

FIRST AMENDMENT TO OPERATING AGREEMENT DA-4999
BETWEEN THE CITY OF LOS ANGELES AND
PACIFIC COAST SIGHTSEEING TOURS & CHARTERS, INC,
FOR THE
OPERATION OF VAN NUYS AND UNION STATION
FLYAWAY BUS SERVICE
AT LOS ANGELES INTERNATIONAL AIRPORT

THIS FIRST AMENDMENT TO OPERATING AGREEMENT NO. DA-4999, FOR THE OPERATION OF VAN NUYS AND UNION STATION FLYAWAY BUS SERVICE (this "Agreement") is made and entered into as of _____ 2022 (the "Effective Date") by and between THE CITY OF LOS ANGELES DEPARTMENT OF AIRPORTS, a municipal corporation ("City"), acting by order of and through its Board of Airport Commissioners ("Board"), and PACIFIC COAST SIGHTSEEING TOURS AND CHARTERS, INC. (hereinafter referred to as "Operator and /or Contractor"), with reference to the following:

RECITALS:

WHEREAS, City and Operator previously entered into Agreement No. DA-4999, commencing July 11, 2015 and expiring on July 10, 2022, unless the term of the Agreement is sooner terminated or extended in accordance with the provisions of the Agreement;

WHEREAS, City desires to extend the term of the Agreement; and

WHEREAS, City desires to adjust the financial terms of the Agreement in conjunction with the extended term.

NOW, THEREFORE, for and in consideration of the covenants and conditions hereinafter contained to be kept and performed by the respective parties hereto, IT IS MUTUALLY AGREED as follows:

AMENDMENTS

Section 1. Amend Section 1.1 of the Agreement by deleting it in its entirety, and in lieu thereof, inserting the following:

“1.1. The Term of this Agreement shall commence on the Commencement Date, which shall be established in a document (hereinafter referred to as "Commencement Date Memorandum") executed by both parties no later than

sixty (60) days after receipt of all required City approvals, and expiring October 31, 2022. thereafter (hereinafter referred to as "Expiration Date") subject, however, to earlier termination and in accordance with the terms of this Agreement. The Commencement Date Memorandum shall be incorporated herein upon its execution, as Exhibit A-1.”

Section 2. Amend the Agreement by deleting Section 8.2 in its entirety and in lieu thereof inserting the following:

“8.2. Effective July 11, 2022, City shall pay to Operator a fixed Monthly Management Fee in the amount of Three Hundred Eighty-eight Thousand, One Hundred Seventy-eight Dollars (\$388,178) per month. Operator acknowledges that the amount payable as the Monthly Management Fee is, among other things, inclusive of and constitutes the full and sole compensation that Operator is entitled to receive under this Agreement for the following:

- (a) Administration and overhead (including but not limited to, corporate management, local management (e.g., general manager, assistant manager, operations manager), accounting, audit and clerical support);
- (b) materials and supplies required for operation of FlyAway Bus Service including, but not limited to, ticketing equipment and infrastructure, FlyAway Bus Service ticket stock, receipt paper and employee FlyAway Bus Service pass cards; and
- (c) any insurance required to be maintained by Operator;
- (d) licenses, permits, and security instruments; and
- (e) profit”

Section 3. Amend the Agreement by deleting Section 8.3 in its entirety and in lieu thereof inserting the following:

“Trip Fees shall mean an amount equal to the Trip Rate (as defined in this section) multiplied by the number of Trips (as defined in Section 4.2) completed during such month, provided, however, that the number of Trips for such month shall not exceed the number of Trips authorized in Section 4.2 or otherwise authorized in writing by the Executive Director (it being understood that no compensation shall be paid to Operator for the performance of Trips in excess of such authorized number of Trips). Effective July 11, 2022, the FlyAway Operator’s Trip Rates shall be set by service location as follows: (1) Union Station Trip Rate is **One Hundred Sixty Dollars and Ninety-five cents (\$160.95)** and shall apply to each completed one-way trip in each direction, between Union Station Bus Terminal and Airport; and; (2) Van Nuys Trip Rate is **One Hundred Fifty-eight Dollars and zero cents (\$158.00)** and shall apply to

each completed one-way trip in each direction, between Van Nuys Bus Terminal and Airport, in accordance with **First Amendment-Exhibit B** and subject to Section 2.1.1.

8.3.1. City shall compensate the Operator for completed Repositioning Trips, defined in Section 8.3.2, provided however, Repositioning Trips shall not exceed five percent (5%) of the annual scheduled Trips authorized in Section 4.2 and specified in **First Amendment- Exhibit B**.

