

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

This FOURTH AMENDMENT TO AIRPORT CONCESSION AGREEMENT is entered into this ____ day of _____, 2019, 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, City and Concessionaire desire to further amend the amended Agreement to retroactively and temporarily increase the “Percentage Fee”; revise the “Joint Marketing 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;

NOW, THEREFORE, effective upon full execution, 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 July 1, 2019 through July 31, 2020, the Percentage Fee shall mean fifteen percent (15%) of Concessionaire’s Gross Revenues. Commencing August 1, 2020, the Percentage Fee shall mean thirteen percent (13%) of Concessionaire’s Gross Revenues.”

SECTION 2. SECTION 5, “FEES AND DEPOSITS” subsection 5.1.4, “Joint Marketing Fund Fee” is hereby amended to read as follows:

“5.1.4 Joint Marketing and Customer Service Fund Fee

A concession marketing and customer service fee of one half of one percent (0.5%) of Gross Revenues shall be paid monthly to the City no later than the twentieth (20th) of each month for the preceding month's activity, in conjunction with the Monthly Concession Report, to be used for marketing the concessions and the development and maintenance of a customer service training program at the Airport. Concessionaire shall deliver to the City the Joint Marketing and Customer Service Fund Fee in accordance with Section 5.1.3 “Percentage Fee and Monthly Concession Report” above.”

SECTION 3. SECTION 37, “TITLE VI CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM” is hereby added to the Agreement as follows:

“A. The Concessionaire 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 Agreement 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 (grantee, licensee, lessee, permittee, etc.) 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 Agreement, in the event of breach of any of the above Nondiscrimination covenants, City will have the right to terminate the Agreement and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the Agreement had never been made or issued.”

SECTION 4. SECTION 38, “TITLE VI CLAUSES FOR CONSTRUCTION / USE / ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM” is hereby added to the Agreement as follows:

- “A. The Concessionaire 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 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 Concessionaire 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 Agreement, in the event of breach of any of the above nondiscrimination covenants, City will have the right to terminate the Agreement and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said Agreement had never been made or issued.”

SECTION 5. Exhibit D, “Labor Peace Assurance/Employee Work Environment Questionnaire” is replaced with Revised Exhibit D attached hereto and incorporated herein.

SECTION 6. All of the terms and conditions of the amended Agreement not modified by this Fourth Amendment shall remain in full force and effect.

[The remainder of this page is 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

TONI J. TABER, CMC
City Clerk

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

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

REVISED EXHIBIT D

Labor Peace Assurance//Employee Work Environment Questionnaire

I, _____, an authorized representative of _____,
(name of Airport Business)

attach a copy of the following existing or planned programs that demonstrate a good work environment that prevents the disruption in services due to disputes with employees.

_____ Copy of Company Employee Handbook that includes information such as: terms of employment; performance appraisals; employee responsibilities; non-discrimination and anti-harassment policy; complaint resolution procedures; working hours and conditions; breaks; assignment of responsibilities; general rules of conduct; prohibited activities; disciplinary procedure; leaves of absence; drug and alcohol use; appearance, grooming and uniform policy; health and safety.

_____ Joint Labor-Management Committee

_____ Collective Bargaining Agreement

_____ Labor Neutrality Provision

_____ Card Check Provision

_____ Any other information, plan, benefits or programs undertaken by Airport Business to attract and retain qualified employees and assist in providing uninterrupted service through the Airport Business's workplace conditions and practices.

The above listed benefits and complaint procedure(s) will be maintained during the period of time work is performed at the Norman Y. Mineta San José International Airport. It is the intent of

_____ to ensure that essential services and labor for which it
(name of Airport Business)

has been contracted will be provided efficiently and without interruption.

Signature

Title

Name of Airport Business

Date

Revised Exhibit D-1

EMPLOYEE BASIC BENEFITS

1. Indicate the basic benefits your workers receive.

Years of Service	# of Vacation Days	# of Sick Days	# of Personal Days
After 1 year			
After 5 years			
After 10 years			

Other: (Explain.)

--

Indicate the paid holidays your workers receive by placing check mark to the left of each.

	New Year's Day		Independence Day		Christmas
	Martin Luther King Jr. Day		Labor Day		Floating Holiday
	Washington's Birthday		Veterans' Day		Other:
	Memorial Day		Thanksgiving Day		Other:

2. Do you allow for unpaid leave? _____ Yes, please briefly explain policy. _____ No

COMPLIANCE WITH STATE AND FEDERAL WORKPLACE STANDARDS

Have any of the following State or Federal Regulatory agencies obtained final orders or final judgments finding a violation by your company of State or Federal law relating to the treatment of your employees?

1. California Department of Fair Employment and Housing (DFEH).

___ **NO**, our company has not had any final judgment or administrative order.

___ **YES**, our company has had final judgment(s) or administrative order(s).

Date of entry of final judgment or order: _____

Agency that obtained the order: _____

___ Attach a description of the nature of violation.

2. California Department of Industrial Relations (Cal OSHA).

___ **NO**, our company has not had any final judgment(s) or administrative order(s)

___ **YES**, our company has had final judgment(s) or administrative order(s).

Date of entry of final judgment or order: _____

Agency that obtained the order: _____

___ Attach a description of the nature of violation.

3. California Department of Industrial Relations (Minimum Wage, hours or working conditions) Labor Board

___ **NO**, our company has not had any final judgment(s) or administrative order(s).

___ **YES**, our company has had final judgment(s) or administrative order(s).

Date of entry of final judgment or order: _____

Agency that obtained the order: _____

___ Attach a description of the nature of violation.

Revised Exhibit D-3