

LEASE AMENDMENT NO. 2

to the

FRESNO YOSEMITE INTERNATIONAL AIRPORT
AIRPORT LEASE AGREEMENT

between

CITY OF FRESNO, CALIFORNIA

and

FEDERAL EXPRESS CORPORATION

THIS LEASE AMENDMENT NO. 2 ("Amendment No. 2") is made and entered into as of the ___ day of _____, 2016, by and between the CITY OF FRESNO, a California municipal corporation (hereinafter referred to as "Lessor"), and Federal Express Corporation, a Delaware Corporation (hereinafter referred to as "Lessee").

RECITALS

WHEREAS, Lessor owns and operates the Fresno Yosemite International Airport (hereinafter referred to as "Airport"), located in the City of Fresno, County of Fresno, State of California; and

WHEREAS, Lessee is occupying and using property ("Premises") at the Airport under the Lease and Agreement dated November 15, 2005 (the "Agreement") as amended by that certain Amendment No. 1 to Lease and Agreement dated September 15, 2011 (collectively, the "Lease"), which Lease expires December 31, 2016; and

WHEREAS, Lessee desires to continue to lease the Premises for five (5) additional years, until December 31, 2021; and

WHEREAS, Lessor has determined it is in the City's best interest to enter into this Amendment No. 2 with Lessee.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual promises herein contained, it is hereby agreed:

1. Article II, "Term", of the Agreement is replaced and re-written to read as follows:

Term: THIS LEASE shall be effective as of the Commencement Date hereof and it shall expire at 12:59 p.m. local time on December 31, 2021, unless sooner terminated in the manner and under the conditions hereinafter provided.

2. Section A of Article VI, "Indemnification," is replaced and re-written as follows:

A. INDEMNIFICATION.

1. Except to any extent expressly provided for in this Agreement, and to the furthest extent allowed by law, Lessee shall indemnify, hold harmless and defend City and its officers, officials, employees, agents and volunteers (hereinafter referred to collectively as "City") from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage, including damage by fire or other casualty) incurred by City Lessee or any other person and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses) asserted against City arising or alleged to have arisen directly or indirectly out of Lessee's: (i) occupancy, maintenance and/or use of the Leased Premises; (ii)

use of all or any part of the Airport, including, but not limited to, use of any Common Use Space, Exclusive Use Space, Joint Use Space, Preferential Use Space and Shared Use Space, upon which the Leased Premises is located; or (iii) performance of, or failure to perform, any obligation of Lessee under this Agreement. Lessee's obligations under the preceding sentence shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages to the extent of the sole and active negligence or willful misconduct of City.

2. Lessee's occupancy, maintenance and use of the Leased Premises, and use of all or any part of Airport, including, but not limited to, use of any Common Use Space, Exclusive Use Space, Joint Use Space, Preferential Use Space and Shared Use Space, upon which the Leased Premises is located, shall be at Lessee's sole risk and expense. Lessee accepts all risk relating to Lessee's: (i) occupancy, maintenance and/or use of the Premises; (ii) use of all or any part of the Airport, including, but not limited to, use of any Common Use Space, Exclusive Use Space, Joint Use Space, Preferential Use Space and Shared Use Space, upon which the Leased Premises is located; or (iii) performance of, or failure to perform, this Agreement. Except as provided in Section 2.A.1 above, City shall not be liable to Lessee and its insurer(s) for, and Lessee and its insurer(s) hereby waive and release City from, any and all loss, liability, fines, penalties, forfeitures, costs or damages resulting from or attributable to an occurrence on or about the Premises, or all or any part of the Airport, including, but not limited to, use of any Common Use Space, Exclusive Use Space, Joint Use Space, Preferential Use Space and Shared Use Space, upon which the Leased Premises is located, in any way related to the Lessee's operations and activities.
 3. Lessee shall immediately notify City of any occurrence on the Leased Premises, or of any occurrence involving Lessee that occurs on all or any part of the Airport, including, but not limited to, any Common Use Space, Exclusive Use Space, Joint Use Space, Preferential Use Space and Shared Use Space, that results in injury or death to any person or damage to property of any person.
 4. If Lessee should contract any work on the Premises or subcontract any of its obligations under this Agreement without requiring each consultant, subconsultant, contractor and subcontractor to indemnify, hold harmless and defend City and its officers, officials, employees, agents and volunteers in accordance with the terms of this Section, such indemnification, hold harmless, and defense obligations shall remain with Lessee.
 5. The provisions of this Section shall survive the termination or expiration of this Agreement.
3. Section C of Article VI, "Insurance," shall be replaced and re-written as follows:

