

**EIGHTH AMENDMENT TO
AIRPORT CONCESSION AGREEMENT
BETWEEN
THE CITY OF SAN JOSE
AND
ALD DEVELOPMENT CORP.**

This **EIGHTH AMENDMENT TO AIRPORT CONCESSION AGREEMENT** is entered into this 13th day of July, 2021, by the CITY OF SAN JOSE, a municipal corporation of the State of California ("City"), and ALD DEVELOPMENT CORP., a Delaware corporation authorized to do business in the State of California as ALD DEVELOPMENT CORP., WHICH WILL DO BUSINESS IN CALIFORNIA AS THE CLUB AT SJC ("Concessionaire").

RECITALS

WHEREAS, on October 22, 2012, City and Concessionaire entered into an agreement entitled "AIRPORT CONCESSION AGREEMENT BY AND BETWEEN THE CITY OF SAN JOSE AND ALD DEVELOPMENT CORP. dba AIRPORT LOUNGE DEVELOPMENT, INC." ("Agreement"); and

WHEREAS, on May 7, 2013, City and Concessionaire entered into a First Amendment to the Agreement to temporarily suspend Concessionaire's obligation to pay the Minimum Annual Guarantee ("MAG") during a time when all transoceanic scheduled service at the Norman Y. Mineta San José International Airport ("Airport" and "SJC") was discontinued indefinitely; and

WHEREAS, subsequent to executing the Agreement, Concessionaire changed its name with the California Secretary of State to ALD DEVELOPMENT CORP., WHICH WILL DO BUSINESS IN CALIFORNIA AS THE CLUB AT SJC; and

WHEREAS, on September 1, 2015, City and Concessionaire entered into a Second Amendment to the Agreement to extend the term and add nondiscrimination requirements as required under federal law and regulations; and

WHEREAS, on November 28, 2017, City and Concessionaire entered into a Third Amendment to the Agreement to further extend the term six (6) years through January 31, 2025, to increase the Percentage Fee retroactive to June 1, 2016, add a Mid-Term Refurbishment Expenditure requirement, add a "Like New" definition, provide for a One-Time MAG Adjustment upon the opening of a new Terminal A lounge, and to add provisions required under federal law and regulations; and

WHEREAS, On October 29, 2019, City and Concessionaire entered into a Fourth Amendment to the Agreement to retroactively and temporarily increase the "Percentage Fee"; revise the "Joint Marketing and Customer Service Fund Fee" to increase the scope of the marketing and service program; revise Concessionaire's Labor Peace Assurance / Employee Work Environment Questionnaire; and add provisions required under federal law and regulations; and

WHEREAS, on June 3, 2020, City and Concessionaire entered into a Fifth Amendment to retroactively further amend the amended Agreement to reduce the Concession Fee to the Percentage Fee for the months of April, May, and June 2020 and suspend contributions to the Joint Marketing Fund for the period of April 2020 through June 2021, in an effort to mitigate financial impacts on Concessionaire at the Airport resulting from the COVID-19 global pandemic; and

WHEREAS, on January 12, 2021, City and Concessionaire entered into a Sixth Amendment to retroactively further amend the amended Agreement to reduce the Concession Fee to the Percentage Fee for the period between April 1, 2020 through December 31, 2020, extend the temporary increase to the Percentage Fee to December 31, 2020, require Concessionaire to commence Concession Operations in

certain Concession Locations, subject to liquidated damages, modify the Security Deposit adjustment calculation for the period between April 1, 2020 through December 31, 2020, and extend the Mid-Term Concession Refurbishment deadline from June 30, 2019 to March 31, 2021, all in an effort to further mitigate financial impacts on Concessionaire at the Airport resulting from the COVID-19 global pandemic; and

WHEREAS, on April 8, 2021, City and Concessionaire entered into a Seventh Amendment to retroactively further amend the amended Agreement to reduce the Concession Fee to the Percentage Fee for the period between January 1, 2021 through March 31, 2021, extend the temporary increase to the Percentage Fee to March 31, 2021, and modify the Security Deposit adjustment calculation for the period between January 1, 2021 through March 31, 2021; and

