

RIGHT OF ENTRY

This Right of Entry Agreement (“AGREEMENT”) is made this _____ day of _____, 20____, by and between NAME, [an individual/ a _____ corporation/ a _____ limited liability company/ a partnership] authorized to do business in the State of California ~~← Delete if entity was formed in California~~ (“ENTRANT”), and the CITY OF SAN JOSE, a chartered municipal corporation of the State of California (“CITY”).

RECITALS

A. WHEREAS, CITY owns and operates the Norman Y. Mineta San José International Airport (“Airport”); and

B. WHEREAS, ENTRANT desires temporary access to the Airport for the purpose of _____ only at the specific location(s) shown on **Exhibit A** attached hereto and incorporated herein; and

C. WHEREAS, ENTRANT’s requested access to the Airport has been coordinated with the Airport [specify Airport division];

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

1. Right of Entry. CITY hereby grants to ENTRANT, its officers, employees, agents, consultants and contractors a temporary Right of Entry as hereinafter described subject to all licenses, easements, leases, encumbrances and claims of title affecting the Airport.

2. **Purpose.** The Right of Entry granted herein is a right to enter onto the Airport only for the purposes and subject to the terms and conditions set forth in this Right of Entry.

3. **Term.** Subject to the termination provision set forth in Section 5 below, the term of the Right of Entry shall begin upon execution of this AGREEMENT by CITY hereto, as set forth above, and shall terminate upon the completion of ENTRANT's activities under this Right of Entry.

4. **Terms and Conditions.** The Right of Entry is given subject to the following terms and conditions.

4.1 ENTRANT shall make no entry on the Airport until CITY has received and approved: [optional: a site-specific health and safety plan], detailed activity plans, necessary CITY permits, and a list of the names of all officers, employees, agents, consultants and contractors of ENTRANT authorized by ENTRANT to enter the Airport pursuant to this Right of Entry. At least 48 hours prior to any entry on the Airport, ENTRANT shall contact the Director of Aviation or the Director's designee to coordinate the ENTRANT's activities. Until CITY notifies ENTRANT otherwise, ENTRANT shall contact [Individual or Department Contact Name and Phone Number Airport] to coordinate all entries on to the Airport.

4.2 ENTRANT shall be responsible for coordination of its activities to avoid any utility conflicts, or conflicts with any Airport facilities and/or operations.

4.3 ENTRANT, at no cost or expense to CITY, shall be responsible for obtaining any and all governmental permits and approvals which may be necessary for it to conduct any activities under this AGREEMENT. CITY shall coordinate and cooperate with ENTRANT in ENTRANT's activities to obtain all necessary government permits and permissions.

4.4 ENTRANT and its officers, employees, agents and contractors shall comply with all applicable local, state, and federal laws and regulations including those laws which govern worker health and safety and reporting the use, handling, treatment, removal, or disposal of toxic or hazardous substances, materials or wastes, including without limitation all substances described in the definition of Hazardous Materials set forth in **Exhibit B** attached hereto and incorporated herein, which may exist on the CITY's Property (hereinafter "Hazardous Materials"). ENTRANT, its officers, employees, agents and contractors shall obtain all required regulatory and governmental permits and licenses necessary to perform the activities hereunder; shall conduct their operations on the Airport so as to avoid unfavorable impact upon the environment; shall comply with all applicable provisions of the Environmental Quality Act of 1970 (California Public Resources Code, Sections 21,000, et. seq.); and shall take all required steps to minimize dust and noise in conformance with neighborhood and governmental standards.

4.5 Prior to any entry on the Airport, ENTRANT shall provide CITY with certificates of insurance acceptable to CITY showing CITY as an additional insured party as to all insurance coverage provided by ENTRANT concerning ENTRANT's activities on the Airport. Insurance Coverage shall meet, at a minimum, the requirements set forth in **Exhibit C** attached hereto and incorporated herein.

