

**THIRD AMENDMENT TO THE AGREEMENT FOR
AIRPORT SHUTTLE BUS SERVICE
BETWEEN
THE CITY OF SAN JOSE AND SHUTTLEPORT CALIFORNIA, LLC**

This Third Amendment to the Agreement for Airport Shuttle Bus Service is entered as of March 1, 2012, by the City of San Jose ("City"), a municipal corporation, and Shuttleport California, LLC, a California limited liability company ("Contractor").

RECITALS

WHEREAS on March 1, 2008 City and Contractor entered into an agreement entitled "Agreement for Airport Shuttle Bus Service" ("Agreement"); and

WHEREAS on October 6, 2009, City and Contractor entered into a First Amendment to the Agreement to change the compensation by changing the hourly billing rate from three operating hour steps to four steps; and

WHEREAS, on February 2, 2011, City and Contractor entered into a Second Amendment to further amend the Agreement to modify the Scope of Services and make certain changes in the compensation by changing the hourly billing rate from four steps to six steps; and

WHEREAS, City and Contractor now wish to further amend the Agreement to replace Exhibit C, "Compensation", in its entirety to change the compensation model from a fixed hourly rate model to a Cost Plus Service compensation model retroactive to March 1, 2012 and replace Exhibit K, "Shuttle Bus Schedule and Headways" in its entirety with the current operational schedule and to add one additional six-month term;

NOW THEREFORE, the parties agree to further amend the amended Agreement as follows:

1. Section 3 is hereby amended to add a subsection 3.2.1 to read as set forth below:

3.2.1 Additional Option

The City may exercise one (1) additional six-month term (the "Extension Term"), based upon the conditions of the Initial Term as amended. City shall notify Contractor in writing of its exercise of its option for an Extension Term no less than thirty (30) days prior to the end of the then current Term.

2. Exhibit C of the Agreement, entitled "Compensation", is hereby amended in its entirety to read as set forth in Third Revised Exhibit C, attached hereto and incorporated herein.

3. Exhibit K of the Agreement, entitled "Shuttle Bus Schedule and Headways" is hereby amended in its entirety to read as set forth in Revised Exhibit K, attached hereto and incorporated herein.

All of the terms and conditions of the Agreement (as previously modified by the First and Second Amendment) not modified by this Third Amendment shall remain in full force and effect.

WITNESS THE EXECUTION HEREOF on the day and year first written above.

APPROVED AS TO FORM:

City of San José,
a municipal corporation

Brian Doyle
Sr. Deputy City Attorney

By _____
Name: Mark Giovannetti
Title: Purchasing Officer
Date: _____

**SHUTTLEPORT CALIFORNIA, LLC,
A CALIFORNIA CORPORATION**

By _____
Name: _____
Title: _____
Date: _____

THIRD REVISED EXHIBIT C – COMPENSATION

1. COMPENSATION BASED UPON COST PLUS SERVICE MODEL

1.1. Effective March 1, 2012, City shall compensate Contractor for Shuttle Bus Operations in according to the following Schedule:

Table 1: Airport Shuttle Bus Operations Total Maximum Compensation:

Description	Compensation Rate	Maximum Annualized Compensation
	3/1/12 – 2/28/13	3/1/12 – 2/28/13
Management Fee	\$97,776/month	\$1,173,312
Variable Cost (basic hourly rate)	\$58.15/service hour	\$3,472,418
Total Maximum Annual Compensation:		\$4,645,730

- 1.2. In Consideration of the Services rendered, and other obligations performed by Contractor under this Agreement, City agrees to a pay Contractor in arrears, upon receipt of invoice, a monthly management fee and a basic hourly rate for actual shuttle bus service provided by Contractor for shuttle bus operations. The management fee represents costs related to administrative, safety, management and dispatch staff, fixed fleet insurance costs, fixed facility and equipment costs, corporate overhead and a portion of profit. The basic hourly rate represents costs related to shuttle bus drivers, utility and supervisory staff, support vehicles, bus cleaning and operations related expenses and a portion of profit.
- 1.3. Should Contractor be unable to provide Airport approved bus service due to lack of bus availability, City agrees to pay Contractor the basic hourly rate for shuttle bus service while replacement buses are procured.
- 1.4. The maximum amount of compensation to be paid to Contractor shall not exceed Four Million, Six Hundred and Forty-Five Thousand, Seven Hundred Thirty Dollars and no cents (\$4,645,730) as set forth above in Table 1. This amount is inclusive of all fees and expenses incurred in performance of the services provided under this Agreement.

2. Monthly Invoice

2.1. Contractor shall submit a monthly statement to the Director within five (5) days from the end of each month indicating the following:

2.1.1. Number of hours of scheduled Shuttle Bus service performed during the month billed at the Basic Hourly Rate; and

2.1.2. Number of hours of special service if applicable.

2.2. Adjustments to Monthly Invoice

Director reserves the right to review and adjust monthly invoices based on information from the Automated Vehicle Identification System or any other available tools and techniques used for monitoring bus service hours. These adjustments will be submitted to the Contractor for review, and Contractor will have five (5) calendar days from date of receipt to respond or demonstrated that stated adjustment did not occur. Director shall review Contractor's evidence as soon as reasonably possible and render a decision sustaining or reversing the adjustment(s). The Director's decision shall be final, and Contractor shall apply adjustment(s) to subsequent monthly invoice.

2.3. Payment

Each installment of compensation computed in accordance with the Basic Hourly Rate shall be payable in lawful money of the United States to Contractor or to such person or at such place as Contractor may designate from time to time in writing.

Revised Exhibit K

ShuttlePort LLC Current Schedule - Effective 3/19/2012

Economy Lot: Sunday through Saturday

TRN #	START	END	HOURS	Service Hours
E-1	02:25	2:31	24:06:00	24.10
E-2	02:30	23:06	20:36:00	20.60
E-3A	02:35	10:34	7:59:00	7.98
E-3B	14:16	0:31	10:15:00	10.25
E-4	02:40	22:16	19:36:00	19.60
Economy Lot 1 Service Hours:				82.53
Annualized Economy Lot 1 Service Hours:*				30,124.67

In-terminal Bus: Sunday through Saturday

TRN #	START	END	HOURS	Service Hours
IT-1	02:20	0:50	22:30:00	22.50
IT-2	03:25	23:47	20:22:00	20.37
IT-3	03:40	21:14	17:34:00	17.57
IT-4	06:19	14:17	7:58:00	7.97
In-terminal Service Hours:				68.41
Annualized In-terminal Service Hours:*				24,969.65

*NOTE: Service Hour totals and schedules are subject to periodic and seasonal fluctuations.