

**City and County of San Francisco
Airport Commission
P.O. Box 8097
San Francisco, California 94128**

**Agreement between the City and County of San Francisco and
Polaris Research and Development
Contract No. 9075**

This Agreement is made this 30th day of June, 2011, in the City and County of San Francisco, State of California, by and between: **Polaris Research and Development, Inc. 390 Fourth Street, San Francisco, CA 94107**, hereinafter referred to as "Contractor," and the City and County of San Francisco, a municipal corporation, hereinafter referred to as "City," acting by and through its Airport Commission or the Commission's designated agent, hereinafter referred to as "Commission."

Recitals

WHEREAS, Commission wishes to engage an independent contractor to manage and staff the San Francisco International Airport's, hereinafter referred to as "Airport," Information Booth Program; and,

WHEREAS, Commission is authorized to enter into all contracts which relate to matters under its jurisdiction; and

WHEREAS, a Request for Proposal ("RFP") was issued on February 18, 2011, and City selected Contractor as the highest qualified scorer pursuant to the RFP; and

WHEREAS, Commission awarded this contract to Polaris Research and Development, Inc. on June 7, 2011, pursuant to Resolution No. 11-0136; and

WHEREAS, the Board of Supervisors approved the Controller's certification that the information booth services can be performed at lower cost than if the work were performed by City employees at current salary and benefit levels on June 7, 2011 pursuant to Resolution No. 234-11; and

WHEREAS, Contractor represents and warrants that it is qualified to perform the services required by City as set forth under this Contract;

Now, THEREFORE, the parties agree as follows:

1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation. This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other

agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

2. Term of the Agreement. Subject to Section 1, the term of this Agreement shall be from July 1, 2011 through June 30, 2014. In addition, the City shall have two (2) one (1) year renewal options, which may be exercised at the discretion of the Airport Commission.

3. Effective Date of Agreement. This Agreement shall become effective when the Controller has certified to the availability of funds and Contractor has been notified in writing.

4. Services Contractor Agrees to Perform The Contractor agrees to perform the services provided for in Appendix A, "Description of Services," attached hereto and incorporated by reference as though fully set forth herein. If Appendix A includes as-needed services, such services shall be requested by City through the issuance of a written task order signed by City and Contractor, which task order shall be made a part of and incorporated into the Agreement as though fully set forth herein without the need for a formal amendment to the Agreement. The task order shall include a description of the as-needed services, the deliverables, schedule for performance, cost, and method and timing of payment.

5. Compensation.

5.1 Invoicing and Payments.

a. Contractor shall invoice City (i) within ten (10) days after the 15th day of each month, representing Services performed during the period commencing on the 1st day of that month and ending on the 15th day of that month (the "First Period"), (ii) within ten (10) days after the last day of each month, representing Services performed during the period commencing on the 16th day of such month and ending on the last day of such month, and (iii) within ten (10) days after the last day of each month, representing actual direct costs and Management Fee for the period commencing on the 1st day of that month and ending on the last day of such month. All such invoices shall be in form and substance satisfactory to City and shall include such cost reports, receipts, certifications, and back-up materials as City shall request. City shall pay Contractor for each invoice within thirty (30) days after receipt and approval of such invoices and other materials. City shall have no obligation to pay for any Services invoiced which have not been performed as required by this Agreement, as determined at the sole discretion of the Airport's Landside Operations.

b. No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by Landside Operations as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any obligation provided for under this Agreement.

c. In no event shall City be liable for interest or late charges for any late payments.

The Controller will not pay invoices submitted by Contractor prior to Contractor's submission of the Airport Federal Progress Payment Report Form 3 ("Federal Form 3"). If Federal Form 3 is not submitted with Contractor's invoice, the Controller will notify the Airport and Contractor of the omission. If Contractor's failure to provide Federal Form 3 is not explained to the Controller's satisfaction, the Controller shall withhold twenty percent (20%) of the payment due pursuant to that invoice until Federal Form 3 is provided.

Following City's payment of an invoice, Contractor has ten (10) days to file an affidavit using the Airport Federal Contract Exit Report and Affidavit -Form 5, verifying that all subcontractors have been paid and specifying the payment amounts.

5.2 Compensation Structure. Compensation payable by City to Contractor hereunder is comprised of the Management Fee and the Actual Direct Costs. Contractor shall incur no expenses under this Agreement unless and until the Annual Cost Proposal has been approved in writing by the City. Compensation payable to Contractor shall be limited each year by the amounts set forth in the approved Annual Cost Proposal.

The approved Annual Cost Proposal, Management Fee and Hourly Salary Ranges for the first three Fiscal Years are set forth in Appendix B and incorporated herein by this reference.