WHEREAS, to further continue to mitigate financial impacts on Concessionaire at the Airport resulting from the COVID-19 global pandemic, City and Concessionaire desire to retroactively further amend the amended Agreement for the period of April 1, 2021 through June 30, 2021 to (a) reduce the Concession Fee to the Percentage Fee, (b) extend the temporary increase to the Percentage Fee to June 30, 2021, (c) modify the Security Deposit adjustment calculation; and (d) modify the Annual MAG Adjustment provisions;

NOW, THEREFORE, retroactive to April 1, 2020, the parties agree to further amend the amended Agreement as follows:

SECTION 1. SECTION 1 "SUMMARY OF TERMS AND DEFINITIONS" is hereby amended to revise the following definition:

"Percentage Fee" Retroactive from April 1, 2021 through June 30, 2021, the Percentage Fee shall mean fifteen percent (15%) of Concessionaire's Gross

Revenues. Commencing July 1, 2021, the Percentage Fee shall mean thirteen percent (13%) of Concessionaire's Gross Revenues."

SECTION 2. SECTION 5, "FEES & DEPOSITS," subsection 5.1.1.1, "Concession Fee Calculation," is hereby amended and restated to read as follows:

"5.1.1.1 Concession Fee Calculation

Commencing on the Commencement Date, Concessionaire shall pay to the City on a monthly basis, the greater of one-twelfth (1/12) of the MAG, as described below, or the Percentage Fee. Notwithstanding the preceding sentence, for the period of April 1, 2021 through June 30, 2021, Concessionaire shall pay only the Percentage Fee. As a condition for the MAG waiver for the period from April 1, 2021 through June 30, 2021, as provided in this subsection 5.1.1.1, Concessionaire, upon its execution of this Amendment, certifies that it has not; (a) received a second draw or assistance for a covered loan under section 7(a)(37) of the Small Business Act (15 U.S.C. 636(a)(37)) that has been applied toward rent or MAG under this Agreement; and (b) applied for a covered loan under 15 U.S.C. 636(a)(37)."

SECTION 3. SECTION 5, "FEES & DEPOSITS," subsection 5.1.2, "MAG Calculation," subsection entitled "Annual MAG Adjustment" is hereby amended and restated to read as follows:

"Annual MAG Adjustment

The MAG shall be adjusted on an annual basis on the Annual Adjustment Date, as defined below.

The first Annual Adjustment Date for each MAG shall occur 12 months after the MAG Commencement Date. Thereafter, this date shall serve as the Annual Adjustment Date. On the first Annual Adjustment Date, the MAG shall be adjusted to equal eighty-five percent (85%) of the Concession Fee actually due to the City during the previous 12-month period.

Upon each subsequent Annual Adjustment Date, the MAG shall be adjusted to equal eighty-five percent (85%) of the Concession Fee actually due to the City during the 12-month period prior to the Annual Adjustment Date. Notwithstanding the previous sentence, in no event shall the MAG be adjusted to be less than the previous year's MAG.

Notwithstanding the Covid-related temporary MAG waiver provisions in **subsection 5.1.1.1**, for purposes of calculating the Annual MAG Adjustment only, Concessionaire shall be deemed to have paid the full portion of the monthly MAG otherwise due for the period between April 1, 2020 and June 30, 2021. If Concessionaire made any MAG payments between April 2020 and June 30, 2021, City shall retain them and credit them toward future invoices."

SECTION 4. SECTION 5, "FEES & DEPOSITS," subsection 5.3, "Security Deposit," subsection 5.3.D is hereby amended to read as follows:

"**5.3.D** Notwithstanding the Security Deposit adjustment provisions set forth in **Section 5.3.A** above, no Security Deposit calculation shall include the period between April 1, 2021 through June 30, 2021."

SECTION 5. All of the terms and conditions of the amended Agreement not modified by this Eighth 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

KEVIN FISHER
Chief Deputy City Attorney

Sarah Zarate

SARAH ZARATE
Director

Date:

"CONCESSIONAIRE"

ALD DEVELOPMENT CORP.,
a Delaware corporation authorized to do
business in the State of California as ALD
DEVELOPMENT CORP., WHICH WILL
DO BUSINESS IN CALIFORNIA AS THE
CLUB AT SJC

Signature

Nancy J. Knipp

Print Name

Nancy J. Knipp

Title

President

Date

01 June 2021

CORPORATE SECRETARY CERTIFICATE

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

I, Cedric Collins certify that I
Name of Secretary or Assistant Secretary

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

attached agreement; that Nancy Knipp
Name of Person that Signed Agreement

signed the agreement on behalf of the corporation as the President
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.

