

## **ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT**

### **Southwest Airlines Co. Hotel Occupancy Tax Reimbursement**

This Economic Incentive Agreement (“Agreement”) is made by and between the City of Farmers Branch, Texas (“City”) and Southwest Airlines Co. (“Company”) (each a “Party” and collectively the “Parties”), acting by and through their respective authorized representatives.

**WHEREAS**, the Company has or intends to reserve approximately 7,455 hotel room nights during the 2024 calendar year and desires to reserve up to an additional 20,000 hotel room nights during the 2025 calendar year in specific hotels located in the City to support its Southwest Airlines University training program; and

**WHEREAS**, the Company has advised the City that a contributing factor that would induce the Company to make such commitments to reserve the above-stated number of hotel room nights in the City would be an agreement by the City to provide an economic development grant to the Company; and

**WHEREAS**, the promotion of the expansion of existing businesses within the City and the recruitment of new business enterprises to the City will promote economic development, stimulate commercial activity, generate additional sales tax, and enhance the economic vitality of the City; and

**WHEREAS**, the City has adopted programs for promoting economic development, and this Agreement and the economic development incentives set forth herein are given and provided by the City pursuant to and in accordance with those programs; and

**WHEREAS**, the City is authorized by Article III, Section 52-a of the Texas Constitution and Texas Local Government Code, Chapter 380, to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

**WHEREAS**, specifically, the City desires to provide the Company an economic development grant in the form of a partial reimbursement of the City hotel occupancy taxes paid by the Company to the City for hotel room night reservations made at hotels located in Farmers Branch, Texas, as authorized in Texas Tax Code §351.101 et seq.; and

**WHEREAS**, the City has determined that making an economic development grant to the Company in accordance with this Agreement is in accordance with the City’s economic development programs, Chapter 351 of the Texas Tax Code, and will (i) further the objectives of the City; (ii) benefit the City and the City’s inhabitants; (iii) promote local economic development and stimulate business and commercial activity in the City; and (iv) enhance and promote the tourism and hotel industry in Farmers Branch.

**NOW THEREFORE**, in consideration of the foregoing, and on the terms and conditions hereinafter set forth, and other valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## **Article I Definitions**

For purposes of this Agreement, each of the following terms shall have the meaning set forth herein unless the context clearly indicates otherwise:

“Bankruptcy or Insolvency” shall mean the dissolution or termination of a Party’s existence as a going business, insolvency, appointment of receiver for any part of such Party’s property, and such appointment is not terminated within one hundred twenty (120) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against such Party and such proceeding is not dismissed within one hundred twenty (120) days after the filing thereof.

“City” shall mean the City of Farmers Branch, Texas.

“City Manager” shall mean the City Manager for the City of Farmers Branch, Texas.

“Company” shall mean Southwest Airlines Co.

“Effective Date” shall mean the last date of execution hereof.

“Force Majeure” shall mean an event wholly or partially preventing a Party from the performance of any obligation or duty placed on such Party by reason of or through work strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, court judgment, or a government restriction, quarantine or mandatory closure order enacted in response to a pandemic or other public health crises, or other specific cause reasonably beyond the Party’s control and not attributable to its malfeasance, neglect or nonfeasance (each an event of “Force Majeure”). In the event of Force Majeure, the time for performance of such obligation (other than a payment obligation) may be extended for a period equal to the time lost by reason of such event, provided that the Party complies with the provisions herein. Specifically, the Party asserting Force Majeure (i) shall give prompt notice to the other Party of the prevention of performance as soon as the asserting Party is reasonably aware of such prevention and (ii) has the burden of demonstrating (1) how and why their performance was so prevented, (2) the period of time during which they were so prevented from performing (which under the facts may be equal to, or shorter or longer than, the duration of the Force Majeure event itself), and (3) that the Party used commercially reasonable efforts to mitigate and/or eliminate such prevention and resumed performance under this Agreement as soon as reasonably practicable.

“Hotel Occupancy Tax(es)” shall, for the purposes of this Agreement, mean the seven (7) percent City hotel occupancy tax assessed to each hotel night reservation made by the Company at a hotel located within the corporate limits of the City.