4.6 ENTRANT and its employees, agents, consultants and contractors shall properly and lawfully transport and dispose of any and all waste, purged water and Hazardous Materials generated by the activities of such parties on the Airport.

4.7 ENTRANT waives and releases CITY from any and all liability to ENTRANT, its officers, employees, agents, consultants or contractors for any loss, damage, liability, or liability for damages, whether for loss of or damage to ENTRANT's Property, or injury to or death of persons, which may arise out of operations by ENTRANT, its officers, employees, agents, consultants or contractors on the Airport, except such loss

or damage as is caused by or arises out of the sole active negligence or willful misconduct of CITY, its officers, agents, employees or contractors. The foregoing shall include any loss, damage, claim, or liability for damages or injury caused by or resulting from generation of Hazardous Materials, or the creation of increased hazard to the public from existing materials arising from the operations of ENTRANT, its officers, employees, agents, consultants or contractors.

4.8 ENTRANT agrees to indemnify, defend, and hold harmless CITY and its officers, agents, employees and contractors against all loss, damage, liability, and liability for damages, resulting from or arising out of ENTRANT's operations upon the Airport, including activities of ENTRANT's officers, employees, agents, consultants or contractors, except such loss or damage as is caused by or arises out of the sole active negligence or willful misconduct of CITY, its officers, agents, employees or contractors. The foregoing shall include any loss, damage, claim, or liability for damages or injury caused by or resulting from generation of Hazardous Materials, or the creation of increased hazard from existing materials arising from the operations of ENTRANT, its officers, agents employees, consultants or contractors

4.9 Nothing herein shall be construed as a grant of title or any interest in the Airport.

4.10 Nothing herein shall be construed as an admission of liability by CITY of its responsibility as to any Hazardous Materials which may be found on the Airport.

4.11 Prior to the termination date of this Right of Entry, ENTRANT shall restore and repair any damage to the Airport caused by ENTRANT, its officers, employees, agents, consultants or contractors.

4.12 ENTRANT will provide CITY with copies of all reports, test data, maps, and other documentation prepared or compiled by ENTRANT, as requested by the

CITY concerning ENTRANT's activities at the Airport for CITY's review no later than two weeks after ENTRANT completes its activities.

4.13 CITY shall review ENTRANT's activities during the term of this Right of Entry, and ENTRANT will make all necessary changes required by CITY inspectors.

5. Termination of Right of Entry. CITY shall have the right to terminate this Right of Entry, without cause, by giving not less than seven (7) days written notice of termination.

6. Notices. All notices or other communications given in conjunction with this AGREEMENT shall be written, and must be made via e-mail or United States mail. A notice or other communication that is e-mailed is effective when sent. A notice or other communication that is mailed shall be effective three (3) business days after deposit in the U.S. Mail, first class postage prepaid to the applicable address stated below, or to such other address as the party may designate by written notice:

To CITY: Director of Aviation
Norman Y. Mineta San José International Airport
1701 Airport Boulevard, Suite B-1130
San José, CA 95110-1206
E-mail:

To ENTRANT: NAME
Attn.: Contact Name, Title
Street
City, State, Zip
E-mail:

7. General Civil Rights Provisions.

In all its activities within the scope of its airport program, the Contractor agrees to comply with pertinent statutes, Executive Orders and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency),

creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision is in addition to that required by Title VI of the Civil Rights Act of 1964. This provision binds the Contractor and subcontractors from the request for proposals or request for qualifications solicitation period through the completion of the contract.

If the Contractor transfers its obligations to another, the transferee is obligated in the same manner as the Contractor. The above provision obligates the Contractor and the airport remains obligated to the Federal Aviation Administration.

