, as necessary to effectuate this indemnity.

8. Insurance.

a. General Liability Insurance. STAC shall obtain and keep in force a commercial general liability policy of insurance, written on ISO Form CG 00 01 10 01 (or equivalent), that protects STAC and the Port Parties, as additional insureds using ISO Form 20 26 (either 11 85 or 07 04 revision) or equivalent, against claims for bodily injury, personal injury and property damage based upon, involving or arising out of STAC's activities and operations at the Airport, and specifically including the action/inaction of any STAC personnel, agent, licensee or invitee. Such insurance shall be on occurrence basis providing single limit coverage in an amount not less than \$5 Million per occurrence and \$5 Million in the annual aggregate. The policy shall contain a minimum \$100,000 sub-limit that covers damage to premises rented or licensed to STAC, including fire damage. The policy shall be endorsed to make the STAC's insurance primary and non-contributory to any insurance the Port may carry. The policy shall be endorsed with a waiver of subrogation or waiver of the transfer of the rights of recovery in favor of the Port Parties. On or before the Effective Date, STAC shall provide the Port with a copy of the additional insured endorsement and other endorsements that validates the coverage requirements of this section.

b. Automobile Liability Insurance. STAC shall obtain and keep in force a commercial automobile liability policy of insurance, written on ISO Form CA 00 01 07 97 (or equivalent), covering claims for bodily injury and property damage based upon, involving or arising out of motor vehicle operations on or about the Premises and all areas appurtenant thereto. Such insurance shall cover any "Auto" (i.e., owned, hired and non-owned) and shall be on an occurrence basis providing a combined single limit coverage in an amount not less than \$1 Million per occurrence. Note: This does not apply to employees of STAC who are parking at the STIA and then walking to their reporting station.

c. Insurance Companies. Insurance required hereunder shall be in companies duly licensed to transact business in the State of Washington and maintaining during the policy term a General Policyholders Rating of 'A-' or better and a financial rating of 'IX' or better, as set forth in the most current issue of "Best's Insurance Guide."

d. Deductibles. No insurance required herein shall contain a deductible or self-insured retention in excess of \$100,000 without the prior written consent of the Port. STAC shall be solely responsible for the payment of any deductible amount under any policies of insurance required to be carried by STAC pursuant to this Section 6.

e. Cancellation/Non-Renewal. The insurances STAC is required to maintain pursuant to this Agreement shall remain current and in good standing at all times this Agreement remains in effect, commencing as of the Effective Date. The Port shall receive documentation annually to include a certificate of insurance and any applicable endorsements to validate the insurance required herein has been purchased and is compliant with the requirements of this Agreement within 10 (ten) days of each insurance renewal. Should any insurance required herein be terminated, cancelled, or not renewed, the STAC will have five (5) days to obtain replacement insurance from the date of the termination, cancellation or non-renewal notice STAC receives from their insurer(s).

f. Evidence of Insurance. Within five (5) business days following the Effective Date, STAC shall deliver, or cause to be delivered, to the Port, certificates of insurance, additional insured endorsements, waivers of subrogation and any other documentation or endorsement that provides evidence of the existence and amounts of such insurance, the inclusion of the Port as an insured as required by this Agreement, and the amounts of all deductibles and/or self-insured retentions. Upon request by the Port, STAC shall deliver or cause to be delivered to the Port, certified copies of the policies

of insurance that STAC has purchased in order for the Port to verify insurance coverage, limits, and endorsements or view any exclusions to the STAC's insurance policies.

g. Subcontractors. STAC shall cause each subcontractor (including, without limitation, VIP) to purchase and maintain insurance of the type specified under this Agreement and cause each subcontractor to include the Port Parties as additional insureds as described in this Section 8. When requested by the Port, STAC shall furnish copies of certificates of insurance coverage for each subcontract.

h. No Limitation of Liability. The limits of insurance required by this Agreement or as carried by STAC shall not limit the liability of STAC nor relieve STAC of any obligation hereunder.