8.3.2. Operator acknowledges Repositioning Trips are defined as deadhead trips (those trips which contain no customer passengers) between Airport and either Union Station Bus Terminal or Van Nuys FlyAway Bus Terminal which are required to meet the service operation schedule published to the traveling public, and as determined in the sole discretion of the Executive Director.

Section 4. Amend the Agreement by adding a new Section 8.4.1 which shall be the following:

“Section 8.4.1 City will reimburse Contractor for actual fuel costs incurred for all bussing services in connection with the operation of the FlyAway Buses for the FlyAway Bus Service. Fuel costs will be based on the U.S. Energy Information Administration diesel fuel cost data for California. Fuel reimbursement will be calculated based on 6.03 miles per gallon and live miles per trip to/from Van Nuys at 23.5 miles and Union Station at 20.2 miles. Contractor will be required to provide detailed back-up documentation each month in a form that shall include a column with formula calculations to depict miles per gallon by vehicle and by route. These fuel usage, vehicle and mileage details shall be submitted to City each month on a spreadsheet form approved by City or electronically through a web-enabled database.”

Section 5. Amend the Agreement by attaching and incorporating into the Agreement the document, **First Amendment – Exhibit B**.

Section 6. Except as amended or modified by this First Amendment, the Agreement is hereby ratified and confirmed and all other terms of the Agreement shall remain in full force and effect, unaltered and unchanged by this First Amendment. If there is any conflict between the provisions of this First Amendment and the provisions of the Agreement the provisions of this First Amendment shall prevail. Whether or not specifically amended by this First Amendment, all terms and provisions of the Agreement are amended to the extent necessary to give effect to the purpose and intent of this First Amendment.

Section 7. **No Third Party Beneficiaries.** No provisions of the Agreement or this First Amendment may be amended or added to except by a written agreement signed by the Parties or their respective successors-in-interest. This First Amendment is not intended to confer upon any person other than the Parties, any rights or remedies hereunder.

Section 8. **Governing Law; Interpretation.** This First Amendment shall be governed by, and construed in accordance with, the laws of the State of California. The Agreement and this First Amendment are subject to the provisions of the Los Angeles Administrative Code. Each Party represents and warrants that this First Amendment has been negotiated and drafted at arms-length by equally sophisticated parties, and any ambiguity cannot be attributed to either Party hereto. If any provision of this First Amendment, or the application thereof to any persons or circumstances, shall be invalid or unenforceable, the remainder of this First Amendment shall not be affected thereby, and each provision of this First Amendment shall be valid and shall be enforceable to the fullest extent permitted by law.

Section 9. **Electronic Signatures & Counterparts.** This First Amendment and any other document necessary for the consummation of the transaction contemplated by this First Amendment may be executed in counterparts, including counterparts that are manually executed and counterparts that are in the form of electronic records and are electronically executed. An electronic signature means a signature that is executed by symbol attached to or logically associate with a record and adopted by a party with the intent to sign such record, including facsimile or e-mail signatures. All executed counterparts shall constitute one agreement, and each counterpart shall be deemed an original. The parties hereby acknowledge and agree that electronic records and electronic signatures, as well as facsimile signatures, may be used in connection with the execution of this First Amendment and electronic signatures, facsimile signatures or signatures transmitted by electronic mail in so-called PDF format shall be legal and binding and shall have the same full force and effect as if a paper original of this First Amendment had been delivered that had been signed using a handwritten signature. All parties to this First Amendment (i) agree that an electronic signature, whether digital or encrypted, of a party to this First Amendment is intended to authenticate this writing and to have the same force and effect as a manual signature; (ii) intended to be bound by the signatures (whether original, faxed, or electronic) on any document sent or delivered by facsimile or electronic mail or other electronic means; (iii) are aware that the other party(ies) will rely on such signatures; and, (iv) hereby waive any defenses to the enforcement of the terms of this First Amendment based on the foregoing forms of signature. If this First Amendment has been executed by electronic signature, all parties executing this document are expressly consenting, under the United States Federal Electronic Signatures in Global and National Commerce Act of 2000 (“E-SIGN”) and the

IN WITNESS WHEREOF, City has caused this First Amendment to be executed by the Chief Executive Officer and Operator has caused the same to be executed by its duly authorized officers and its corporate seal to be hereunto affixed, all as of the day and year first hereinabove written.