“Hotel Occupancy Tax Grants” shall collectively mean annual grant, each in an amount not to exceed five (5) dollars per room night of the Hotel Occupancy Taxes the Company actually paid during each respective quarter.

“Impositions” shall mean all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees, and other charges by a public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on the Company or any property or any business owned by Company within the City.

“Payment Request” shall mean a written request from the Company to the City for payment of the applicable Hotel Occupancy Tax Grant, which request shall be accompanied by copies of tax statement and/or receipt(s) and/or other evidence reasonably satisfactory to the City to establish that the Hotel Occupancy Tax assessed by the City for the listed hotel night stays has been paid for such quarter.

“Related Agreements” shall mean any agreement by and between the City and the Company or any of its affiliated or related entities.

“State of Texas” shall, where applicable, mean the Office of the Texas Comptroller or its successor.

“Tax Year” shall have the meaning assigned to such term in Section 1.04 of the Texas Tax Code (i.e., the calendar year).

## **Article II**

### **Term**

This Agreement shall be effective and binding upon the Parties retroactively beginning January 1, 2024 and shall remain in effect until December 31, 2024. Following this one-year term, the City may elect to extend this Agreement by mutual written agreement under the same terms for an additional one-year term ending on December 31, 2025. Company shall contact the City with any changes impacting the utilization of Hotel Occupancy Tax Funds within thirty (30) days of the change.

## **Article III**

### **Economic Development Grants**

3.1 Hotel Occupancy Tax Grants. (a) Subject to the continued satisfaction of all the terms and conditions of this Agreement, the City agrees to provide the Company with four (4) quarterly grants, each in an amount equal to 71.43% of the Hotel Occupancy Taxes the Company paid during each respective quarter. However, the collective Hotel Occupancy Tax Grants made by the City to the Company shall be limited as follows: (a) for the initial term of this Agreement, the total amount of Hotel Occupancy Tax Grants shall not exceed \$37,275.00 during the 2024 calendar year and (b) upon the City’s

execution of its additional option period of another one-year term, the total amount of Hotel Occupancy Tax Grants shall not exceed \$75,000.00 during the 2025 calendar year.

3.2 Subject to Company's compliance with Article IV, the Hotel Occupancy Tax Grants shall be paid within sixty (60) days after receipt of a Payment Request following the end of each respective quarter. Each Payment Request shall be submitted to the City not later than thirty (30) days immediately following the end of the applicable quarter period.

3.3 Except as provided below, if the Company fails to timely submit the Payment Request for any applicable quarter period the Company shall forfeit the Hotel Occupancy Tax Grant for such corresponding period.

3.4 Grant Limitations. Under no circumstances shall City obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Further, City shall not be obligated to pay any commercial bank, lender, or similar institution for any loan or credit agreement made by the Company. None of the City's obligations under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

3.5 Current Revenue. The Grants made hereunder shall be paid solely from lawfully available funds pursuant to Texas Constitution Article II, Section 52-a, Texas Tax Code Chapter 351, and Texas Local Government Code Chapter 380. Consequently, notwithstanding any other provision of this Agreement, the City shall have no obligation or liability to pay any Grants except as allowed by law. The City shall not be required to pay any grants if prohibited under federal or state legislation or a decision of a court of competent jurisdiction.

