

**AMENDMENT TO LEASE**  
**KELOWNA AIRPORT**

**THIS AMENDMENT made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2020.**

**BETWEEN:**

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA**  
**as represented by the Minister of Transport**

**("Her Majesty")**

**AND:**

**THE CORPORATION OF THE CITY OF KELOWNA**

**("Kelowna")**

**WHEREAS** by lease dated the 19<sup>th</sup> day of December, 1979, and registered in the Legal Registry of Transport Canada as No. 109806 (the "Lease"), Her Majesty did lease those lands and premises described therein to Kelowna, which lease was amended by the following supplemental agreements: "Supplemental Agreement #1" dated November 8, 1983, "Supplemental Agreement #2" dated January 15, 1985, "Supplemental Agreement #3" dated October 31, 1996, "Supplemental Agreement #4" dated November 15, 1989, "Supplemental Agreement #5" dated September 1, 1990, "Supplemental Agreement #6" dated June 14, 1994, "Supplemental Agreement #7" dated May 26, 1994, "Supplemental Agreement #8" dated February 16, 1996, and "Supplemental Agreement #9" dated June 24, 2015;

**AND WHEREAS** Her Majesty and Kelowna wish to further amend the Lease as set out herein.

**NOW THEREFORE** in consideration of the premises and mutual covenants contained in this Agreement, the parties agree to amend Lease No. 109806 (the "Lease") as follows:

1. Capitalized terms used in this agreement and not otherwise defined shall have the same meanings as contained in the Lease as amended hereby; references herein to Sections, Subsections, Paragraphs or Clauses shall, unless otherwise provided, mean Sections, Subsections, Paragraphs or Clauses, as the case may be, of the Lease.
2. To delete the Description Clause and substitute therefore the following Description Clause:

ALL and SINGULAR those parts of certain parcels of land legally described as:

PID: 009-459-014

Lot 3, District Lots 32 and 120 And Of Section 14 Township 23 Osoyoos  
Division Yale District Plan 11796

PID: 011-518-189

Lot 7 Section 14 Township 23 Osoyoos Division Yale District Plan 1502  
Except Plan H16596

PID: 013-949-101

Lot B District Lot 122 Osoyoos Division Yale District Plan 41159

more particularly shown on Drawing No. P131P007N108 dated August 22, 1990 attached hereto as Schedule "D" (hereinafter referred to as "the said lands") comprising parts of the Kelowna Airport (hereinafter referred to as "the Airport").

TOGETHER with the Lessor's buildings and facilities (hereinafter referred to as "the said buildings") as listed in Schedule B and equipment as listed in Schedule A.

3. To delete Clause 4 - Assignment and substitute therefore the following **Clause 4 – Assignments, Transfers and Sub-leases:**

**4.01 Assignments, Transfers and Sub-leases**

- 4.01.01 That the Lessee shall not make any assignment of these Presents, nor any transfer or sub-lease of any of the lands, rights or privileges demised or leased hereunder, without obtaining the consent in writing of the Minister to such assignment, transfer or sub-lease, except as permitted in Sections 4.02, 4.03, and 4.07.
- 4.01.02 Any transfer of the whole or any part of this Lease by operation of law shall be deemed to be a Transfer without the Lessee having obtained the required consent of the Minister and shall constitute a default under this Lease.

