

RENTAL AGREEMENT
BUCHANAN FIELD AIRPORT

This Rental Agreement ("**Agreement**") is dated _____, 2016, and is between the County of Contra Costa, a political subdivision of the State of California ("**County**") and Delux Public Charter, LLC, a California limited liability company, dba JetSuiteX ("**Tenant**").

Recitals

- A. County is the owner of the real property known and designated as Buchanan Field Airport located in Contra Costa County, California, ("**Airport**").
- B. Tenant desires to rent a portion of the Airport property for the purpose of operating a scheduled charter aviation service. The portion that Tenant desires to rent is 181 John Glenn Drive as shown on Exhibit A (the "**Premises**").

Agreement

- 1. **RENTAL OF PREMISES:** In consideration of the rents and subject to the terms herein set forth, the County hereby rents the Premises to Tenant on a month-to-month basis for the use described below.
- 2. **TERM:** This Agreement is month to month commencing _____, 2016, and will continue until terminated. This Agreement may be terminated by County or Tenant at any time, for any reason, or for no reason, with or without cause, on thirty (30) days written notice. County may terminate this Agreement at any time upon five (5) days written notice to Tenant in the event Tenant violates any term or condition of this Agreement.
- 3. **USE:** Tenant may only use the Premises to operate scheduled charter aviation and related services. The Premises may not be used for any other purpose without the prior

written approval of the Director of Airports. Use of the Premises for purposes other than as provided in this Agreement is cause for the termination of this Agreement.

4. **RENT:** Beginning _____, 2016, as consideration for this Agreement, Tenant shall pay a monthly rent in an amount equal to a concession fee of five dollars (\$5.00) per passenger enplaned (the “**Concession Fee**”) by Tenant on or from the Airport in each calendar month. The County may review the Concession Fee annually and may, at its discretion, adjust the Concession Fee upon thirty (30) days prior written notice to Tenant.
 - A. All checks are to be made payable to Contra Costa County and mailed to: Director of Airports, 550 Sally Ride Drive, Concord, CA 94520, or as otherwise specified in writing by County.
 - B. Tenant shall pay the Concession Fee to County not later than the 10^h day of each month representing business completed during the previous month. If County receives the Concession Fee after the 10^h day of the month, the Concession Fee is delinquent and is subject to additional fees as described below.
 - C. Tenant shall submit a gross monthly passenger enplanement report with each Concession Fee payment (the “**Monthly Report**”). Tenant shall cause the Monthly Report to include the total gross monthly passenger enplanement and deplaned totals by Tenant at the Airport during the previous month. The Monthly Report is to be dated, signed, and approved as correct for submission to the Director of Airports by an authorized officer, agent, or representative of Tenant.
 - D. At the end of each calendar year, Tenant shall submit to County an annual report showing all of Tenant’s records for passengers enplaned and deplaned at the Airport for the previous twelve months (the “**Annual Report**”). Tenant shall, at all times, keep and maintain a full and complete set records that accurately show Tenant’s annual passenger enplanement and deplanement totals at the Airport for

the present and three (3) previous income tax years. These records are to be available at all reasonable times for inspection by County's duly authorized representatives.

E. County reserves the right to inspect Tenant's records to determine the accuracy of the Tenant's Monthly Reports.

F. County reserves the right to revise and/or amend Tenant's reporting requirement at any time.

5. **DELINQUENT FEES:** If a Concession Fee payment is Delinquent, Tenant shall pay to County a late fee of Fifty Dollars (\$50.00) (the "**Late Fee**"), plus accrued interest at a rate of one and one-half percent (1.5%) or the maximum legal rate, per month on any unpaid balance. For purposes of calculating accrued interest, the unpaid balance includes the Late Fee, if unpaid, from the date the unpaid balance was due and payable until paid in full.

6. **DEPOSIT:** Prior to the effective date of this Agreement, Tenant shall submit a check payable to Contra Costa County to the Director of Airports in the amount of ____ Thousand and No/100 Dollars (\$__,000). This deposit, less any outstanding amount due to the County, will be returned to Tenant within thirty (30) days following termination of this Agreement.