8. Nondiscrimination Requirements/Title VI Clauses for Compliance.

During the performance of this AGREEMENT, the ENTRANT, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”), agrees as follows:

1. Compliance with Regulations: The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this AGREEMENT.

2. Nondiscrimination: The Contractor, with regard to the work performed by it during the AGREEMENT, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the AGREEMENT covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

3. Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor's obligations under this AGREEMENT and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

4. Information and Reports: The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the City or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of a Contractor's noncompliance with the non-discrimination provisions of this AGREEMENT, the City will impose such AGREEMENT sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the Contractor under the AGREEMENT until the Contractor complies; and/or
- b. Cancelling, terminating, or suspending the AGREEMENT, in whole or in part.

6. Incorporation of Provisions: The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the City or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance.

Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the City to enter into any litigation to protect the interests of the City. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

9. Title VI List of Pertinent Nondiscrimination Acts and Authorities.

During the performance of this AGREEMENT, the ENTRANT, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-Assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-259) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs

or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

- Titles II and III of the Americans with Disabilities Act of 1990 (42 USC § 12101, et seq) (prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;

- The Federal Aviation Administration's Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs [70 Fed. Reg. 74087 (2005)];

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC § 1681, et seq).

10. Title VI Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program.

A. The ENTRANT for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the

construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the ENTRANT will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.

B. With respect to the AGREEMENT, in the event of breach of any of the above Nondiscrimination covenants, City will have the right to terminate the AGREEMENT and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said AGREEMENT had never been made or issued.

11. Federal Fair Labor Standards Act (Federal Minimum Wage).

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, et seq, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part-time workers.

The ENTRANT has full responsibility to monitor compliance to the referenced statute or regulation. The ENTRANT must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

12. Occupational Safety And Health Act Of 1970.

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. The employer must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The employer retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (29 CFR Part 1910). The employer must address any claims or disputes that

pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

13. Counterparts.

This Agreement may be executed in any number of counterparts and by each party in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

14. Use of Electronic Signatures.

Unless otherwise prohibited by law or CITY policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a writing as set forth in Evidence Code Section 1550. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by the CITY.

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IN WITNESS WHEREOF, the parties have executed this instrument the day and year first above written.

FORM OF RIGHT OF ENTRY
AGREEMENT APPROVED BY THE
OFFICE OF THE CITY ATTORNEY

“CITY”

CITY OF SAN JOSE, a chartered
municipal corporation of the State of
California

MUKESH (MOOKIE) PATEL, C.M.
Director of Aviation

“ENTRANT”

[NAME], a [TYPE OF BUSINESS ENTITY
– e.g. a [state of formation] corporation, a
[state of formation] limited liability
company, an individual] authorized to do
business in the State of California

By _____
Name:
Title:

CERTIFICATE OF LLC AUTHORITY

This Certificate of LLC Authority shall be executed by the manager of the limited liability company.

I, _____, certify that I am the manager of the
Name of Manager
limited liability company named in the attached agreement;

that _____ signed the agreement on behalf of the limited
Name of Person that Signed Agreement

liability company as the _____ of the limited liability
Title of Person that Signed Agreement

company; and that the agreement was duly signed for and on behalf of the limited liability company by authority of its members, and is within the scope of its limited liability company powers.

By: _____

Name: _____

Its: Manager

Date: _____

CORPORATE SECRETARY CERTIFICATE

Remove this page or previous page depending on Entity

This certificate shall be executed by the secretary or assistant secretary of the corporation.

I, _____ certify that I
Name of Secretary or Assistant Secretary

am the Secretary or Assistant Secretary of the corporation named in the

attached agreement; that _____
Name of Person that Signed Agreement

signed the agreement on behalf of the corporation as the _____
Title of Person that Signed the Agreement