**4.02 Sub-lease in the Ordinary Course of Operations**

- 4.02.01 Subject to the Lessee remaining liable on this Lease, the Lessee may, without the consent of the Minister, enter into a sub-lease in respect of any part, but not the entirety of, the said lands, provided that:
- (a) the sub-lease is for less than the then total remainder of the Term, however the sub-lease may contain renewals that extend beyond the remainder of the Term if
    - (i) the right to renew the sub-lease is subject to the Term of this Lease being renewed; and
    - (ii) any renewal term of such sub-lease shall be deemed to be one day less than the potential renewed Term of this Lease;
  - (b) the sub-lease does not create any privity of estate or privity of contract between the sub-lessee and the Lessor;
  - (c) the sub-lease contains an agreement by the sub-lessee whereby, subject to any rights of non-disturbance granted by the Lessor, the sub-lessee acknowledges and agrees that, upon the default hereunder of the Lessee and early termination of this Lease and re-entry by the Lessor, the Lessor has the option, in Her sole unfettered discretion, to require the sub-lessee to attorn to the Lessor in which event the sub-lessee shall forthwith attorn to the Lessor;
  - (d) the sub-lease is not inconsistent with any of the terms of this Lease;
    - (i) the sub-lease contains a covenant which prohibits any further assigning, subletting or sharing of possession by the sub-lessee unless such assigning, subletting or sharing of possession meets all the requirements of this Subsection 4.02.01
- 4.02.02 The Lessee shall, upon request made by or on behalf of the Lessor, deliver to the Lessor a copy of any sub-lease (or in the case of a verbal sub-lease, a detailed written description of such sub-lease) within five (5) business days (a day other than a Saturday, Sunday, Boxing Day, Easter Monday or statutory holiday in British Columbia) of the request.
- 4.02.03 A sub-lease which meets all of the requirements set out in Subsection 4.02.01 is a Sub-lease in the Ordinary Course of Operations.
- 4.02.04 Nothing herein contained shall authorize the Lessee, or imply any consent or agreement on the part of the Lessor, to subject the Lessor's estate or interest in the said lands and the said buildings or any part thereof to any sub-lessee or sub-lease.
- 4.03 Sub-lease Requiring Consent**
- 4.03.01 A sub-lease which does not meet all of the requirements set out in Subsection 4.02.01 is not a Sub-lease in the Ordinary Course of Operations and shall require the consent of the Lessor (a "Sub-lease

Requiring Consent”).

- 4.03.02 If the Lessee intends to enter into a Sub-lease Requiring Consent, and so often as such event shall occur, the Lessee shall give prior written notice to the Lessor of such intent together with a copy of any such Sub-lease Requiring Consent executed by the proposed sub-lessee, and shall, upon request, provide the Minister with such credit, financial and business information relating to any such Sub-lease Requiring Consent and relating to the person with whom it intends to enter into such Sub-lease Requiring Consent and such other information, material and documentation with respect to such Sub-lease Requiring Consent as the Minister requires.
- 4.03.02 Any Sub-lease Requiring Consent shall be subject to the consent of the Minister, whose consent may be unreasonably withheld.
- 4.03.03 The application for consent to a Sub-lease Requiring Consent shall be made by the Lessee to the Minister in writing and shall set out the proposed effective date of the Sub-lease Requiring Consent. The Minister shall have no obligation to consider any Sub-lease Requiring Consent unless and until the Minister has received all of the information set out in Subsection 4.03.01.
- 4.03.04 The Minister shall not be obliged to consider consenting to a Sub-lease Requiring Consent, unless,
- (a) at the time the application for consent is made, the Lessee is not in default under the Lease;
  - (b) notwithstanding the Minister's consent to a Sub-lease Requiring Consent and the entering into of the Sub-lease Requiring Consent, the Lessee shall be and remain liable for all the obligations of the Lessee under this Lease and shall not be released from any liability by the said Sub-lease Requiring Consent or the Minister's consent to any of them.
- 4.03.05 No Sub-lease Requiring Consent shall be entered into by the Lessee, unless previously consented to by the Minister in accordance with this Lease.

#### **4.04 Consent Document and Disbursements**

- 4.04.01 Any consent to a Sub-lease Requiring Consent shall be prepared by the Lessor's solicitors.
- 4.04.02 All reasonable costs and expenses incurred by the Minister in determining whether to give his consent to a Sub-lease Requiring Consent shall be paid in full by the Lessee to the Lessor prior to the Minister executing such document.

