

**SECOND AMENDMENT TO
AIRLINE-AIRPORT LEASE AND OPERATING AGREEMENT FOR
NORMAN Y. MINETA SAN JOSE INTERNATIONAL AIRPORT
BY AND BETWEEN
THE CITY OF SAN JOSE
AND
XXXXX**

This SECOND AMENDMENT TO AGREEMENT is entered into this ____ day of _____, 2017, by the CITY OF SAN JOSE, a municipal corporation of the State of California (“City”), and XXXXX corporation authorized to do business in the State of California (“Airline”).

RECITALS

WHEREAS, on March 3, 2008, City and Airline executed that certain Agreement entitled “AIRLINE-AIRPORT LEASE AND OPERATING AGREEMENT FOR NORMAN Y. MINETA SAN JOSE INTERNATIONAL AIRPORT BY AND BETWEEN THE CITY OF SAN JOSE AND XXXXX” (“Agreement”), which was effective December 1, 2007; and

WHEREAS, on December 12, 2011, City and Airline entered into a First Amendment to the Agreement to extend the term; and

WHEREAS, City and Airline desire to further amend the amended Agreement to extend the term for two years, amend and restate Article 11 effective July 1, 2017, and amend and restate Article 21;

NOW, THEREFORE, the parties agree to further amend the amended Agreement as follows:

SECTION 1. Article 3, “Term,” is amended to read as follows:

“3.01 Termination Date. This Agreement shall commence on the Effective Date and shall terminate at midnight on June 30, 2019, unless cancelled sooner as provided herein.

3.02 Notwithstanding Article 3.01, this Agreement shall terminate upon execution of a new Airline Lease and Operating Agreement between City and Airline.”

SECTION 2. Effective July 1, 2017, Article 11, “Municipally-Funded Air Service Incentive Program,” is amended and restated in its entirety as follows:

“Article 11 **Indirect Overhead Expenses**

Because the operation and management of the Airport is supported by a number of City departments, employees and resources that are not directly charged to the Airport operating budget, City allocates a percentage of its total indirect overhead expenses to the Airport operating budget. In no event will the indirect overhead expenses of City allocated to the Airport’s operating budget exceed twenty-five percent (25%) or be less than fifteen percent (15%) during the Term hereof.”

SECTION 3. Article 21, “General Civil Rights Provisions,” is amended and restated in its entirety as follows:

“The tenant/concessionaire/lessee and its transferee agree 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.

This provision obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport through the Airport Improvement Program.

In cases where Federal assistance provides, or is in the form of personal property; real property or interest therein; structures or improvements thereon, this provision obligates the party or any transferee for the longer of the following periods:

- (a) The period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or
- (b) The period during which the airport sponsor or any transferee retains ownership or possession of the property.”

SECTION 4. All of the terms and conditions of the amended Agreement not modified by this Second Amendment shall remain in full force and effect.

[remainder of page intentionally left blank]

WITNESS THE EXECUTION HEREOF on the day and year first written above.

“CITY”

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal
corporation of the State of California

KEVIN FISHER
Chief Deputy City Attorney

JOHN AITKEN, A.A.E.
Director of Aviation

“AIRLINE”

XXXXX,
a corporation authorized to do business in
the State of California

Signature

Print Name

Title

Date

CORPORATE SECRETARY CERTIFICATE

This certificate shall be executed by the secretary or assistant secretary of the corporation.

I, _____ certify that I
Name of Secretary or Assistant Secretary

am the Secretary or Assistant Secretary of the corporation named in the

attached agreement; that _____
Name of Person that Signed Agreement

signed the agreement on behalf of the corporation as the _____
Title of Person that Signed the Agreement

of the corporation; and that the agreement was duly signed for and on behalf of

the corporation by authority of its Board of Directors, and is within the scope of its

corporate powers.

Signature of Secretary or Assistant Secretary

Corporate Seal

Date