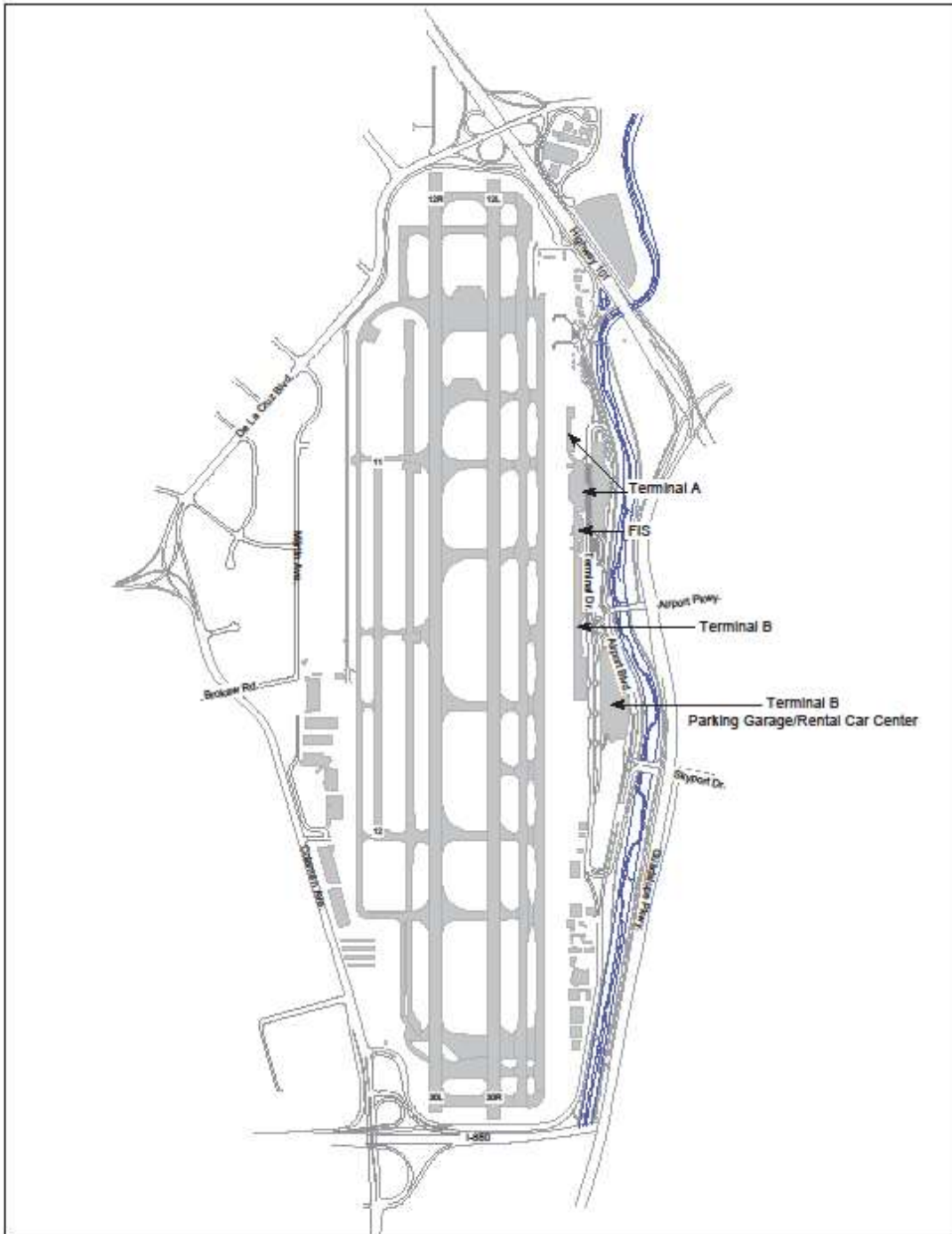
of the corporation; and that the agreement was duly signed for and on behalf of the corporation by authority of its Board of Directors, and is within the scope of its corporate powers.

