

RIGHT OF ENTRY

This Right of Entry Agreement (“AGREEMENT”) is made this ____ day of _____, 2015, by and between NAME, [an individual/ a _____ corporation/ a _____ limited liability company/ a partnership] (“ENTRANT”) and the CITY OF SAN JOSE, a municipal corporation, (“CITY”).

RECITALS

- A. **WHEREAS**, CITY owns and operates the Norman Y. Mineta San Jose 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].

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 given in conjunction with this AGREEMENT shall be written, and shall be effective three (3) 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 Jose International Airport
 1701 Airport Boulevard, Suite B-1130
 San José, CA 95110-1206

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

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 municipal
corporation

By _____
KIM BECKER AGUIRRE
Director of Aviation

“ENTRANT”

[NAME], a [TYPE OF BUSINESS ENTITY
– e.g. a California corporation, a Delaware
limited liability company, an individual]

By _____
Name:
Title:

EXHIBIT A CITY PROPERTY MAP

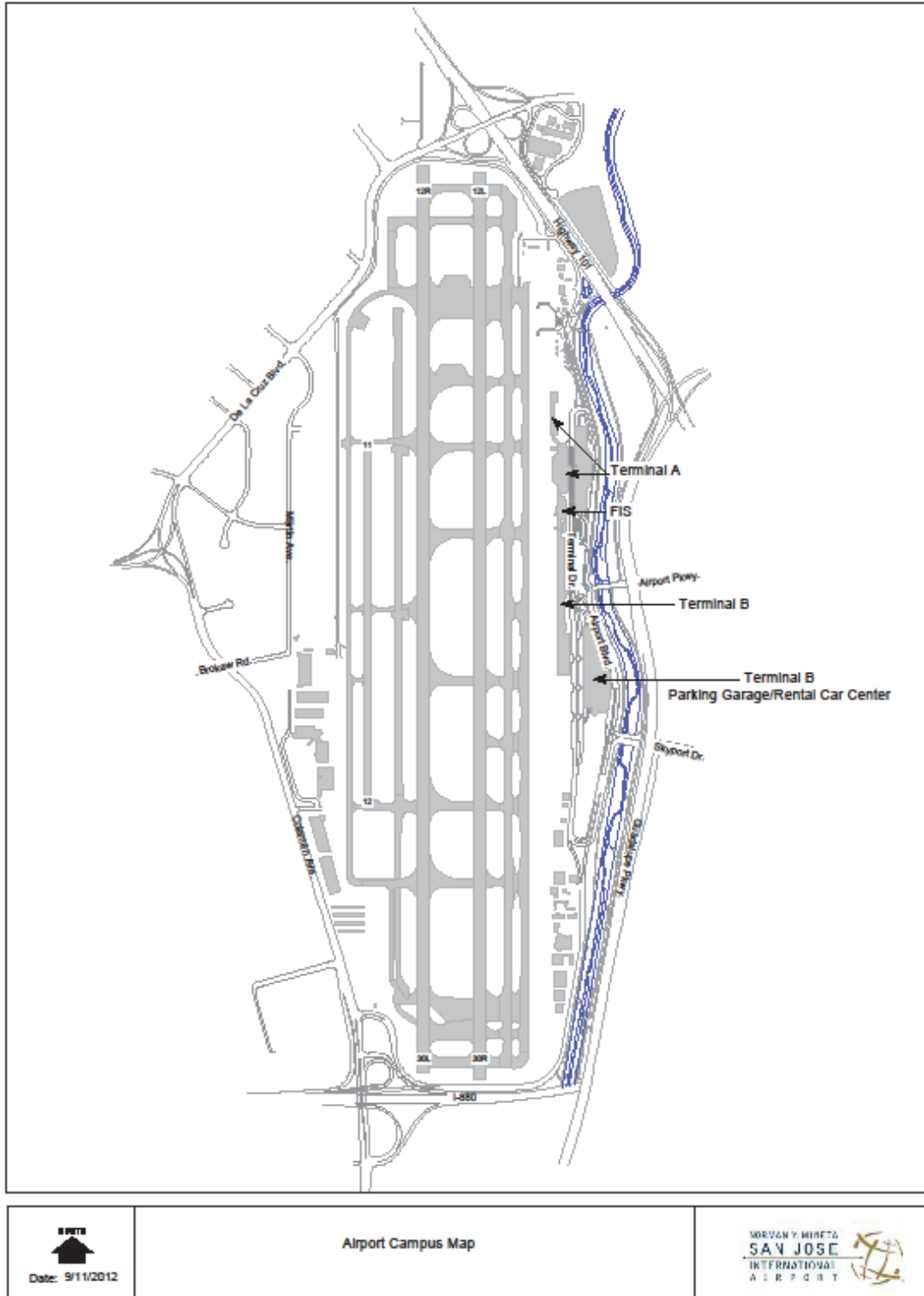


EXHIBIT B HAZARDOUS MATERIALS

“**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

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 described in Insurance Services Office Form Commercial General Liability together with Insurance Services Office Form Broad Form Comprehensive General Liability; or that described in Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001 including XCU (Explosion, Collapse & Underground) Coverage, and Environmental Impairment Liability; and

2. The coverage described in Insurance Services Office Form Automobile Liability, Code 1 "any auto", or Code 2 "owned autos" and Endorsement CA 0025. Coverage shall also include Code 8 "hired autos" and Code 9 "nonowned autos"; and

3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and

B. Minimum Limits of Insurance

ENTRANT shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 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: \$1,000,000 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

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 Jose, 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 either emailed in pdf format to: Riskmgmt@sanjoseca.gov, or mailed to the following postal address or any subsequent address as may be directed in writing by the Risk Manager:

City of San Jose—Finance
Risk Management
200 East Santa Clara Street, 13th Floor Tower
San Jose, CA 95113-1905

G. Subcontractors

ENTRANT shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.