7. **UTILITY OBLIGATIONS:** Tenant shall pay, on Tenant's own account, all charges for utilities used or consumed on the Premises including, but not limited to, garbage disposal, janitorial services, and telephone services.

8. **ALTERATIONS AND ADDITIONS:** Tenant may not make any alterations, erect any additional structures, or make any improvements on the Premises without the prior written consent of the Director of Airports. In the event Tenant makes alterations or constructs additions that violate the conditions contained in this Agreement (an

“Unauthorized Addition”), at the County’s sole discretion, Tenant shall remove any Unauthorized Addition at Tenant’s sole cost and expense. If Tenant is required to remove any Unauthorized Addition, Tenant, at its sole cost and expense, shall restore the Premises to the condition existing immediately prior to the existence of the Unauthorized Addition, or such other condition designated by Lessor in its election. If Tenant is not required to remove all or any portion of the Unauthorized Addition, then at the Director of Airports sole discretion will advise Tenant if all or any portion of the Unauthorized Addition will remain on and be surrendered with or be removed from the Premises, at the Tenant’s sole cost and expense, on the expiration or termination of the Agreement.

If Tenant wishes to make any alterations, erect any additional structures, or make any additional improvements to the Premises as provided in this Section, Tenant may not commence construction until Tenant has the prior written consent of the County.

9. **MAINTENANCE AND REPAIRS:** Tenant shall maintain the Premises in good order, condition, and repair with ordinary wear and tear excepted. Tenant shall cause all maintenance, repairs, and replacements to be of a quality substantially equal to, or better than, the original material and workmanship.
10. **SECURITY:** County is not responsible for any security for the Premises. Notwithstanding the foregoing, Airport personnel have the right, but not the obligation, to patrol the Premises daily.
11. **SIGNAGE:** Tenant may not install or post any signs of any type, whether permanent or temporary, on the Premises without the prior written consent of the Director of Airports. Any signage installed without the Director of Airport’s prior written approval may be removed at County’s discretion and at Tenant’s expense.
12. **PERMITS AND APPROVALS:** Tenant is responsible for obtaining any permits or approval from any agency having jurisdiction.

13. **INSURANCE:**

- A. **Liability Insurance.** Throughout the Term, the Tenant shall maintain in full force and effect, at its sole expense, a comprehensive general liability or commercial general liability insurance program covering bodily injury (including death), personal injury, and property damage. The limits must be not less than ___ million dollars per occurrence and ___ million dollars aggregate. The policy must name the County, its officers, agents and employees, individually and collectively, as additional insureds. The liability insurance maintained by the Tenant must be primary.
- B. **Worker's Compensation.** Tenant shall obtain workers' compensation insurance as required by law, covering all employees of Tenant, and such insurance shall be kept in force during the entire Term of this Agreement.
- C. **Form of Policies.** Tenant shall cause all policies of insurance required by this Section to be in such standard form and written by such qualified insurance companies as is satisfactory to County. Tenant shall provide evidence of such insurance to Lessor in the form of (i) a copy of the policies, and (ii) a duly executed certificate of insurance. All of such certificates shall name "Contra Costa County, its officers, agents, and employees" as additional insureds. Said policy or policies or certificates shall contain a provision that written notice of policy lapses, cancellation or any changes thereto shall be delivered to County no fewer than thirty (30) days in advance of the effective date thereof.
- D. **Waiver of Subrogation.** Except as may be specifically provided elsewhere in this agreement, the County and the Tenant hereby each mutually waive any and all rights of recovery from the other in the event of damage to the Premises or any personal property that is caused by acts of God, perils of fire, lightning, and the extended coverage perils, as defined in insurance policies and forms approved for use in the State of California. Each party shall obtain any special endorsements, if

required by their insurer, to evidence compliance with this waiver.

