

ALTERNATIVE FUEL VEHICLES AND VEHICLE AGE AGREEMENT

This ALTERNATIVE FUEL VEHICLES AGREEMENT (“Agreement”) is made and entered into on _____, by and between the San Diego County Regional Airport Authority (“Authority”), a local government entity of regional government, existing under §170000 *et seq.* of the California Public Utilities Code (“Authority Act”) and _____ (“Airline”), a corporation existing under the laws of the state of _____ and authorized to conduct business in the State of California.

RECITALS

WHEREAS, the Authority Act establishes Authority as a local governmental entity of regional government, with the exclusive power and authority to oversee the establishment, operation and coordination of airport facilities within the County of San Diego, as well as study, plan and implement any improvements, expansion or enhancements at San Diego International Airport (the “Airport”) and other existing or future airports within its control; and

WHEREAS, Authority is in the process of planning a proposed major capital development program, the proposed Airport Development Plan (“ADP”), at the Airport to, among other things, replace Terminal 1 with a new, modern terminal; and

WHEREAS, the Authority estimates that ground service equipment (“GSE”) and other motor vehicles operated on the Airport by Airline will contribute to the increase in greenhouse gas (“GHG”) emissions associated with the operation of the proposed ADP; and

WHEREAS, Authority and Airline are in the process of completing a new, ten-year agreement that will allow Airline to operate and lease facilities at the Airport (the “AOLA”) and support the Authority’s proposed binding commitments to convert GSE and other vehicles to alternative fuels and to eliminate motor vehicles beyond a certain age through the AOLA;

WHEREAS, the Authority and the Airline reached agreement that, due to the potential complexity of these issues and the timing of the AOLA, which will go into effect on July 1, 2019, it was mutually beneficial to address the Authority’s proposed binding commitments in a separate agreement;

NOW, THEREFORE, for and in consideration of the covenants, terms and conditions herein contained to be kept and performed by the respective parties, and for other valuable consideration, Authority and Airline covenant and mutually agree as follows:

Section 1: Definitions

“**Alternative Fuel**” means any fuel as defined by the federal Energy Policy Act of 1992 as modified, revised, or replaced, and which shall meet the definition under the California Air Resources Board’s Low-Carbon Fuel Standard as modified, revised, or replaced, including: renewable diesel, biodiesel; natural gas and liquid fuels domestically produced from natural gas; propane (liquefied petroleum gas); electricity; hydrogen; blends of 85% or more of methanol, denatured ethanol, and other alcohols with gasoline or other fuels; methanol, denatured ethanol,

and other alcohols with gasoline or other fuels; fuels (other than alcohol) derived from biological materials; and P-Series fuels (blends of ethanol, methyltetrahydrofuran, natural gas liquids and butane).

“**Alternative Fuel Vehicle**” means a dedicated, flexible fuel, or dual-fuel vehicle designed to operate on at least one Alternative Fuel and may include, but is not limited to, electric vehicles, fuel cell vehicles and renewable diesel.

“**Covered Vehicles and Equipment**” means (a) all motorized vehicles and equipment fueled by diesel; (b) all motorized baggage tugs, belt loaders, lifts, push back tugs, utility carts fueled with gasoline; and (c) fifty percent (50%) of Airside Operations Area (AOA)-permitted light duty vehicles (including pickup trucks, panel trucks, sport utility vehicles (SUVs) and vans) fueled with gasoline. The fifty percent (50%) requirement in clause (c) shall apply individually to Airline and each of its ground handlers, contractors or sublessees.

Section 2: Program to Convert to Alternative Fuel Vehicles and Phase Out Old Vehicles

2.1 Alternative Fuel Vehicles. By July 1, 2024, all Covered Vehicles and Equipment owned by Airline, any ground handlers utilized by Airline or other contractors or sublessees of Airline that service the Airport or operations thereon, shall be, to the extent such vehicles are available, Alternative Fuel Vehicles utilizing established and available Alternative Fuel sources. Airline shall be liable for any non-compliance by any ground handlers utilized by Airline or other contractors or sublessees of Airline even if such ground handlers, contractors or sublessees are utilized by other air carriers at the Airport.

2.2 Motorized Equipment Age. By July 1, 2024, all Covered Vehicles and Equipment owned by Airline, any ground handlers utilized by Airline or other contractors or sublessees of Airline that service the Airport or operations thereon, shall be less than thirteen (13) years old from their original manufactured date. Zero-emission and Tier IV (or higher) diesel-powered motorized equipment shall be excluded from this provision. Airline shall be liable for any non-compliance by any ground handlers utilized by Airline or other contractors or sublessees of Airline even if such ground handlers, contractors or sublessees are utilized by other air carriers at the Airport.

