

FIRST AMENDMENT

to the

FRESNO YOSEMITE INTERNATIONAL AIRPORT
LEASE AND AGREEMENT

Between

CITY OF FRESNO, CALIFORNIA

And

UNITED PARCEL SERVICE, INC. (UPS)

THIS FIRST AMENDMENT TO THE LEASE AND AGREEMENT (First Amendment) is made and entered the ___ Day of ___, 2019, by and between the CITY OF FRESNO, CALIFORNIA, a municipal corporation (Lessor), and UNITED PARCEL SERVICE, INC., an Ohio Corporation (Lessee or Tenant).

RECITALS

WHEREAS the Parties entered into a Lease and Agreement effective August 1, 2008 (Lease), consisting of 41,495 square feet of undeveloped land located at the northerly side of the cargo ramp at the Fresno Yosemite International Airport (Airport) and a revocable, non-exclusive priority use right to 62,444 square feet on the cargo ramp located at the Airport; and

WHEREAS, the term of the Lease expires on November 30, 2019; and

WHEREAS, Lessee desires to extend the Lease for an additional term; and

WHEREAS, Lessor has determined it is in the Lessor's best interest to extend the Lease.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual promises herein contained, the Parties hereby agree as follows:

1. Article II, Term, of the Lease is amended as follows:

The term of this Lease shall be for a period of thirteen years and five months, commencing August 1, 2008, hereinafter sometimes referred to as the "Commencement Date", and ending December 31, 2021 (the "Expiration Date").

2. Article VI, "Indemnification, Exemption of Lessor and Insurance" is replaced and re-written as follows

A. Throughout the life of this Agreement, Licensee shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide, or (ii) authorized by City's Risk Manager or his/her designee. The following policies of insurance are required:

(i) **AVIATION/AIRPORT OR GENERAL LIABILITY** insurance which shall be at least as broad as Insurance Services Office (ISO) form CG 00 01 and shall include coverage for "bodily injury", "property damage" and "personal and advertising injury", including premises and operation, hangarkeepers legal liability, products and completed operations, and contractual liability (including, without limitation, indemnity obligations under this Lease), with limits of liability of not less than \$5,000,000 per occurrence for bodily injury and property damage, \$1,000,000 per occurrence for personal and advertising injury, \$5,000,000 aggregate for products and completed operations and \$10,000,000 general aggregate. **Licensee may substitute Airport Liability insurance for this insurance provided the coverage is as broad as required and the limits of liability are not less than required.**

(ii) AIRCRAFT HULL AND LIABILITY insurance shall include coverage for bodily injury to passengers and non-passengers, property damage and cargo legal liability with combined single limits of liability of not less than \$10,000,000 per occurrence and aggregate for bodily injury, property damage and cargo legal liability for fixed wing aircraft and \$10,000,000 per occurrence and aggregate for bodily injury, property damage and cargo legal liability for rotorcraft.

(iii) COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as the most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, and include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1 - Any Auto) with limits of liability of not less than \$2,000,000 per accident for bodily injury and property damage, both on terminal and off terminal.

(iv) WORKERS' COMPENSATION insurance as required under the California Labor Code.

(iv) EMPLOYERS' LIABILITY insurance with limits of liability of not less than \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee.

(v) POLLUTION LIABILITY insurance with limits of liability of not less than \$2,000,000 per claim/occurrence and \$4,000,000 aggregate.

(vi) PROPERTY Limits of insurance in an amount equal to the full (100%) replacement cost (without deduction for depreciation) of LESSEE'S business property.

- B. In the event Licensee purchases an Umbrella or Excess insurance policy(ies) to meet the minimum limits of insurance set forth above, this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).
- C. Licensee shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Licensee shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the City's Risk Manager or his/her designee. At the option of the City's Risk Manager or his/her designee, either (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, officials, employees, agents and volunteers; or (ii) Licensee shall provide a financial guarantee, satisfactory to City's Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall City be responsible for the payment of any deductibles or self-insured retentions.
- D. All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice has been given to City. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Licensee shall furnish City with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during this Agreement, Licensee shall provide a new certificate, and applicable

endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

- E. The Airport Liability (or General Liability, if applicable), Pollution and Automobile Liability insurance policies shall be written on an occurrence form and shall name City, its officers, officials, agents, employees and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so Licensee's insurance shall be primary and no contribution shall be required of City. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents and volunteers. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to City, its officers, officials, agents, employees and volunteers.
- F. Licensee shall furnish City with all certificate(s) and applicable endorsements effecting coverage required hereunder. **All certificates and applicable endorsements are to be received and approved by the City's Risk Manager or his/her designee prior to City's execution of the Agreement.** Such evidence of insurance shall be provided City at the following address:

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

- G. Upon request of City, Licensee shall immediately furnish City with a complete copy of any insurance policy required under this Contract, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.
- H. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Lease. No action taken by City hereunder shall in any way relieve Licensee of its responsibilities under this Lease.
- I. The fact that insurance is obtained by Licensee shall not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City and its officers, officials, employees, agents and volunteers shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Licensee. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Licensee.
- J. Licensee and its insurers hereby waive all rights of recovery against City and its officers, officials, employees, agents and volunteers, on account of injury, loss by or damage to the Licensee or its officers, officials, employees, agents, volunteers, invitees, consultants, subconsultants, contractors and subcontractors, or its property or the property of others under its care, custody and control. Licensee shall give notice to its insurers that this waiver of subrogation is contained in this Agreement. This requirement shall survive termination or expiration of this Agreement.

SUBCONTRACTORS -If LICENSEE subcontracts any or all of the services to be performed under this Agreement, LICENSEE shall require, at the discretion of the CITY Risk Manager or designee, subcontractor(s) to enter into a separate Side Agreement with the City to provide required indemnification and insurance protection. Any required Side Agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by CITY Risk Manager or designee. If no Side Agreement is required, LICENSEE shall require and verify that subcontractors maintain insurance meeting all the requirements stated herein and LICENSEE shall ensure that CITY, its officers, officials, employees, agents and volunteers are additional insureds. The subcontractors' certificates and endorsements shall be on file with LICENSEE, and CITY, prior to commencement of any work by the subcontractor.

3. Except as expressly provided in this First Amendment, all other terms and provisions of the Lease shall continue in full force and effect.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties have executed this First Amendment to the Lease and Agreement as of the day and year first above written.

City of Fresno
A Municipal Corporation

United Parcel Service, Inc.
An Ohio Corporation

By: _____
Kevin R. Meikle,
Director of Aviation

By: _____
Name: FERNANDO FALCON

Title: VP
(if corporation or LLC, Board
Chair, Pres. or Vice Pres.)

APPROVED AS TO FORM:
Douglas T. Sloan
City Attorney

By: *Amanda B. Freeman* 8/23/19
Amanda B. Freeman, Date
Senior Deputy City Attorney

By: _____
Name: Andrew Cooper

Title: Assistant Secretary
(if corporation or LLC, CFO,
Treasurer, Secretary or Assistant
Secretary)

ATTEST:
Yvonne Spence, MMC CRM
City Clerk

By: _____
Deputy

Address for Notice:
United Parcel Service, Inc.
UPS Airport Properties, 3A
1400 North Hurstbourne Parkway
Louisville, KY 40223-4015
(503) 329-3991

Address for Notice:

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