

AMENDMENT NO. 2

To

LAND LEASE AND AGREEMENT

Between

CITY OF FRESNO, CALIFORNIA

And

SNL CORPORATION

(formerly known as BALJINDER SINGH, an individual, SANDHU BROTHERS GAS STATION,
INC. and SUKHWANT SANDHU, an individual, Jointly and Severally)

THIS AMENDMENT NO. 2, effective as of _____, 2018, is entered by and between the City of Fresno, California, a Municipal Corporation ("City" or "Lessor"), and SNL Corporation, a California corporation (formerly known as several entities, including Baljinder Singh, an individual, Sandhu Brothers Gas Station, Inc. and Sukhwant Sandhu, an individual), with principal offices located at 3147 North Clovis Avenue, Fresno, CA 93727 ("Lessee").

RECITALS

WHEREAS, Lessor entered into a Land Lease and Agreement with Beal Properties, Inc., dated October 22, 1998 (the "Original Agreement"), and

WHEREAS, the Original Agreement was Assumed and Assigned to Sandhu Brothers Gas Station by Beal Properties, Inc., on April 15, 2005, and

WHEREAS, the Original Agreement was first amended on March 2, 2012; and

WHEREAS, the Original Agreement was subleased to SNL Corporation on September 1, 2013; and

WHEREAS, under the sublease, SNL Corporation leases and operates and maintains a gas station and convenience store known as Quick Way Food Store located at 3147 North Clovis Avenue, Fresno, CA 93727; and

WHEREAS, Sandhu Brothers Gas Station, Inc., purchased SNL Corporation on January 2, 2018 and now operates as the SNL Corporation, which terminates the sublease between the two entities as operation of law; and

WHEREAS, Lessor and Lessee now desire to enter into this Amendment No. 2 to reflect that SNL Corporation is now the Lessee and to update the indemnification and insurance requirements of the Agreement as set forth below.

AGREEMENT

NOW, THEREFORE, for and in consideration of the foregoing, the mutual covenants and promises hereinafter set forth and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties intending to be legally bound, hereby agree as follows:

1. The parties acknowledge the sublease between Sandhu Brothers and SNL Corporation is terminated due to the acquisition of SNL Corporation by Sandhu Brothers and assumption of the name SNL Corporation for the purpose of this Agreement. The Lessee is SNL Corporation and Lessor remains the City of Fresno.
2. Article VI is stricken in its entirety and replaced with the following:

ARTICLE VI

INDEMNITY AND INSURANCE

- A. Throughout the life of this Agreement, LESSEE shall pay for and maintain in full force

- A. Throughout the life of this Agreement, LESSEE shall pay for and maintain in full force and effect all insurance as required herein with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by CITY'S Risk Manager or his/her designee at any time and in his/her sole discretion. The required policies of insurance as stated herein shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.
- B. If at any time during the life of the Agreement or any extension, LESSEE or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to LESSEE shall be withheld until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY pursuant to this section shall in any way relieve LESSEE of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.
- C. 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. The duty to indemnify CITY 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, vendors, suppliers, invitees, contractors, sub-contractors, subcontractors, or anyone employed directly or indirectly by any of them.

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."
2. The most current version of ISO *Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy

shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto). If personal automobile coverage is used, the CITY, its officers, officials, employees, agents and volunteers are to be listed as additional insureds.

3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Premises Pollution Liability for environmental liability coverage for operators and/or Contractors Pollution Liability for any contractors for any pollution events. Coverage should include coverage for Underground Storage Tanks.

MINIMUM LIMITS OF INSURANCE LEASE AGREEMENT

LESSEE shall procure and maintain for the duration of the contract, and for 5 years thereafter, insurance with limits of liability not less than those set forth below. However, insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. **COMMERCIAL GENERAL LIABILITY**

- (i) \$2,000,000 per occurrence for bodily injury and property damage;
- (ii) \$2,000,000 per occurrence for personal and advertising injury;
- (iii) \$4,000,000 aggregate for products and completed operations; and,
- (iv) \$4,000,000 general aggregate

2. **LIQUOR LIABILITY INSURANCE** for alcoholic beverages that are to be sold, served or furnished, Liquor Liability coverage is required with limits of liability of not less than:

- (i) \$1,000,000 per occurrence;
- (ii) \$2,000,000 aggregate for bodily injury and property damage;

3. **COMMERCIAL AUTOMOBILE LIABILITY**

\$2,000,000 per accident for bodily injury and property damage.

4. **Workers' Compensation Insurance as required by the State of California with statutory limits and EMPLOYER'S LIABILITY with limits of liability not less than:**

- (i) \$1,000,000 each accident for bodily injury;
- (ii) \$1,000,000 disease each employee; and,
- (iii) \$1,000,000 disease policy limit.

5. **PROPERTY INSURANCE** against all risk of loss to any tenant improvement or betterments, at full replacement cost with no coinsurance penalty provision.

6. **PREMISES POLLUTION LEGAL LIABILITY** with coverage for bodily injury, property damage or pollution clean-up costs that could result from of pollution condition, both sudden and gradual. Coverage is required to include underground

storage tanks, including a discharge of pollutants brought to the work site, a release of pre-existing pollutants at the site, or other pollution conditions with limits of liability of not less than the following:

- (i) \$2,000,000 per occurrence or claim; and,
- (ii) \$4,000,000 general aggregate per annual policy period.