APPROVED AS TO FORM:
Michael N. Feuer, City Attorney

CITY OF LOS ANGELES

Date _____

By _____

By 
Nichole Kelso (Jun 3, 2022 16:12 PDT)
Deputy/Assistant City Attorney

Chief Executive Officer
Department of Airports

ATTEST:

Pacific Coast Sightseeing Tours and Charters, Inc.

By 
Jazmine Estacio (May 26, 2022 18:56 EDT)
Signature

By 
Greg Cain (May 26, 2022 15:47 PDT)
Signature

Jazmine Estacio
Print Name

Greg Cain
Print Name

Secretary and General Counsel
Print Title

VP / General Manger
Print Title

FIRST AMENDMENT - EXHIBIT B
SERVICE OPERATIONS SCHEDULE FOR LAX FLYAWAY® SERVICE
FLYAWAY - VAN NUYS & UNION STATION
 Schedule as of 11.10.21

VNY to LAX				
12:00 AM	1:00 AM	2:00 AM	3:00 AM	3:30 AM
4:00 AM	4:30 AM	5:00 AM	5:20 AM	5:40 AM
6:00 AM	6:20 AM	6:40 AM	7:00 AM	7:20 AM
7:40 AM	8:00 AM	8:20 AM	8:40 AM	9:00 AM
9:20 AM	9:40 AM	10:00 AM	10:20 AM	10:40 AM
11:00 AM	11:20 AM	11:40 AM	12:00 PM	12:20 PM
12:40 PM	1:00 PM	1:20 PM	1:40 PM	2:00 PM
2:20 PM	2:40 PM	3:00 PM	3:20 PM	3:40 PM
4:00 PM	4:20 PM	4:40 PM	5:00 PM	5:20 PM
5:40 PM	6:00 PM	6:20 PM	6:40 PM	7:00 PM
7:20 PM	7:40 PM	8:00 PM	8:20 PM	8:40 PM
9:00 PM	9:20 PM	9:40 PM	10:00 PM	10:20 PM
10:40 PM	11:00 PM	11:20 PM	11:40 PM	
LAX to VNY				
12:00 AM	12:20 AM	12:40 AM	1:00 AM	1:20 AM
2:30 AM	3:30 AM	4:30 AM	5:00 AM	5:30 AM
6:00 AM	6:20 AM	6:40 AM	7:00 AM	7:20 AM
7:40 AM	8:00 AM	8:20 AM	8:40 AM	9:00 AM
9:20 AM	9:40 AM	10:00 AM	10:20 AM	10:40 AM
11:00 AM	11:20 AM	11:40 AM	12:00 PM	12:20 PM
12:40 PM	1:00 PM	1:20 PM	1:40 PM	2:00 PM
2:20 PM	2:40 PM	3:00 PM	3:20 PM	3:40 PM
4:00 PM	4:20 PM	4:40 PM	5:00 PM	5:20 PM
5:40 PM	6:00 PM	6:20 PM	6:40 PM	7:00 PM
7:20 PM	7:40 PM	8:00 PM	8:20 PM	8:40 PM
9:00 PM	9:20 PM	9:40 PM	10:00 PM	10:20 PM
10:40 PM	11:00 PM	11:20 PM	11:40 PM	

US to LAX				
3:00 AM	4:00 AM	5:00 AM	5:30 AM	6:00 AM
6:30 AM	7:00 AM	7:30 AM	8:00 AM	8:30 AM
9:00 AM	9:30 AM	10:00 AM	10:30 AM	11:00 AM
11:30 AM	12:00 PM	12:30 PM	1:00 PM	1:30 PM
2:00 PM	2:30 PM	3:00 PM	3:30 PM	4:00 PM
4:30 PM	5:00 PM	5:30 PM	6:00 PM	6:30 PM
7:00 PM	7:30 PM	8:00 PM	8:30 PM	9:00 PM
9:30 PM	10:00 PM	10:30 PM	11:00 PM	11:30 PM
LAX to US				
5:40 AM	6:10 AM	6:40 AM	7:10 AM	7:40 AM
8:10 AM	8:40 AM	9:10 AM	9:40 AM	10:10 AM
10:40 AM	11:10 AM	11:40 AM	12:10 PM	12:40 PM
1:10 PM	1:40 PM	2:10 PM	2:40 PM	3:10 PM
3:40 PM	4:10 PM	4:40 PM	5:10 PM	5:40 PM
6:10 PM	6:40 PM	7:10 PM	7:40 PM	8:10 PM
8:40 PM	9:10 PM	9:40 PM	10:10 PM	10:40 PM
11:10 PM	11:40 PM	12:10 PM	12:40 AM	1:10 AM