C. INSURANCE.

1. Throughout the life of this Lease, Lessee 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:

- a. 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. **Lessee 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.**
 - b. 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.
 - c. 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.
 - d. WORKERS' COMPENSATION insurance as required under the California Labor Code.
 - e. 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.
 - f. POLLUTION LIABILITY insurance with limits of liability of not less than \$2,000,000 per claim/occurrence and \$4,000,000 aggregate; provided, however, Lessee may self-insure for all or any part of the pollution liability limits required by this Section 1(f).
2. In the event Lessee 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).

3. Lessee shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Lessee shall also be responsible for payment of any self-insured retentions. Any self-insured retentions must be declared to the City's Risk Manager or his/her designee. At no time shall City be responsible for the payment of any deductibles or self-insured retentions.
4. 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, Lessee 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, Lessee 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.
5. The Airport Liability (or General Liability, if applicable), Aircraft Liability, 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 Lessee'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.
6. Lessee 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

7. Upon request of City, Lessee 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.
8. 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 Lessee of its responsibilities under this Lease.

9. The fact that insurance is obtained by Lessee shall not be deemed to release or diminish the liability of Lessee, including, without limitation, liability under the indemnity provisions of this Agreement. Lessee's duties to indemnify City and its officers, officials, employees, agents and volunteers shall be as expressly set forth in Article IV.E.5 and Article VI of this Agreement and 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 Lessee. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Lessee.
 10. Except as otherwise expressly provided in this Agreement, Lessee 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 Lessee 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. Lessee 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.
4. The first paragraph of Section B of Article V (RENT, RENTAL ADJUSTMENTS, AND LATE PAYMENTS) shall be replaced and re-written to read as follows:

B. RENTAL ADJUSTMENT: Commencing on March 1, 2017, and then annually thereafter, on each and every successive March 1st for the term of the Lease, the amount of monthly rental to be paid to LESSOR by LESSEE shall be subject to adjustment (increase or decrease, respectively), by the same percentage as the percentage change (increase or decrease) in the U.S. Department of Labor, Bureau of Labor Statistics (USDLBLS) Consumer Price Index (CPI) for Urban Wage Earners and Clerical Workers (all items, U.S. city average) from January 1 to December 31 during the last full calendar year prior to the scheduled rental adjustment date. The amount of all such annual adjustments shall be determined in the manner illustrated within Exhibit "C" - Illustration of Annual Rental Adjustment Computation, attached hereto and made a part hereof.

5. Except as expressly provided in this Amendment No. 2, all other terms and provisions of the Agreement shall continue in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Amendment No. 2 as of the day and year first above written.


CITY OF FRESNO,
a municipal corporation

By: _____
Kevin Meikle
Director of Aviation

ATTEST:
Yvonne Spence, CMC
City Clerk

By: _____ Date _____
Deputy

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

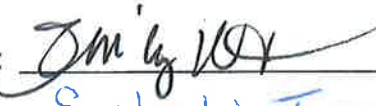
By: 
Amanda B. Freeman
Deputy City Attorney

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

FEDERAL EXPRESS CORPORATION,
A Delaware a Corporation

By: 
Wiley Johnson Jr.
(Printed Name)

Title: Vice President Managing Director

By: 
Emily W. Turner
(Printed Name)

Title: Assistant Secretary

Address for Notice:
Federal Express Corporation
Attn.: Manager, Airport
Relations & Development
3680 Hacks Cross Road
Building H, 3rd Floor
Memphis, Tennessee 381 25
Lease #: 04-0329

With Copy To:
Federal Express Corporation
Legal Department
3620 Hacks Cross Road
Building B, 3rd Floor
Memphis, Tennessee 381 25
Attn.: Managing Director,
Business Transactions
Lease #: 04-0329

Approved
Legal Department 
10/26/16