- E. Notice. Tenant shall give Lessor prompt and timely notice of any claim made or suit instituted of which it has knowledge and which could in any way directly, contingently or otherwise, affect either Tenant or County or both, and both Tenant and County shall have the right to participate in the defense of such claim or suit to the extent of its respective interest.
14. **HOLD HARMLESS**: Tenant shall defend, indemnify, save, protect, and hold harmless County and its officers, agents, and employees from and against all liabilities, judgments, claims, costs, and expenses arising directly or indirectly out of or connected with the operations of Tenant, its agents, servants, employees, business invitees, or subcontractors, and any act taken by Tenant, its agents, servants, employees, business invitees or subcontractors, pursuant to this Agreement, or otherwise related to the granting of this Agreement, save and except claims or litigation arising from the sole negligence or sole willful misconduct of County.
15. **STORM WATER DISCHARGED**: The Federal Clean Water Act (the “Act”) provides that the discharge of pollutants to water of the United States from any industrial commercial properties must be in compliance with a National Pollutant Discharge Elimination Permit (“NPDEP”). Under the Act, airports are considered to be “industrial” activities. Therefore, the County, and all tenants located on the Airport, are required to be in compliance with the Act and be NPDEP. County has applied for and received an NPDEP, which covers Tenant’s operations on the Premises.

Tenant shall ensure that no pollution or Hazards Materials (as defined in Section 16. Waste; Hazardous Materials) of any type is discharged into storm water system at the Airport. Tenant is responsible for any such discharge by it or by any of its officers, employees, agents, contractors, guests, or invitees, while this License is in effect. Any

fine or cost of remedial action required of County by any agency or agencies having jurisdiction thereover, as a result of actions on or discharges from the Premises, will be charged to Tenant, and Tenant shall immediately reimburse County for such cost upon demand. In addition, any discharge of pollutants or Hazardous Materials on or from the Premises will be considered a default of this Agreement and grounds for its termination. This Section 15 will survive the termination of this Agreement.

16. **WASTE; HAZARDOUS MATERIALS:** Tenant may not commit, or suffer or permit the commission of any waste upon the Premises, or any nuisance or other act or thing that may disturb the quiet enjoyment of the use of the Airport or surrounding property. Tenant may not, and shall ensure that no others, store or dispose of any Hazardous Materials on the Premises. The term “Hazardous Materials” means any hazardous or toxic substance, hazardous or radioactive material, hazardous waste, pollutant or contaminant at any concentration that is, or during the term of the License becomes, regulated by any local or regional government authority having jurisdiction over the Premises, by the State of California, or by the United States.

Tenant may not permit any activity on the Premises that directly or indirectly produces unlawful amounts or levels of air pollution (gases, particulate matter, odors, fumes, smoke, or dust), water pollution, noise, glare, heat emissions, radioactivity, electronic or radio interference with navigational and communication facilities for the operation of the Airport and for its use by aircraft, trash or refuse accumulation, or vibration or that is hazardous or dangerous by reason or risk of explosion, fire, or harmful emissions. County may enter the Premises at any time to verify Tenant's conformance with the provisions of this Section.

17. **ASSIGNMENT AND TRANSFER:** Tenant may not assign or transfer any of Tenant's right under this Agreement. County may immediately revoke this Agreement if Tenant assigns or transfers any of its rights hereunder.

18. **ALTERATION OF TERMS AND CONDITIONS:** County reserves the right to alter, amend, and/or change the terms and conditions of this Agreement upon thirty (30) days prior written notice to Tenant, and Tenant hereby agrees to execute any document required by County to affect any such alteration, amendment, or change.
19. **INSTRUMENT OF TRANSFER AND NON-DISCRIMINATION COVENANTS:**
- A. Instrument of Transfer: This Agreement is subordinate and subject to the provisions and requirements of the Instrument of Transfer by and between the United States and County dated the 9th day of October, 1947, and recorded in Book 1137, at page 114 of the Official Records of Contra Costa County, California. This Agreement is subordinate to the provisions and requirements of any future agreement between County and the United States relative to the development, operations, and/or maintenance of the Airport.
- B. Non-Discrimination:
- (1) Tenant represents and warrants that it will undertake an affirmative action program as required by 14 Code of Federal Regulations Part 152, Subpart E (“14 CFR Part 152, Subpart E”), to insure that no person shall on the grounds of race, creed, color, national origin, or sex is excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Tenant represents and warrants that no person will be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by 14 CFR Part 152, Subpart E. Tenant represents and warrants it will require that its covered suborganizations provide assurances to Tenant that they similarly will undertake an affirmative action program and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same

effect.