2.3 Supporting Infrastructure. Authority and Airline recognize and agree that viable operations of Alternative Fuel Vehicles at the Airport require sufficient infrastructure to support the operations of such vehicles, including adequate fueling systems and charging stations, sufficient space and appropriate airside configuration, and that Authority and Airline must cooperate to ensure that such infrastructure is available. Accordingly, Authority agrees to provide adequate electric vehicle charging infrastructure to meet the demand for electric vehicles of Airline and other air carrier executing similar agreements, and Airline agrees to provide adequate, non-electric fueling systems (either directly or through the airline fuel consortium) to meet the demand for non-electric Alternative Fuel Vehicles of Airline and other air carrier executing similar agreements and both parties agree to cooperate as necessary to meet their respective obligations.

2.4 Exemptions. Airline shall qualify for a temporary exemption from any of the requirements in Sections 2.1 and 2.2 on an item-by-item basis or on the basis of vehicle type or equipment if Airline demonstrates in writing to Authority one or more of the following:

- (a) the safety of Airline personnel and others working on the airfield will be placed at risk;
- (b) Alternative Fuel Vehicles and related equipment are not commercially available;
- (c) Alternative Fuel sources are not reasonably available on or within reasonable proximity to the Airport;
- (d) the Airport does not contain infrastructure capable of safely and efficiently supporting the Alternative Fuel Vehicles;
- (e) the vehicle/equipment is considered “low-use” because it will have less than 200 hours of operation per year;
- (f) the vehicle/equipment’s warranty would be voided by use of Alternative Fuels; or
- (g) there is no possible means of complying with Section 2.1 or 2.2 without violating an applicable federal or state law.

Beginning January 1, 2024 Airline shall submit to Authority no later than January 1 of each year a list of vehicles that are exempt under this Section 2.4 with an explanation adequate for the Authority to verify the exemption. Authority shall have thirty (30) days to review Airline’s written explanation and notify Airline of any determination that Airline has failed to demonstrate that it meets one or more the criteria for an exemption and Airline must therefore comply with the requirements of Section 2.1 and 2.2. If Airline qualifies for an exemption, the exemption shall be effective for one (1) year from the date of the delivery of Airline’s written explanation. However, Airline may obtain additional one (1) year exemptions if it qualifies under this Section 2.4.

Section 3: Non-Compliance

In the event that Airline fails to meet any of its obligations under Section 2, Authority shall notify Airline of such failure and Airline shall have ninety (90) days from the date of such notice to cure its failure to comply or such longer period as may be reasonably required to cure such failure provided that Airline has commenced a cure within such time period and is diligently pursuing the same; provided further, however, that in no event shall Airline have more than one hundred eighty (180) days to cure any failure . If Airline fails to cure its noncompliance, Airline shall be deemed in default of this Agreement and such default shall be deemed a cross-default of the Airline Operating and Lease Agreement or the Non-Signatory Airline Operating Agreement between Airline and Authority, whichever is applicable, and Authority shall have the remedies available to it under those agreements, including the right to terminate those agreements.

Section 4: Miscellaneous Provisions

4.1 Governing Law and Venue. This Agreement has been entered into and shall be governed by, construed and interpreted in accordance with the laws of the State of California. Venue of any action brought under this Agreement shall be vested in the state courts of California in the County of San Diego or if federal jurisdiction is appropriate, in the United States District Court in the Southern District of California.

4.2 Agent for Service of Process and Alternative Service. It is expressly agreed and understood that if Airline is not a resident of the state of California, or is a partnership or joint venture without a partner or member resident in California, or is a foreign corporation, then Airline shall designate the California Secretary of State as its agent for the purpose of service of process in any court action or other litigation between it and Authority arising out of or based upon this Agreement. Service shall be made as provided by the laws of the state of California for service upon a nonresident and a copy of such service of process shall also be delivered to Airline's address for notices provided in Section 4.13. It is further expressly agreed, covenanted and stipulated that if, for any reason, service of such process is not possible, as an alternative method of service of process, Airline may be served personally with such process out of this State by mailing, by registered or certified mail, the complaint and process to Airline at the address specified in Section 4.13, and that such service shall constitute valid service upon Airline as of the date of mailing, and Airline shall have thirty (30) days from the date of mailing to respond. It is further expressly agreed that Airline is amenable, and hereby agrees, to the process so served, submits to the jurisdiction and waives any and all objection and protest thereto, any laws to the contrary notwithstanding.

4.3 Entire Understanding. This Agreement contains the entire and only understanding and agreement of Authority and Airline, which by accepting this Agreement, acknowledge that there is no other written or oral understanding or agreement between them with respect to the subject matter of this Agreement and that this Agreement supersedes all prior negotiations, discussions, obligations and rights of Authority and Airline. No waiver, modification, amendment or alteration of this Agreement shall be valid unless it is expressed in writing and signed by authorized representatives of Airline and Authority, in accordance with Section 4.4. Airline and Authority acknowledge that no other party, nor any agent or attorney of any other party, has made any promise, representation, waiver or warranty whatsoever, expressed or implied, which is not expressly contained in writing in this Agreement and further acknowledge that this Agreement was not executed in reliance upon any collateral promise, representation, waiver or warranty, or in reliance upon any belief as to any fact not expressly recited in this Agreement.

4.4 Amendments. Except as specifically provided herein, neither this Agreement, nor any of its terms or provisions, may be changed, waived, discharged, or terminated, except by a written instrument signed by the party against which the enforcement of the change, waiver, discharge, or termination is sought.