3.6 Indemnification THE COMPANY AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY FOR PURPOSE OF THIS SECTION, THE "CITY") HARMLESS FROM AND AGAINST ANY AND ALL REASONABLE LIABILITIES, DAMAGES, CLAIMS, LAWSUITS, JUDGMENTS, ATTORNEY FEES, COSTS, EXPENSES, AND DEMANDS BY THE STATE OF TEXAS THAT THE CITY HAS BEEN PAID ERRONEOUSLY, OVER-PAID OR INCORRECTLY ALLOCATED HOTEL OCCUPANCY TAX ATTRIBUTED HOTEL NIGHT STAYS MADE BY THE COMPANY AND/OR COMPANY AFFILIATES FOR ANY PERIOD DURING THE TERM OF THIS AGREEMENT OR DURING ANY GRANT PERIOD (COLLECTIVELY, A "CLAIM"). IT BEING THE INTENTION OF THE PARTIES THAT THE COMPANY SHALL BE RESPONSIBLE FOR THE REPAYMENT OF ANY HOTEL OCCUPANCY TAX GRANTS PAID TO THE COMPANY HEREIN BY THE CITY THAT INCLUDES HOTEL OCCUPANCY TAXES THAT THE STATE OF TEXAS HAS DETERMINED WERE PAID ERRONEOUSLY, COLLECTED, DISTRIBUTED, OR ALLOCATED TO THE CITY. THE INDEMNIFICATION PROVIDED ABOVE SHALL NOT APPLY TO ANY LIABILITY RESULTING SOLELY FROM THE ACTIONS OR OMISSIONS OF THE CITY; THE COMPANY SHALL BE OBLIGATED TO PAY REASONABLE ATTORNEY FEES AND OTHER THIRD-PARTY COSTS INCURRED BY THE CITY TO DEFEND OR CONTEST A CLAIM (COLLECTIVELY, THE "OTHER COSTS"). THE PROVISIONS OF THIS SECTION SHALL SURVIVE TERMINATION OF THIS AGREEMENT. THE PROVISIONS OF THIS SECTION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND DO NOT

CREATE ANY OBLIGATIONS FROM OR GRANT ANY CONTRACTUAL OR OTHER RIGHTS TO ANY OTHER PERSON OR ENTITY, OTHER THAN OBLIGATIONS, IF ANY, THAT ARISE FROM THE COMPANY TO THE CITY TO PERFORM OBLIGATIONS CREATED BY THIS SECTION.

#### **Article IV**

##### **Conditions to the Grants**

The obligation of the City to provide the grant(s) shall be conditioned upon the continued compliance with and satisfaction of each of the terms and conditions of this Agreement by the Company and each of the conditions set forth in this Article.

4.1 Good Standing. The Company shall not have an uncured breach or default of this Agreement or a Related Agreement (provided that if any grants are not paid at any time that an uncured breach or default of this Agreement or a Related Agreement exists, such grants shall be paid to Company upon timely cure of such breach or default if the Agreement is not terminated for such uncured breach).

4.2 Use of Hotels Located in Farmers Branch. This Agreement shall only apply to those hotel night stays in hotels located in the city limits of Farmers Branch, Texas. The Company guarantees that it shall reserve and pay (1) a minimum of 750 hotel nights during the initial term of this Agreement and (2) a minimum of 750 hotel nights during the City's additional one-year option period. If no room tax is paid, that should not count towards the reimbursement.

4.3 Payment Request. The Company shall, as a condition precedent to the payment of the Hotel Occupancy Tax Grants, provide the City with the applicable Payment Request.

#### **Article V**

##### **Termination; Repayment**

5.1 Termination. This Agreement terminates as described in Article II and may, prior to the expiration date, be terminated upon any one or more of the following:

- (a) by mutual written agreement of the Parties;
- (b) upon written notice by either Party, if the other Party defaults or breaches any of the terms or conditions of this Agreement or a Related Agreement and such default or breach is not cured within sixty (60) days after written notice thereof;
- (c) upon written notice by the City, if any Impositions owed to the City or the State of Texas by the Company shall have become delinquent and such delinquency is not cured within ten (10) business days after written notice thereof (provided, however, the Company retains the right to timely and properly protest and contest any such taxes or Impositions);

- (d) upon written notice by the City, if the Company suffers an event of Bankruptcy or Insolvency; or
- (e) upon written notice by either Party if any subsequent Federal or State legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal, or unenforceable.

5.2 Offsets. The City may, at its option, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due to the City from the Company, regardless of whether the amount due arises pursuant to the terms of this Agreement, a Related Agreement or otherwise and regardless of whether or not the debt due the City has been reduced to judgment by a court; provided that the City shall provide reasonable prior notice of any such offset.

5.3 Repayment. In the event the Agreement is terminated by the City pursuant to Section 5.1, the Company shall immediately repay to the City an amount equal to the grant(s) previously paid by the City to the Company, plus interest at the rate periodically announced by the Wall Street Journal as the prime or base commercial lending rate, or if the Wall Street Journal shall ever cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from time to time announced by Citibank, N.A. (or by any other New York money center bank reasonably selected by the City) as its prime or base commercial lending rate, which shall accrue from the date the grant was initially paid to Company.