- (2) In the event of a breach of any of the above non-discrimination covenants, County may terminate this Agreement as if said Agreement had never been made or issued.
- (3) Tenant agrees to furnish service on a fair, equal, and non-discriminatory basis to all users thereof, and to charge fair, reasonable, and non-discriminatory prices for each unit of sales or service, provided, that Tenant may be allowed to make reasonable and non-discriminatory discounts, rebates, or other similar types of price reductions to volume purchasers. Furthermore, Tenant shall neither discriminate nor permit discrimination against any person or group of persons on the grounds of race, color, national origin, sex or age in any manner, including, but not limited to, discrimination prohibited by applicable Federal Aviation Regulations.
- (4) Non-compliance with paragraph (3) above constitutes a material breach and a default of this Agreement by Tenant. In the event of such non-compliance, (i) County may terminate this Agreement without liability therefore, or (ii) at the election of either government, either or both the County and the United States may judicially enforce the provisions of paragraphs (2) and (3) of this Section.

20. **GENERAL PROVISIONS:**

- A. This Agreement is subject to Section 22. of Airport Ordinance 87-8, as amended by Airport Ordinance 88-82, and any other amendments or successor ordinances thereto.

- B. County hereby reserves the right to further develop or improve the Airport as it sees fit, regardless of the desires or views of Tenant and without interference or hindrance from Tenant.
- C. County hereby reserves the right to hold “special events,” such as air shows, among other events, at the Airport that may involve the temporary closure of all or portions of the Airport. In such event, Tenant may not use any of the ramp areas, taxiways, or other areas of the Airport designated as closed by the Director of Airports in his sole discretion. Such closure does not require notice by the Airport directly to Tenant for this clause to be in effect. In the event of such closure, Tenant may not hold County liable or responsible for any effect such closure may have on Tenant’s operations or business.
- D. County reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, together with the right to prevent Tenant from erecting or permitting to be erected any building or other structure on the Airport that, in the sole opinion of the County, would affect the usefulness of the Airport or constitute a hazard to aircraft.

County, in exercising the rights stated in this subsection, is not liable to Tenant for any expense, loss, or damage to Tenant that results from County's removal of any aerial obstructions.

- E. Neither the failure or delay on the part of County to strictly enforce all the terms and conditions of this Agreement, is a waiver of any rights or remedies accruing to County by law or by this Agreement for any subsequent breach of this Agreement.
- F. In the event that any provisions contained herein is held to be invalid by any court of competent jurisdiction, the invalidity of any such provisions will not materially

prejudice either County or Tenant in their respective rights and obligations contained in the valid provisions of this Agreement.

21. **NOTICES:** Any and all notices, requests, consents, approvals, or communication that either party desires or is required to give to the other party under this Agreement or otherwise must be in writing and either served personally or sent by prepaid first-class mail and will be effective from the date of the mailing of the same. For the purposes thereof, unless otherwise provided in writing by the parties hereto, the address of County is:

Contra Costa County
Director of Airports
550 Sally Ride Drive
Concord, CA 94520

and the address of Tenant is:

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23. **ENTIRE AGREEMENT:** This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. No alterations or variations of this Agreement are valid or binding unless made in writing and signed by both parties hereto.

The parties are executing this Agreement as of the date set forth in the introductory paragraph.

CONTRA COSTA COUNTY,

**Delux Public Charter, LLC
a California limited liability company
dba JetSuiteX**

By: _____
Keith Freitas
Director of Airports

By: _____
Name
Title

RECOMMENDED FOR APPROVAL:

By: _____
Name
Title

By: _____
Beth Lee
Assistant Director of Airports

APPROVED AS TO FORM

Sharon L. Anderson, County Counsel

Note to Tenant:
For corporations, the Agreement must be signed by two officers. The first signature must be that of the Chairperson of the Board, President, or Vice-President, and the second signature must be that of the Secretary, Chief Financial Officer, or Assistant Treasurer (Civ. Code, 1190; Corps. Code 313.)

By: _____
Kathleen M. Andrus
Deputy County Counsel