

**THIRD AMENDMENT AND CONTINUATION AGREEMENT TO  
LEASE OF AIRPORT PREMISES  
BETWEEN  
THE CITY OF SAN JOSE  
AND  
SOUTHWEST AIRLINES CO.  
AT  
1239 AIRPORT BOULEVARD**

This THIRD AMENDMENT AND CONTINUATION AGREEMENT TO LEASE OF AIRPORT PREMISES is entered into this 28th day of February, 2022, by the CITY OF SAN JOSE, a municipal corporation of the State of California (“City”), and SOUTHWEST AIRLINES CO., a Texas corporation authorized to do business in the State of California (“Tenant”).

**RECITALS**

**WHEREAS**, on April 3, 2009, City and Tenant entered into a lease entitled “LEASE OF AIRPORT PREMISES BETWEEN THE CITY OF SAN JOSE AND SOUTHWEST AIRLINES CO. AT 1239 AIRPORT BOULEVARD” (“Lease”); and

**WHEREAS**, on January 24, 2011, City and Tenant entered into a First Amendment to the Lease to extend the term for an additional five (5) years, to revise the termination provisions, and to update the City’s address for notices; and

**WHEREAS**, on April 11, 2016, City and Tenant entered into a Second Amendment to the amended Lease to extend the term for an additional five (5) years through December 31, 2020, to revise Exhibit A, entitled “Description of Premises”, to reflect solely a change in the location of a portion of the Asphalt Ramp Area, which shall result in a zero net change in both the total square footage of the Asphalt Ramp Area and the total square footage of the entire Leased Premises, as further described in Section 1 of the amended Lease, and to add nondiscrimination requirements as required under federal law and regulations; and

**WHEREAS**, City and Tenant desire to further amend the amended Lease retroactively to extend the term for five (5) additional years through December 31, 2025, revise the termination provisions, and to add provisions required under federal, state and municipal law and regulations;

**NOW, THEREFORE**, retroactive to January 1, 2021, City and Tenant agree to further amend the amended Lease as follows:

**SECTION 1.** SECTION 1, "DEFINITIONS AND SUMMARY OF LEASE TERMS", the term entitled "Expiration Date" is restated to read as follows:

“**Expiration Date**” (§2-TERM) shall mean the date December 31, 2025, subject to earlier termination as provided in this Lease.”

**SECTION 2.** SECTION 2, “TERM”, is amended to read as follows:

**“2     Term**

2.1     Term

The term of this Lease shall commence on the “Commencement Date” and shall continue through the “Expiration Date”, unless and until terminated by no less than ninety (90) days written notice by either party, or otherwise terminated in accordance with the terms of this Lease. However, in no case shall the term of this Lease, or any extensions thereof, extend beyond the “Expiration Date”.

2.2     Holdover

It is not the intent of this Lease to create any tenancy by Tenant beyond the expiration or termination date hereinabove set forth. Any holdover after the expiration or earlier termination of the term of this Lease shall be conditioned upon the approval of the Director.”

**SECTION 3.** SECTION 7 “IMPROVEMENTS”, a new subsection 7.4 “Asbestos Notification for Property Constructed Before 1979,” is hereby added as follows:

**“7.4 Asbestos Notification For Property Constructed Before 1979.** Tenant acknowledges that City has advised Tenant that the Premises contains or, because of its age, is likely to contain asbestos-containing materials (ACMs). If Tenant undertakes any alterations, additions, or improvements to the Premises, as permitted by **Section 7**, Tenant shall, in addition to complying with the requirements of **Section 7**, undertake the alterations, additions, or improvements in a manner that avoids disturbing any ACMs present in the Premises. If ACMs are likely to be disturbed in the course of such work, Tenant shall encapsulate or remove the ACMs in accordance with an approved asbestos-removal plan and otherwise in accordance with all applicable Environmental Laws, including giving all notices required by California Health and Safety Code §§25915-25919.7.”