#### **4.05 Additional Conditions**

- 4.05.01 Any consent shall be only a consent to the extent required by this Lease and not as to any of the terms and conditions of the Sub-lease Requiring Consent as between the Lessee and the sub-lessee and shall not be construed so as to release or relieve the Lessee of any of its obligations under this Lease. Such consent shall be subject to any additional conditions which the Minister considers advisable ("Special Conditions"). These Special Conditions which shall be set out in the consent document may include, without limitation, further restrictions on the purposes for which the said lands and the said buildings or any part thereof affected by the sub-lease may be used, or any other special rights granted to the Lessee being rescinded.
- 4.05.02 Subject to Subsection 4.05.03, the Lessee shall comply with any Special Conditions.
- 4.05.03 If the Lessee is not willing to comply with any Special Conditions, the Lessee shall, within thirty (30) days of receipt of the Special Conditions,

notify the Lessor that it withdraws its request for consent. For greater certainty, if the Lessee fails to notify the Lessor within such thirty (30) day period that it withdraws its request for consent, the Lessee shall be deemed to have accepted the Special Conditions.

**4.06 Consent Not Valid for Subsequent Sub-lease Requiring Consent**

4.06.01 The consent by the Minister to a Sub-lease Requiring Consent shall not constitute a permission to enter into a further sub-lease with respect to the property which is the subject matter of the sub-lease which has been consented to, nor shall such consent constitute a waiver of the requirement of the Minister's consent to a subsequent Sub-lease Requiring Consent of the same or any other property.

**4.07 Mortgage of Sublease**

4.07.01 For greater certainty, consent of the Minister is not required for a mortgage of a Sub-lease Requiring Consent or a mortgage of a Sub-lease in the Ordinary Course of Operations.

4. To delete Clause 10 Erection of Buildings or Structures and substitute therefore the following clause:

**10.01 Erection of Buildings or Structures**

10.01.01 The Lessee may construct buildings and structures, or undertake alterations or improvements to any existing buildings or structures on the land (collectively defined as "New Construction"). All such New Construction must:

- a) be consistent with the use of the said lands and said buildings as a public airport;
- b) not be inconsistent with the provisions of this lease;
- c) not reduce the value of the said lands and the said buildings; and
- d) not impair the structural safety of the land or any building or structure.

10.01.02 The Lessee shall at its own risk and expense:

- a) undertake any New Construction in a good and workmanlike manner in compliance with this lease; and
- b) make itself fully acquainted with all applicable laws and construction standards relating to any New Construction including those imposed by Article 10.01.03.

10.01.03 In addition to all applicable federal laws all New Construction shall be governed as if the lands were subject to the jurisdiction of provincial and municipal laws and the Lessor may at its option require compliance with any such applicable laws whether or not, as a matter of jurisdiction, those provincial or municipal laws apply to the lands of the Lessor. The Lessee covenants that all New Construction shall comply with all such provincial and municipal laws, including its own bylaws and all provincial and municipal laws relating to the environment. All New Construction shall meet or exceed all applicable building and construction standards imposed by this Article 10.01.03.

10.01.04 The Lessee shall, at the end of each year of this lease, deliver to the Lessor the following documents for any New Construction completed during that lease year:

- 1. Final inspection certificate issued by the City of Kelowna;
- 2. A copy of all letters of assurance or similar documents received by the Tenant from engineers, architects, or other licenced professionals documenting the quality of the New Construction or its compliance with any applicable law as set out in Article 10.01.03;
- 3. One set of reproducible "as-built" drawings, plans and specifications;

4. Any relevant environmental reports.
5. The Parties confirm the Lease in all other respects.
6. This agreement may be executed and delivered in any number of counterparts (including by facsimile or other means of electronic transmission, such as by electronic mail in “pdf” form), with the same effect as if all parties had signed and delivered the same document, and all counterparts shall together constitute one and the same original document.