i. Waiver of Subrogation. Without affecting any other rights or remedies, STAC (for itself and on behalf of anyone claiming through or under it by way of subrogation or otherwise) hereby waives any rights it may have against the Port Parties (whether in contract or in tort) on account of any loss or damage occasioned to STAC arising out of or incident to the perils required to be insured against under this Agreement. Accordingly, STAC shall cause each insurance policy required by this Agreement

to further contain a waiver of subrogation clause. The effect of such release and waiver of the right to recover damages shall not be limited by the amount of insurance carried or required or by any deductibles applicable thereto.

9. Termination.

- a. The Port may terminate this Agreement prior to expiration of Phase 1, or as applicable, expiration of Phase 2, by providing ten (10) days written notice to STAC.
- b. The parties acknowledge that TSA may elect to resume staffing of the Covered Exit Lanes using TSA's own personnel at any point during the duration of this Agreement, should staffing needs change or to comply with any security or other regulatory requirements or otherwise in the exercise of TSA's regulatory prerogative. If TSA elects to resume staffing of the Covered Exit Lanes pursuant to the foregoing sentence, either the Port or STAC may terminate this Agreement upon forty-eight (48) hours written notice to the other party.
- c. In the event this Agreement is terminated pursuant to the terms hereof, the Port will reimburse STAC for its costs in staffing the Covered Exit Lanes, as set forth in Section 5 above, through the last date STAC provides such staffing prior to the effective date of termination.

10. Assignment; Subcontracting. STAC shall not assign this Agreement or any of its rights and privileges hereunder, or subcontract (other than with VIP) for the performance of any of the work or personnel to be provided by it hereunder, without the Port's prior written approval, which approval may be granted or withheld by the Port in the Port's sole discretion.

11. Federal Nondiscrimination Regulations.

a. STAC agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from federal assistance. If STAC transfers its obligation to another, the transferee is obligated in the same manner as STAC. This provision obligates STAC for the period during which the property is owned, used or possessed by STAC and the Airport remains obligated to the FAA. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

b. During the performance of this Agreement and to the extent applicable, STAC, for itself, its assignees, and successors in interest agrees as follows.

(1) STAC will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.

(2) STAC, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and Agreements of equipment. STAC will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

(3) In all solicitations, either by competitive bidding, or negotiation made by STAC for work to be performed under a subcontract, including procurements of materials, or Agreements of equipment, each potential subcontractor or supplier will be notified by STAC of STAC's obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

(4) STAC will provide all reasonably requested information and reports required by applicable Laws and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Port or the FAA to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of STAC is in the exclusive possession of another who fails or refuses to furnish the information, STAC will so certify to the Port or the FAA, as appropriate, and will set forth what efforts it has made to obtain the information.

(5) In the event of STAC's noncompliance with the nondiscrimination provisions of this contract, the Port will impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to cancelling, terminating, or suspending the Agreement, in whole or in part.

(6) STAC will include the provisions of paragraphs 11.b(1) through 11.b(6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. STAC will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if STAC becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, STAC may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, STAC may request the United States to enter into the litigation to protect the interests of the United States.

(7) Title VI List of Pertinent Nondiscrimination Acts and Authorities.

During the performance of this Agreement, STAC, for itself, its assignees, and successors in interest agrees to comply with the following nondiscrimination statutes and authorities, including but not limited to:

(a) Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252)

(prohibits discrimination on the basis of race, color, national origin);

(b) 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);

(c) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

(d) Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;

(e) The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.)

(prohibits discrimination on the basis of age);

(f) Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);

(g) The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

(h) Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;

(i) The FAA’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

(j) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

(k) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, STAC must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

(l) Title IX of the Education Amendments of 1972, as amended, which prohibits STAC from discriminating because of sex in education programs or activities (20 USC 1681 et seq).

c. Affirmative Action. STAC assures that it will undertake an affirmative action program if required by 14 CFR Part 152, Subpart E, to ensure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. STAC assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. STAC assures that it will require that its covered sub organizations provide assurances to STAC that they will require assurances from their sub organizations, if required by 14 CFR Part 152, Subpart E, to the same effect.

