

AMENDMENT NO. 4

Between

**CITY OF FRESNO
A Municipal Corporation**

And

**BANK OF AMERICA, NATIONAL ASSOCIATION,
a national banking association**

This AMENDMENT NO. 4 is made and entered into this ____ day of _____, 2016, by and between the City of Fresno, California, a municipal corporation, hereinafter referred to as "Licensor," and Bank of America National Association, a national banking association, formerly known as Bank of America N.T. & S.A., a national banking association hereinafter referred to as "Bank."

RECITALS

WHEREAS, Licensor is the owner and operator of the Fresno Yosemite International Airport, a public airport located in the City of Fresno, County of Fresno, State of California, hereinafter referred to as "Airport"; and

WHEREAS, pursuant to a License Agreement dated May 2, 1995 (as amended, the "License Agreement"), Bank is authorized to install and operate automated teller machine(s) ("ATM") at Airport; and

WHEREAS, the Amendment NO.1 extended the License Agreement through April 30, 2001, and modified the License Agreement in other regards; and

WHEREAS, the Amendment NO. 2 extended the License Agreement through April 30, 2006, and modified the License Agreement in other regards; and

WHEREAS, the Amendment NO. 3 extended the License Agreement through April 30, 2016, and modified the License Agreement in other regards; and

WHEREAS, the parties wish to further extend the License Agreement, and otherwise modify same as herein expressly set forth.

AGREEMENT

NOW, THEREFORE, for and in consideration of the above recitals and the mutual covenants, agreements, and conditions contained herein, the parties hereto agree as follows:

1. Paragraph 1.2 of the License Agreement as heretofore amended shall be further amended to read as follows:

"1.2 This License Agreement will commence on May 1, 1995, and, unless earlier terminated in accordance with the terms of this License Agreement, shall expire on April 30, 2021, but will terminate no later than April 30, 2026."

2. The following shall be added to the License Agreement as Section 1.2, Subparagraph (a):

"1.2(a)": Options to Extend Term.

Bank shall have the option to extend the term of this License Agreement for up to two (2) additional and consecutive three (3) year renewal terms, upon the terms and conditions herein.

- i. Bank must provide written notice to Licensor of its intention to exercise the aforementioned extension option at least ninety (90) days prior to the then scheduled expiration of this License Agreement.
 - ii. Any option periods shall be subject to a two percent (2%) increase in rent upon the date the option begins and annually thereafter.
 - iii. These option(s) are null and void if the exercise of such is or becomes inconsistent with constitutional, legal and /or local law requirements."
3. Exhibit B of the License is hereby amended to include the following:
 - i. "ATM, Location #1: The monthly rental rate for the extended term from May 1, 2016, through April 30, 2021, shall be a fixed rate of \$500.00 per month due monthly in advance. Any option periods shall be subject to a two (2%) percent increase in rent upon the date the option begins and annually thereafter.
4. Section 6 of the License Agreement is to be amended to include the following new Section 6.4 as follows:
 - "6.4 **Relocation.** Licensor has the right to relocate Bank's ATM to a comparable location within the passenger terminal building, upon at least sixty (60) days prior written notice to Bank."
5. Section 9 of the License Agreement shall be deleted in its entirety and replaced with the following:

"Section 9: **Termination**"

 - "9.1 Bank shall have the right to terminate the License Agreement at any time on or after April 30, 2018, if transaction volume continues to decline. Bank shall provide at least sixty (60) days prior written notice of termination to Licensor. The notice period for termination is subject to any applicable government regulations regarding relocation or closure of ATMs.
 - "9.2 Licensor has the right to terminate this License Agreement any time after April 30, 2018, by providing at least sixty (60) days prior written notice of termination to Bank. Upon such termination, Bank shall remove all ATMs pursuant to the provisions of Section 6.2 of this License."
6. **Economic Sanctions Compliance.** Licensor represents that neither Licensor nor any of its subsidiaries or, to the knowledge of the Licensor, any director, officer, employee, agent, affiliate or representative of the Licensor, or any third party to whom Licensor directs Bank to make any payments required by the License, is an individual or entity ("**Person**") currently the subject of any sanctions administered or enforced by the United States Department of Treasury's Office of Foreign Assets Control ("**OFAC**"), or other relevant sanctions authority (collectively, "**Sanctions**"), nor is the Licensor located,

organized or resident in a country or territory that is the subject of Sanctions; and Licensor represents and covenants that it has not knowingly engaged in, is not now knowingly engaged in, and shall not engage in, any dealings or transactions with any Person, or in any country or territory, that is the subject of Sanctions.