**SECTION 4.** SECTION 34, “AMERICANS WITH DISABILITIES ACT” is hereby modified to add a new subsection entitled “Disability Access Disclosure,” to read as follows:

**“34.2 Disability Access Disclosure**

Pursuant to California Civil Code Section 1938, City states that, as of this Third Amendment, the Premises has not undergone inspection by a Certified Access Specialist to determine whether the Premises meet all applicable construction-related accessibility standards under California Civil Code section 55.53. A Certified Access Specialist (CASp) can inspect the Premises and determine whether the Premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the Premises, the City may not prohibit the Tenant from obtaining a CASp inspection of the Premises for the occupancy or potential occupancy of the Tenant if requested by the Tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection. The parties mutually agree that Tenant shall be responsible for the payment of any fees for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Premises.”

**SECTION 5.** SECTION 36, "MISCELLANEOUS," is hereby modified to add the following subsections to read as follows:

**"36.20 Counterparts**

This Lease may be executed in any number of counterparts and by each party in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

**36.21 Use of Electronic Signatures**

Unless otherwise prohibited by law or City policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a writing as set forth in Evidence Code Section 1550. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the City."

**SECTION 6.** SECTION 40, entitled "GENERAL CIVIL RIGHTS PROVISIONS," is hereby added as follows:

**"40 GENERAL CIVIL RIGHTS PROVISIONS**

The (tenant/concessionaire/lessee) 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 the (tenant/concessionaire/lessee) transfers its obligation to another, the transferee is obligated in the same manner as the (tenant/concessionaire/lessor).

This provision obligates the (tenant/concessionaire/lessee) for the period during which the property is owned, used or possessed by the (tenant/concessionaire/lessee) and the airport remains obligated to the Federal Aviation

Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.”

**SECTION 7.** SECTION 41, entitled “TITLE VI CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER ACTIVITY, FACILITY, OR PROGRAM,” is hereby added as follows:

**“41 TITLE VI CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER ACTIVITY, FACILITY, OR PROGRAM**

A. The Tenant for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this Lease for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the Tenant will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

B. With respect to this Lease, in the event of breach of any of the above Nondiscrimination covenants, City will have the right to terminate the Lease and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the Lease had never been made or issued.”

**SECTION 8.** SECTION 42, entitled “TITLE VI CLAUSES FOR CONSTRUCTION / USE / ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM,” is hereby added as follows:

**“42 TITLE VI CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM**

A. The Tenant for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Tenant will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.

B. With respect to this Lease, in the event of breach of any of the above nondiscrimination covenants, City will have the right to terminate the Lease and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said Lease had never been made or issued.”

**SECTION 9.** SECTION 43, entitled “FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE),” is hereby added as follows:

**“43 FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)**

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part-time workers.

The Tenant has full responsibility to monitor compliance to the referenced statute or regulation. The Tenant must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.”

**SECTION 10.** SECTION 44, entitled “OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970,” is hereby added as follows:

**“44 OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970**

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. The employer must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The employer retains full responsibility to monitor its compliance and their subcontractor’s compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). The employer must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.”

**SECTION 11.** All of the terms and conditions of the amended Lease not modified by this Third Amendment shall remain in full force and effect.

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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

Attorney  
Jon Calegari



Email: jon.calegari@sanjoseca.gov

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JON CALEGARI  
Deputy City Attorney



Email: sarah.zarate@sanjoseca.gov

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SARAH ZARATE  
Director, City Manager's Office

“TENANT”

SOUTHWEST AIRLINES CO.,  
a Texas corporation authorized to do



Email: steve.sisneros@wnco.com

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Signature



## CORPORATE SECRETARY CERTIFICATE

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

I, Marilyn Post certify that I  
Name of Secretary or Assistant Secretary

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

attached agreement; that, Steve Sisneros  
Name of Person that Signed Agreement

signed the agreement on behalf of the corporation as the, Managing Director  
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.



Email: marilyn.post@wnco.com

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Signature of Secretary or Assistant Secretary