12. Miscellaneous.

a. Governing Law. This Agreement shall be deemed to have been made in, and be construed in accordance with the laws of, the State of Washington.

b. No Waiver. No waiver of default of any of the terms, covenants and conditions of this Agreement to be performed, kept and observed by the other party shall be construed as, or operate as, a waiver of any subsequent default of any of the terms, covenants or conditions of this Agreement to be performed, kept and observed by the other party

c. Time. Time is expressed to be the essence of this Agreement.

d. No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.

e. No Joint Venture. STAC is not authorized to act as the Port’s agent hereunder and shall have no obligation to the Port, express or implied, to act for or bind Port hereunder and nothing contained in this Agreement shall be deemed or construed by the Port or STAC or by any third party to create the relationship of partnership or of joint venture. It is expressly agreed that the parties to this Agreement are not, in any way or for any purpose, partners and therefore do not assume any responsibilities for one another.

f. Agreements with the United States. The terms of this Agreement are subject and subordinate to (a) the provisions of any agreement between the Port and the United States, including without limitation the terms of any "Sponsor's Grant Assurances" or like agreement, required to obtain federal grant funds or other benefits for the airport and (b) any bond covenants of the Port. STAC shall consent to any modification to the terms of this Agreement that is required to comply with the Port's obligations under such agreements or bond covenants or if required as a condition of the Port's entry into such agreements or bond covenants.

g. Attorneys' Fees. In the event that either party shall be required to bring any action to enforce any of the provisions of this Agreement, or shall be required to defend any action brought by the other party with respect to this Agreement, and in the further event that one party shall substantially prevail in such action, the losing party shall pay all of the prevailing party's reasonable costs and reasonable attorneys' fees as determined by the court. In the event the Port or STAC is represented by inhouse attorneys in such action, such attorneys' fees shall be computed at hourly rates charged by attorneys of comparable experience in private practice in Seattle; provided, however, that with respect to the Port's use of in-house counsel, STAC shall only be required to pay to the Port the difference between the total attorneys' fees owed by STAC and the amount direct billed to the Port by its in-house counsel.

h. Successors and Assigns. All of the terms, provisions, covenants, stipulations, conditions and considerations in this Agreement shall extend to and bind the legal representatives, successors, and assigns of each party to this Agreement.

i. Entire Agreement; Modification. This Agreement sets forth all covenants, promises, agreements, conditions and understandings between the Port and STAC, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between the Port or STAC, concerning the subject matter hereof, other than as set forth in this Agreement. No subsequent amendment, change or addition to this Agreement shall be binding upon any party hereto unless in writing and signed by both the Port and STAC.

j. Counterparts; Electronic Signatures. This Agreement may be executed in counterparts, each of which will be deemed an original, and all of which, together, will constitute one and the same instrument. This Agreement may be accepted and signed in electronic form (e.g., by a physically signed document, scanned and transmitted via electronic mail) and each party's electronic acceptance and signature will be deemed binding between the parties. Each party acknowledges and agrees it will not contest the validity or enforceability of this Agreement, including under any applicable statute of frauds, because it was accepted and/or signed in electronic form. Further, each party shall, upon the request of the other party, promptly provide the requesting party, via United States mail or overnight courier, an originally executed copy of the executed document that it signed in electronic form.

SIGNATURE PAGE FOLLOWS

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MEMORANDUM OF AGREEMENT – signature page

Seattle-Tacoma Airline Consortium, LLC

Randall Fiertz

Signature

By: Randall Fiertz

Its: Chair

Port of Seattle

Signature

By: Stephen P. Metruck

Its: Executive Director

8/10/2022