## **Article VI Miscellaneous**

6.1 Binding Agreement. The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the Parties hereto.

6.2 Limitation on Liability. It is understood and agreed between the Parties that the Company and City, in satisfying the conditions of this Agreement, have acted independently, and the City assumes no responsibilities or liabilities to third parties in connection with these actions.

6.3 No Joint Venture. It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the Parties.

6.4 Authorization. Each Party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement. The undersigned officers and/or agents of the Parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the Parties hereto.

6.5 Notice. Any notice required or permitted to be delivered hereunder shall be in writing and shall be given by either Party via an express mail service, courier, or certified mail, return receipt



requested, or by confirmed facsimile, to the respective Party at the address specified below (or to such other Party or address as either Party may designate in writing). All notices given pursuant to this section shall be deemed effective on the date such notice is actually received or otherwise hand-delivered:

If intended for City, to:

Attn: Ben Williamson  
City Manager  
13000 William Dodson Parkway  
Farmers Branch, Texas 75234

With a copy to:

Whitt Wyatt  
Wyatt Hamilton Findlay PLLC  
5810 Long Prairie Road  
Flower Mound, Texas 75028

If intended for the Company, to:

Attn: \_Muneerah Ali-Hussain  
2702 Love Field Drive  
Dallas, TX 75235  
Email: \_\_muneerah.alihussain@wnco.com\_\_

6.6 Entire Agreement. This Agreement is the entire Agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the Parties that in any manner relates to the subject matter of this Agreement, except as provided in any Exhibits attached hereto.

6.7 Governing Law. The Agreement shall be governed by the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction; and the exclusive venue for any action concerning this Agreement shall be in the State District Court of Dallas County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

6.8 Amendment. This Agreement may only be amended by the mutual written agreement of the Parties.

6.9 Legal Construction. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the Parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

6.10 Successors and Assigns. This Agreement may not be assigned without the prior written consent of the City; however notwithstanding the foregoing, this Agreement may be assigned without the consent of the City to a Successor, provided: (i) such Successor has assumed in writing the obligations and liabilities of the Company hereunder in a form reasonably approved by the City; and (ii) Company

has provided City ten (10) days prior written notice thereof. If the Company discloses to the City that it intends to assign this Agreement to a Successor and/or discloses the identity of a potential Successor, the City shall treat such information (including, but not limited to the fact that the Company is considering the applicable transaction and the identity of the potential Successor) as disclosed in confidence and shall not disclose such information to any third parties except: (i) with the prior written consent of the Company and/or (ii) as and to the extent required by law. For purposes of this Section “Successor” shall mean: (i) an entity that is the result of a conversion of the Company from one form of business entity to a different form of business entity (such as from a corporation to a limited liability company) recognized by, and qualified to do business in, the State of Texas, (ii) any successor corporation or other entity resulting from a merger, consolidation, or acquisition with respect to Company, or (iii) a person or entity that purchases all or substantially all of either (A) the equity of the Company or (B) the assets of the Company.

6.11 Recitals. The recitals to this Agreement are incorporated herein.

6.12 Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

6.13 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

6.14 Employment of Undocumented Workers. During the term of this Agreement, the Company agrees not to knowingly employ any undocumented workers, and if convicted of a violation under 8 U.S.C. Section 1324a (f), the Company shall repay the Grants provided herein and any other funds received by the Company from the City as of the date of such violation within 120 business days after the date the Company is notified by the City of such violation, plus interest at the rate of 6% compounded annually from the date of violation until paid. The Company is not liable for a violation of this section by a subsidiary, affiliate, or franchisee of the Company or by a person with whom the Company contracts.

**EXECUTED** on this \_\_\_\_\_ day of \_\_\_\_\_, 2024.



**CITY OF FARMERS BRANCH, TEXAS**

By: \_\_\_\_\_  
Ben Williamson, City Manager

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Whitt Wyatt, City Attorney

**EXECUTED** on this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

**SOUTHWEST AIRLINES CO.**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_