**IN WITNESS WHEREOF**, this agreement has been executed by Her Majesty the Queen in Right of Canada as represented by the Minister of Transport and by the City of Kelowna which has hereunto affixed its corporate seal attested by the hands of its proper signing officers in that behalf, as of the day and month of the year first above written.

**HER MAJESTY THE QUEEN IN RIGHT  
OF CANADA** as represented by the  
Minister of Transport

\_\_\_\_\_

Witness

Per: \_\_\_\_\_

Minister of Transport

**KELOWNA** **THE CORPORATION OF THE CITY OF**

Per: \_\_\_\_\_

Name:

Title:

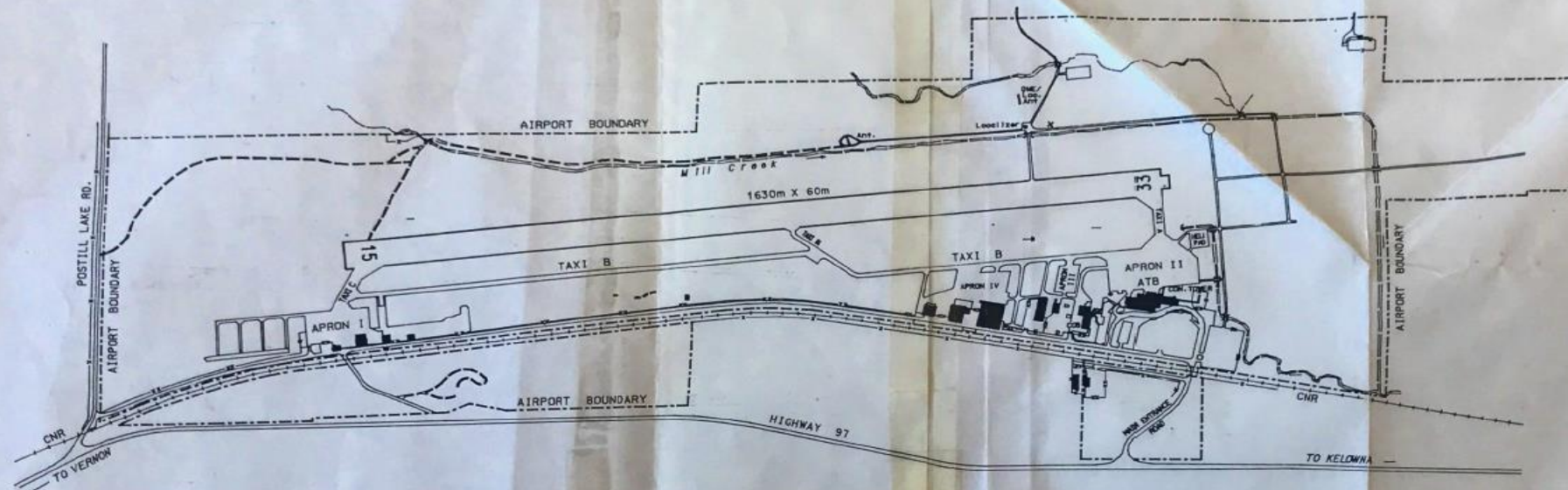
Per: \_\_\_\_\_

Name:

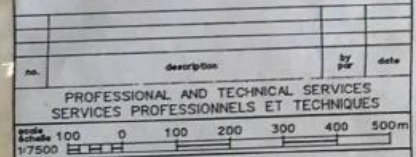
Title:

Schedule “D”

[insert Drawing No. P131P007N108]



PROFESSIONAL AND TECHNICAL SERVICES SERVICES PROFESSIONNELS ET TECHNIQUES			
no.	Description	by par	date



KELOWNA AIRPORT

title  
 LEASE AREA TO  
 THE CORPORATION OF THE  
 CITY OF KELOWNA

drawn by  
 D.S. KALSI

checked by  
 verified by

approved by  
 approved by

date  
 1990-08-22

P 1 3 1 P 0 0 7 N 1 0 8