Cedric Collins
Signature of Secretary or Assistant Secretary

Corporate Seal

3/15/2021
Date



- FOR YOUR ELECTRONIC SIGNATURE
- FULLY EXECUTED COPY TO FOLLOW

CITY STAFF: _____
STAFF EMAIL: _____

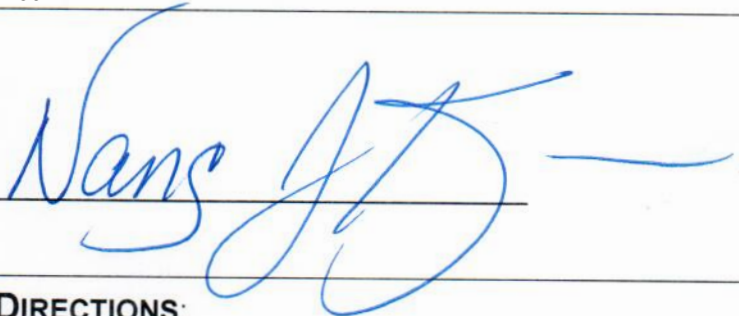
SCANNED SIGNATURE AUTHORIZATION

DATE: 6/6/2021

TOTAL PAGES: _____
(INCLUDING THIS PAGE) 15

CONSULTANT NAME: Nancy J Knipp
EMAIL: sam.sadeddin@airportdimensions.com
PHONE: 469-403-9403

I agree to use electronic signatures

SIGNATURE OF CONSULTANT: 

DIRECTIONS:

REVIEW THE ENCLOSED DOCUMENT, IF IT IS ACCEPTABLE:

1. SIGN THE DOCUMENT
2. CHECK THE BOX BELOW YOUR NAME AND SIGN AGREEING TO THE USE OF ELECTRONIC SIGNATURES
3. SCAN YOUR EXECUTED DOCUMENT TOGETHER WITH THIS COVER PAGE **IN BLUE INK**
4. EMAIL THE ENTIRE DOCUMENT TO (CITY STAFF EMAIL ADDRESS):

To BE COMPLETED BY CITY STAFF:

ALTERNATIVE METHODS OF VERIFICATION:

- USE OF A PASSWORD PROTECTED WEBSITE
- CONFIRMED BY A KNOWN TELEPHONE NUMBER / EMAIL
- PERSONALLY KNOWN TO CITY STAFF

City of San José Contract/Agreement Transmittal Form

Route Order

Attached / Completed

Electronically Signed

TO: City Attorney
 City Manager
 City Clerk **OR** Return to
Dept. (circle one)

Insurance Certificates / Waivers Electronically Signed:
 Business Tax Certificate Audit Trail Attached (if applicable)
 Contacted Clerk re: Form 700 Scanned Signature Authorization
 Supplemental Memorandums (if applicable):

Type of Document: _____

Type of Contract: _____

REQUIRED INFORMATION FOR ALL CONTRACTS:

Existing GILES # _____ -008

Contractor: _____

Address: _____

Phone: _____ Email: _____

Contract Description: _____

Term Start Date: _____ Term End Date: _____ Extension: _____

Method of Procurement: _____ RFB, RFP or RFQ No.: _____ Date Conducted: _____

Agenda Date (if applicable): _____ Agenda Item No.: _____

Resolution No.: _____ Ordinance No.: _____

Original Contract Amount: _____ Amount of Increase/Decrease: _____

Option #: ___ of ___ Option Amount: _____ NTE/Updated Contract Amount: _____

Fund/Appropriation: _____

Form 700 Required (Selection mandatory for processing): Business Revenue Agreement: _____

Tax Certificate No.: _____ Expiration Date: _____

Department: _____

Department Contact: _____ Customer (Finance Only): Á' _____

Notes: _____

Department Director Signature:  _____ Date _____

Office of the City Manager Signature: _____ Jessica Lowry 7/13/21 _____ Date _____