Signature of Secretary or Assistant Secretary

Corporate Seal

Date

EXHIBIT A CITY PROPERTY MAP




| | | |
|--|--------------------|--|
|  Date: 9/11/2012 | Airport Campus Map |  WORLDWIDE SAN JOSE INTERNATIONAL AIRPORT |
|--|--------------------|--|

EXHIBIT B HAZARDOUS MATERIALS

“Hazardous Materials” shall mean any and all (a) substances, products, by-products, waste, or other materials of any nature or kind whatsoever which is or becomes listed, regulated or addressed under any Environmental Laws, and (b) any materials, substances, products, by-products, waste, or other materials of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, by-products, or waste may give rise to liability under any Environmental Law or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of any state or federal court; and (c) any substance, product, by-product, waste or any other material which may be hazardous or harmful to the air, water, soil, environment or affect industrial hygiene, occupational, health, safety and/or general welfare conditions, including without limitation, petroleum and/or asbestos materials, products, by-products, or waste.

“Environmental Laws” shall mean and include all federal, state, and local laws, statutes, ordinances, regulations, resolutions, decrees, and/or rules now or hereinafter in effect, as may be amended from time to time, and all implementing regulations, directives, orders, guidelines, and federal or state court decisions, interpreting, relating to, regulating or imposing liability (including, but not limited to, response, removal, remediation and damage costs) or standards of conduct or performance relating to industrial hygiene, occupational, health, and/or safety conditions, environmental conditions, or exposure to, contamination by, or clean-up of, any and all Hazardous Materials, including without limitation, all federal or state superlien or environmental clean-up statutes.

EXHIBIT C
INSURANCE REQUIREMENTS [TO BE PROVIDED BY RISK; PER SG WORKFLOW
FORM-148-22 -000488, RISK APPROVED OF THESE PROVISIONS FOR THE
TEMPLATE, EFFECTIVE 9/27/22.]

ENTRANT, at ENTRANT's sole cost and expense, shall procure and maintain for the duration of this AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, any activities at the Airport hereunder by ENTRANT, its agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") form CG 0001, including ongoing operations and products and completed operations; and
2. The coverage provided by Insurance Services Office Form number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned, and hired automobiles; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
4. Property insurance covering ENTRANT's personal property on the PREMISES; and
5. Pollution Liability coverage for bodily injury, property damage, defense, cleanup, and related defense costs as a result of pollution conditions.

B. Minimum Limits of Insurance

ENTRANT shall maintain limits no less than:

1. Commercial General Liability: \$XXX per occurrence for bodily injury, personal injury and Property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location, or the general aggregate limit shall be twice the required occurrence limit; and

2. Automobile Liability: \$XXX combined single limit per accident for bodily injury and Property damage; and
3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident; and
4. Property: Replacement cost.
5. Pollution Liability: \$XXX each occurrence/aggregate limit.

C. **Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to, and approved by CITY's Risk Manager. At the option of CITY, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, employees, agents and contractors; or ENTRANT shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the CITY's Risk Manager.

D. **Other Insurance Provisions**

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages
 - a. The City of San José, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of ENTRANT; products and completed operations of ENTRANT; premises owned, leased or used by ENTRANT; and automobiles owned, leased, hired or borrowed by ENTRANT. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents and contractors.
 - b. ENTRANT's insurance coverage shall be primary insurance as respects CITY, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by CITY, its officers, employees, agents or contractors shall be excess of ENTRANT's insurance and shall not contribute with it.
 - c. Any failure to comply with reporting provisions of the policies by ENTRANT shall not affect coverage provided CITY, its officers, employees, agents, or contractors.

d. Coverage shall state that ENTRANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. All Coverages

Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days' prior written notice has been given to CITY.

E. **Acceptability of Insurers**

Insurance is to be placed with insurers acceptable to CITY's Risk Manager.

F. **Verification of Coverage**

ENTRANT shall furnish CITY with certificates of insurance and with original endorsements affecting coverage required by this AGREEMENT. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be emailed in pdf format to: Riskmgmt@sanjoseca.gov: