

SECOND AMENDMENT TO
NON-EXCLUSIVE LICENSE AGREEMENT TO CONDUCT COMMERCIAL AVIATION
GROUND HANDLING AND SUPPORT SERVICES
AT FRESNO YOSEMITE INTERNATIONAL AIRPORT

Issued By

CITY OF FRESNO, CALIFORNIA
A Municipal Corporation

To

DAL GLOBAL SERVICES, LLC.
A Delaware Limited Liability Corporation

This Second Amendment to the Non-Exclusive License Agreement to Conduct Commercial Aviation Ground Handling and Support Services ("Second Amendment"), is made and entered into as of the _____ day of _____, 2018, by the City of Fresno, California, a municipal corporation (hereinafter "City"), and DAL Global Services, LLC (hereinafter "DGS"), a Delaware limited liability corporation (hereinafter "Licensee").

RECITALS

WHEREAS, City owns and operates Fresno Yosemite International Airport, ("FAT") which is located in the City of Fresno, County of Fresno, State of California (hereinafter "Airport"); and

WHEREAS, Licensee is engaged in the business of providing commercial aviation ground handling and support services to one or more air carriers who are variously engaged in the transportation by air of persons, property, cargo, and mail to and from Airport; and

WHEREAS, Licensee and City (each a "Party"; collectively the "Parties") have heretofore entered a Non-Exclusive License Agreement to Conduct Commercial Aviation Ground Handling and Support Services dated August 22, 2012 ("Original License"), followed by a First Amendment dated October 6, 2015 (Amendment No. 1); and

WHEREAS, the Parties desire to amend the Original License for the purpose of amending the term of the license and updating all insurance requirements;

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. Article II, Section 2.01 of the Original License shall be amended such that the ending date is August 21, 2023.
2. Article VII, Section 7.01 of the Original License shall be deleted and replaced with the following:

7.01 Insurance Requirements

A. Prior to engaging in any operation authorized by this License and continuing throughout the life hereof, 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. 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 \$10,000,000 per accident for bodily injury and property damage.

(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.

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).

- B. 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.
- C. 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.

- D. 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.
- E. 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

- F. 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.
- G. 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.
- H. 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.
- I. 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 subcontractors must be reviewed and preapproved by CITY Risk Manager or designee. If no Side Agreement is required, LICENSEE will be solely responsible for ensuring that it's subcontractors maintain insurance coverage at levels no less than those required by applicable law and is customary in the relevant industry.

If Licensee should be authorized by City to sublicense all or any portion of the premises Licensee shall require each sublicense to provide insurance protection in favor of City, its officers, officials, employees, agents and volunteers in accordance with the terms of each of the preceding paragraphs, except that the sublicense's certificates and endorsements shall be on file with Licensee and City prior to the commencement of any sublicense.

3. 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.
4. All capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement.
5. Except as amended herein, the Original License and Amendment No. 1 shall be and remain in full force and effect.

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IN WITNESS WHEREOF, Licensee has caused this Second Amendment to be executed by its duly authorized officer, and City 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.

CITY OF FRESNO, CALIFORNIA
A Municipal Corporation

By: _____
Kevin R. Meikle,
Director of Aviation

APPROVED AS TO FORM:
Douglas T. Sloan
City Attorney

By: *Amanda Freeman* *5/14/18*
Amanda Freeman, Senior Deputy
Date

ATTEST:
Yvonne Spence, MMC
City Clerk

By: _____
Deputy

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

DAL GLOBAL SERVICES, LLC.
A Delaware Limited Liability Corporation

By: *Phillip*
Title: *EVP & CEO*
(Board Chair, President or Vice
President)

By: *J. Spence*
Title: *ASSISTANT CONTROLLER*
(CFO, Treasurer, Secretary or
Assistant Secretary)

Address for Notice:

DAL Global Services, LLC.
980 Virginia Avenue, 4th Floor
Atlanta, GA 30354
Phone: (404) 715-2600