- (a) In the event this Agreement involves the transportation of hazardous material, either the Commercial Automobile policy or other appropriate insurance policy shall be endorsed to include *Transportation Pollution Liability insurance* covering materials to be transported by LESSEE pursuant to the Agreement.

UMBRELLA OR EXCESS INSURANCE

In the event LESSEE purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the CITY, its officers, officials, employees, agents and volunteers.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

LESSEE shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and LESSEE shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared on the Certificate of Insurance, 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) LESSEE 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.

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

- (i) *All policies of insurance* required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice has been given to CITY, except ten (10) days for nonpayment of premium. LESSEE is also responsible for providing written notice to the CITY under the same terms and conditions. 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 LESSEE policy is due to expire during the work to be performed for CITY, LESSEE shall provide a new certificate, and applicable endorsements,

- evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.
- (ii) The Commercial General, Liquor, and Automobile Liability insurance policies shall be written on an occurrence form. The Premises Pollution Liability insurance policy shall be written on either an occurrence form, or a claims-made form.
 - (iii) The Commercial General, Liquor, Automobile and Premises Pollution Liability insurance policies shall be endorsed to name City, its officers, officials, agents, employees and volunteers as an additional insured. LESSEE shall establish additional insured status for the City and for all ongoing and completed operations under both Commercial General and Premises Pollution Liability policies by use of ISO Forms or an executed manuscript insurance company endorsement providing additional insured status. The Commercial General endorsements must be as broad as that contained in ISO Forms: GC 20 10 11 85 or both CG 20 10 & CG 20 37.
 - (iv) All such policies of insurance shall be endorsed so the LESSEES' 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. If LESSEE maintains higher limits of liability than the minimums shown above, City requires and shall be entitled to coverage for the higher limits of liability maintained by LESSEE.
 - (v) Should any of these policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.
 - (vi) For any claims related to this Agreement, LESSEE'S insurance coverage shall be primary insurance with respect to the CITY, its officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, agents, employees and volunteers shall be excess of the LESSEE'S insurance and shall not contribute with it.
 - (vii) The Workers' Compensation insurance policy shall contain, or be endorsed to contain, a waiver of subrogation as to CITY, its officers, officials, agents, employees and volunteers.

PROVIDING OF DOCUMENTS - LESSEE shall furnish CITY with all certificate(s) and applicable endorsements effecting coverage required herein. **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 and before work commences.** All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of CITY, LESSEE shall immediately furnish CITY with a complete copy of any insurance policy required under this Agreement, 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. All subcontractors working under the direction of LESSEE shall also be required to provide all documents noted herein.

CLAIMS-MADE POLICIES - If any coverage required is written on a claims-made coverage form:

- (i) The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by LESSEE.
- (ii) Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the work or termination of the Agreement, whichever first occurs.
- (iii) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement, or work commencement date, LESSEE must purchase "extended reporting" period coverage for a minimum of five (5) years after completion of the work or termination of the Agreement, whichever first occurs.
- (iv) A copy of the claims reporting requirements must be submitted to CITY for review.
- (v) These requirements shall survive expiration or termination of the Agreement.

MAINTENANCE OF COVERAGE - If at any time during the life of the Agreement or any extension, LESSEE or any of its subcontractors fail to maintain any required insurance in full force and effect, all work under this Agreement shall be discontinued immediately until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY hereunder shall in any way relieve LESSEE of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

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. The duty to indemnify CITY 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, its principals, officers, agents, employees, persons under the supervision of LESSEE, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

SUBCONTRACTORS - If LESSEE subcontracts any or all of the services to be performed under this Agreement, LESSEE 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, LESSEE will be solely responsible for ensuring that its subcontractors maintain insurance coverage at levels no less than those required by applicable law and is customary in the relevant industry.

4. In the event of any conflict between the body of this Amendment No. 2 and any Exhibit or Attachment hereto or document referenced herein, the terms and conditions of the body of this Amendment No. 2 shall control and take precedence over the terms and conditions expressed within the Exhibit, Attachment or document referenced. Furthermore, any terms or conditions contained within any Exhibit, Attachment hereto, or document referenced herein which purport to modify the allocation of risk between the parties, provided for within the body of this Amendment No. 2, shall be null and void.
5. All capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement.
6. Except as amended herein, the Original Agreement and Amendment No. 1 shall be and remain in full force and effect.

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IN WITNESS WHEREOF, Lessee has caused this Amendment No. 2 to be executed by its duly authorized officer, and Lessor has caused the same to be executed by its duly authorized person(s)/officer(s), all as of the day and year first above written.

LESSOR

LESSEE

**CITY OF FRESNO, CALIFORNIA
A Municipal Corporation**

**SNL Corporation,
A California Corporation**

By: _____

By: Sukhwant

Kevin R. Meikle,
Director of Aviation

Title: President
(Board Chair, President or Vice President)

**APPROVED AS TO FORM:
Douglas T. Sloan
City Attorney**

By: Sukhwant

By: Amanda Freeman 7/15/18
Amanda Freeman, Date
Senior Deputy City Attorney

Title: Secretary
(CFO, Treasurer, Secretary or Assistant Secretary)

**ATTEST:
Yvonne Spence, MMC
City Clerk**

By: _____
Deputy

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

Address for Notice:
SNL Corporation
3147 North Clovis Avenue
Fresno, CA 93727