4.5 Cumulative Rights. Each right of Authority and Airline is cumulative and is in addition to every other legal right that the party may have in the event of any default by the other.

4.6 Construction to Save Agreement. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and in no way shall be affected, impaired, or invalidated thereby. It is the intention of the parties hereto that if any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

4.7 No Waiver. No waiver of default of any of the terms, covenants and conditions of this Agreement to be performed, kept and observed by the other party shall be construed or operate as a waiver of any subsequent default of any of the terms, covenants or conditions of this Agreement to be performed, kept and observed by the other party. No failure on the part of either party to require or exact full and complete compliance by the other party with any of the covenants, conditions, or agreements of this Agreement be construed in any manner as a change in or to the terms of this Agreement or prevent the enforcement in full of any provisions.

4.8 Relationship of Parties. Nothing in this Agreement shall be deemed or construed by Authority or Airline, or by any third party, as creating the relationship of principal and agent, partners, joint venturers, or any other similar such relationship between Authority and Airline. No provision in this Agreement and no act of Authority or Airline create a relationship other than the relationship of landlord and tenant.

4.9 Successors and Assigns. All of the terms, provisions, covenants, stipulations, conditions and considerations in this Agreement shall extend to and bind the legal representatives, successors, and assigns of each party to this Agreement.

4.10 Force Majeure. If either party shall be delayed or hindered in or prevented from the performance of any act required under this Agreement by reason of strikes, lockouts, labor disputes, inability to procure labor or materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, terrorism, war, fire or other casualty, or other reason of a similar nature beyond the reasonable control of the party delayed in performing work or doing acts required under this Agreement, performance of such act shall be excused for the period of the actual delay attributable to such causes, and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay (any such delay is herein referred to as an "Unavoidable Delay"). Airline shall give Authority notice of any Unavoidable Delay within a reasonable time (not to exceed thirty (30) days) following the occurrence of the delaying event.

4.11 Attorneys' Fees.

4.11.1 If Authority shall, without any fault, be made a party to any litigation commenced by or against Airline arising out of Airline's failure to meet its obligations under this Agreement and as a result of which Airline is finally adjudicated to be liable, then Airline shall pay all costs and reasonable attorneys' fees incurred by or imposed upon Authority in connection with such litigation.

4.11.2 In any action by Authority or Airline against the other for recovery of any sum due under this Agreement, or to enforce any of the terms, covenants or conditions contained herein, the prevailing party shall be entitled to reasonable attorneys’ fees in addition to costs and necessary disbursements incurred in such action. Each party shall give prompt notice to the other of any claim or suit instituted against it that may affect the other party.

4.12 Time of the Essence. Time is of the essence of this Agreement and of each and all of its terms, conditions, covenants and provisions.

4.13 Notices. All notices and payments under this Agreement may be delivered or mailed. If delivered by messenger or courier (including overnight air courier), they shall be deemed delivered when received at the Street Addresses below. If mailed or sent via overnight courier, they shall be sent to Authority’s Overnight Delivery and Street Address and Airline’s Overnight Delivery and Street Address as provided below, respectively, or to such other respective addresses as either party may from time to time designate to the other party in writing.

Airline:

Name:
Street Address:

Overnight Delivery Address:
Email:

Authority:

Name: San Diego County Regional Airport Authority
Street Address:

3225 North Harbor Drive, 3rd Floor Administration
Bldg, San Diego, CA 92138

Overnight Delivery Address:
Email:

All notices mailed by regular mail (including first class) shall be deemed to have been given on the fifth business day following the date of mailing, if properly mailed and addressed. Notices sent by certified or registered mail shall be deemed to have been given on the third business day following the date of mailing, if properly mailed and addressed. For all types of mail, the postmark affixed by the United States Postal Service shall be conclusive evidence of the date of mailing. Notices delivered via courier or overnight courier shall be deemed to have been given upon arrival. Notices sent via email shall be deemed to have been given on the date of transmission if the email is received before 5:00 p.m. on a business day of the recipient, otherwise on the first business day following the date of such email transmission.

4.14 Duly Authorized. The execution, delivery and performance by Airline of this Agreement have been duly authorized by all necessary corporate or other organizational action,

and do not and will not (a) contravene the terms of any of Airline’s organization documents, or (b) to Airline’s knowledge conflict with or result in any breach or contravention of any contractual obligation to which Airline is a party, or any order, injunction, writ or decree of any governmental authority or any arbitral award to which Airline or its property is subject.

4.15 Counterparts. This Agreement may be executed simultaneously in counterparts, each of which shall be deemed to be an original copy of this Agreement and, when taken together, shall be deemed to be one and the same Agreement.

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APPROVED AS TO FORM

**SAN DIEGO COUNTY REGIONAL
AIRPORT AUTHORITY**

By: _____
Amy Gonzalez
General Counsel

By: _____
Kimberly J. Becker
President/CEO

Airline

By: _____

Print Name: _____

Print Title: _____

By: _____

Print Name: _____

Print Title: _____