7. Customer Information Protection. Bank's personal property shall include the ATM(s) and all cash and securities, computer servers, software, intellectual property and other property which could reasonably be expected to contain customer information and which may be subject to federal regulations as to ownership, possession, storage, disposal and handling (collectively, the "Protected Items"). Ownership of the Protected Items shall at all times be and remain vested in Bank. The ATM(s) shall not under any circumstances constitute, be or be deemed to be fixtures annexed to Licensor's property, and such ATM(s) shall at all times be and remain free and clear of any claims, liens, or encumbrances created by Licensor.
8. Commission. Licensor and Bank acknowledge that Jones Lang LaSalle ("Bank's Broker") has acted as Bank's real estate agent for this transaction, and that Licensor is unrepresented. Bank shall be responsible for any commissions due Bank's Broker in accordance with separate written agreement(s) between them. Licensor and Bank each represents and warrants to the other that, other than Bank's Broker, neither Licensor nor Bank has dealt with any real estate broker, salesperson, or finder in connection with this Amendment, and no such person initiated or participated in the negotiation of this Amendment. Licensor and Bank agree to indemnify, defend and hold each other harmless from and against any and all liabilities, claims, commissions, fees and other costs (including without limitation reasonable attorney fees) arising out of a breach of the foregoing representations.
9. Counterparts and PDF Signatures. This Amendment may be executed in any number of counterparts with the same force and effect as if all signatures were appended to one document, each of which shall be deemed an original. Execution and delivery of this Amendment by portable document format ("PDF") copy bearing the PDF signature of any party hereto shall constitute a valid and binding execution and delivery of this Amendment by such party. Such PDF copies shall constitute enforceable original documents.
10. Notice Addresses. Notwithstanding any provision in the License to the contrary, from and after the date hereof, the notice addresses for the respective parties shall be as reflected beneath the respective signature blocks hereto.
11. Defined Terms/Effect. Except as amended herein, each and all of the terms, covenants, conditions, warranties, agreements and provisions of the License Agreement dated May 2, 1995, as amended by Amendment No. 1, Amendment No. 2 and Amendment No. 3, remain in full force and effect.

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IN WITNESS WHEREOF, the parties have executed this Amendment at Fresno, California, the day and year first above written.

CITY OF FRESNO, CALIFORNIA
A Municipal Corporation

By: _____
Kevin R. Meikle,
Director of Aviation

Address for Notice:
City of Fresno
Airports Department
4995 E. Clinton Way
Fresno, CA 93727

ATTEST:
Yvonne Spence, CMC
City Clerk

By: _____
Deputy

APPROVED AS TO FORM:
Douglas T. Sloan
City Attorney

By: _____
Amanda Freeman, Deputy Date

Address for Notice:
City of Fresno – Airport Revenue
4995 E. Clinton Way
Fresno, CA 93727

With a copy to:

City of Fresno
Airports Department
Properties Division
4995 E. Clinton Way
Fresno, CA 93727

**BANK OF AMERICA, NATIONAL
ASSOCIATION**

By: Leslie O'Brien 2/25/16
Name: Leslie O'Brien

CS# 31939
ATM-J22

Title: Vice President

By: Kathleen M. Luongo

Name: Kathleen M. Luongo
Title: Vice President

Address for Notice:
Bank of America, National Association
13850 Ballantyne Corporate Place
Mail Code: NC2-150-03-06
Charlotte, NC 28277
Attn: License Administration (ATM-J22)

With a copy to:

Bank of America, National Association
3075 S. Alma School Road
Mailcode: AZ3-162-01-01
Chandler, AZ 85248
Attention: Leslie O'Brien, Vice President
(ATM-J22)