

**FIRST AMENDMENT TO
LEASE OF AIRPORT PREMISES BETWEEN
THE CITY OF SAN JOSE
AND
S J AUTOMOTIVE, LLC, dba LEXUS OF STEVENS CREEK**

This FIRST AMENDMENT TO LEASE OF AIRPORT PREMISES is entered into this ____ day of _____, 2017, by the CITY OF SAN JOSE, a municipal corporation of the State of California ("City"), and S J Automotive, LLC, a California limited liability company, dba Lexus of Stevens Creek ("Tenant").

RECITALS

WHEREAS, on December 18, 2012, City and Tenant entered into an agreement entitled "LEASE OF AIRPORT PREMISES BETWEEN CITY OF SAN JOSE AND S J AUTOMOTIVE, LLC, dba LEXUS OF STEVENS CREEK" ("Lease"); and

WHEREAS, City and Tenant desire to amend the Lease to extend the term of the Lease through December 31, 2021, and to add provisions as required under federal law and regulations;

NOW, THEREFORE, effective retroactively from January 01, 2017, the parties agree to amend the Lease as follows:

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

“ **Expiration Date**” (**§2 TERM**) means the date December 31, 2021, subject to earlier termination as provided in this Lease.”

SECTION 2. SECTION 35, "RELOCATION, EXPANSION OR CONTRACTION OF PREMISES" is hereby amended to read as follows:

“In the event that implementation of the City’s requirements for the Airport, changes in airlines or flight schedules, or other changes in business conditions necessitate the relocation, expansion or contraction of the Premises, or any part thereof, Tenant shall, at Tenant’s sole cost and expense, relocate all or part of its operations on the Premises, or any part thereof, or contract or expand the size of the Premises in an expeditious manner only as may be permitted, directed or required by the Director.

Amendments to this Lease which change or modify the description of the Premises set forth in **Section 3** above to specify in writing increases, decreases, or relocation of space, and which include only such rental rates on a per square foot basis as are specified or authorized in accordance with **Section 5** above, may be executed on behalf of the City by the Director.”

SECTION 3. SECTION 38, “TITLE VI CLAUSES FOR COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS” is hereby added as follows:

“(Source: Appendix A of Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the FAA)

During the performance of the Lease, as amended, the Tenant, for itself, its assignees, and successors in interest (hereinafter referred to in this SECTION 38 as the “Tenant”) agrees as follows:

1. **Compliance with Regulations:** The Tenant (hereinafter includes consultants) will comply with the **Title VI List of Pertinent Nondiscrimination Statutes and Authorities**, as they may be amended from time to time, which are herein incorporated by reference, set forth in SECTION 4 of this First Amendment, and made a part of the Lease.
2. **Non-discrimination:** The Tenant, with regard to the work performed by it during the Lease, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Tenant will not participate directly or indirectly in the discrimination prohibited by the Acts

and the Regulations, including employment practices when the Lease covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the Tenant for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Tenant of the Tenant's obligations under the Lease and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The Tenant will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City or the FAA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a Tenant is in the exclusive possession of another who fails or refuses to furnish the information, the Tenant will so certify to the City or the FAA, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of Tenant's noncompliance with the Non-discrimination provisions of the Lease, the City will impose such Lease sanctions as it or the FAA may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the Tenant under the Lease until the Tenant complies; and/or
 - b. Cancelling, terminating, or suspending the Lease, in whole or in part.

6. **Incorporation of Provisions:** The Tenant will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Tenant will take action with respect to any subcontract or procurement as the City or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Tenant becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Tenant may request the City to enter into any litigation to protect the interests of the City. In addition, the Tenant may request the United States to enter into the litigation to protect the interests of the United States.”

SECTION 4. SECTION 39, “TITLE VI LIST OF PERTINENT NONDISCRIMINATION AUTHORITIES” is hereby added as follows:

“(Source: Appendix E of Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the FAA)

During the performance of the Lease, the Tenant, for itself, its assignees, and successors in interest (hereinafter referred to in this SECTION 39 as the “Tenant”) agrees to comply with the following non-discrimination statutes and authorities, including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);

- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;

- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).”

SECTION 5. SECTION 40, “GENERAL CIVIL RIGHTS PROVISIONS” is hereby added 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 6. SECTION 41 “OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970,”
is hereby added as follows:

“This Lease incorporates by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Tenant must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Tenant retains full responsibility to monitor its compliance and their subtenant’s compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Tenant 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 7. SECTION 42 “FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE),” is hereby added as follows:

“This Lease incorporates 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 8. All of the terms and conditions of the Lease not modified by this First 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

KEVIN FISHER
Chief Deputy City Attorney

TONI TABER, CMC
City Clerk

Date: _____

“TENANT”

S J AUTOMOTIVE, LLC,
a California limited liability company,
dba LEXUS OF STEVENS CREEK

By: _____

Name: _____

Title: _____

Date: _____

CERTIFICATE OF LLC AUTHORITY

This Certificate of LLC Authority shall be executed by the manager of the limited liability company.

I, _____, certify that I am the manager of the
Name of Manager
limited liability company named in the attached agreement;

that _____ signed the agreement on behalf of the limited
Name of Person that Signed Agreement

liability company as the _____ of the limited liability
Title of Person that Signed Agreement

company; and that the agreement was duly signed for and on behalf of the limited liability company by authority of its members, and is within the scope of its limited liability company powers.

By: _____

Name: _____

Its: Manager

Date: _____