5.3 Management Fee Adjustment and Limitations.

a. If and to the extent City exercises the option(s) to extend the term of this Agreement, the Management Fee for the extension term(s) shall be increased or decreased in the same proportion as the change in the CPI at such time as compared to the CPI on the commencement date of this Agreement. However, increases provided for in this section shall be limited to three percent (3%) per annum. Additionally, the Management Fee shall not exceed 20% of the Annual Cost Proposal for the initial term of the contract and for all option(s) City exercises to extend the term of this Agreement.

b. The Overhead and Profit component of the Management Fee, as set forth in Appendix B (Page 2 of 9, Page 5 of 9, and Page 8 of 9) shall not exceed seven percent (7%) of the Annual Cost Proposals. If and to the extent City exercises the option(s) to extend the term of this Agreement, the Overhead and Fee component of the extension term(s) shall be subject to the following limitations, expressed as a percentage of the Annual Cost Proposal for that term:

First option year: 5%

Second option year: 5%

c. Notwithstanding the foregoing, in no event shall the amounts paid by City for the salaries and fringe benefits of each of the Information Booth Management Staff exceed amounts actually incurred and paid by Contractor. Any amounts billed by Contractor in excess of amounts actually incurred and paid shall be promptly reflected as credits in Contractor's invoices to City. All amounts billed by Contractor are subject to audit and adjustment by City.

5.4 Labor Cost.

a. The individual direct labor cost rates, exclusive of fringe benefits, shall be within the salary ranges as set forth in Appendix B (Page 3 of 9, Page 6 of 9, and Page 9 of 9) hereto, "Hourly Salary Ranges."

b. The hourly rates reflected in Appendix B incorporate a 2% increase for all employees over the current rate. The individual direct labor cost rates are subject to salary administration by Contractor. In no case can these rates be adjusted more than 1% for the life of the existing contract, excluding extension options without the prior written approval of the Airport Director.

c. Premium costs incurred as a result of working overtime or holidays are prohibited in the absence of prior written approval of the Director or his designee.

d. If and to the extent Contractor anticipates or receives any subsidies or grants of money from any governmental agency for participating in a government-sponsored program for persons employed under this Agreement, such subsidies or grants shall be reflected as credits in the Annual Cost Proposal, and such credits shall be properly reflected in Contractor's invoices to City.

e. The parties acknowledge that labor costs could increase the cost of performing the services under this Agreement. Accordingly, Contractor shall keep City apprised of all negotiations with labor regarding labor costs, including the negotiation of any collective bargaining agreements. Notwithstanding the foregoing, increases in labor rates billed by Contractor shall be subject to all limitations set forth in this section. All collective bargaining agreements entered into by Contractor must be in concert with this Agreement.

5.5 Ownership of Material; Reimbursable and Non-Reimbursable Costs.

a. All direct costs exceeding \$500 and which are not specified in reasonable detail in the Annual Cost Proposal shall be subject to the Director's prior written approval. No reimbursement shall be made in the absence of prior written approval by the Director. The schedule of reimbursable and non-reimbursable direct costs is set forth in Appendix E attached hereto and incorporated by reference as though fully set forth herein. The City shall be responsible for all reimbursable direct costs; the City shall not be responsible for non-reimbursable costs.

b. All costs and expenditures made by Contractor shall be reasonable and necessary to effectuate the terms of the Agreement, including all Appendices. All costs incurred by Contractor for which Contractor seeks reimbursement shall be actual net costs to the Contractor (the price, less any rebates, refunds, discounts or other items of value received by Contractor that have the effect of reducing the cost or price actually incurred). The City reserves the right to refuse payment of any costs it considers unreasonable, unnecessary or non-beneficial.

c. The City shall retain ownership of all items, including, but not limited to supplies, equipment, materials, and software purchased directly by the City. Upon termination of the Agreement, the City shall retain ownership of all items, including, but not limited to supplies, equipment, materials, and software goods and services purchased by Contractor and for which the Contractor has been reimbursed by the City.

5.6 Not to Exceed Amount.

In no event shall the amount of this Agreement exceed \$1,700,000 for the first year of the contract. The breakdown of costs associated with this Agreement in the first year appears in Appendix B "Annual Cost Proposal" (Page 1 of 9), "Management Fee Schedule" (Page 2 of 9), and "Hourly Salary Wages" (Page 3 of 9) which are attached hereto and incorporated by reference as though fully set forth herein. Notwithstanding the foregoing, in the event the term of this Agreement is extended, the amount of the Agreement may be increased by parties to reflect the approved Annual Cost Proposal for the extension year. Under no circumstances shall the total amount paid to Contractor by City under this Agreement, including all approved options, exceed Ten Million Dollars (\$10,000,000).

5.7 Performance Measures: Each quarter Airport staff will conduct a performance review of Contractor, based on the criteria shown in Appendix C. The performance review will be a qualitative and quantitative assessment of the overall program in terms of its effect on passenger perception of the Airport facilities and services as rated in the Airport's Annual Air Passenger Survey. The performance review will also consist of ratings of specific service quality, contractual, and social objectives. Contractor will be expected to provide the Airport with a written plan within 15 days of receiving the evaluation results demonstrating how Contractor intends to improve unacceptable ratings in any category during the next reporting period. Contractor will be subject to the special liquidated damages specified in Section 21(d) of the contract for failure to meet certain performance measures.

If it is discovered in an audit or investigation that Contractor (including agents, employees, and officers) has tampered with or otherwise altered the results of evaluating Contractor's performance, Contractor shall be subject to the special liquidated damages as if they failed to meet said performance goals. This action may also be considered breach of contract and subject to any remedies in law or equity including the termination of the Agreement at the sole discretion of Director.

Any allegations from a third-party of Contractor's failure to meet minimum performance standards as set forth in Appendix C shall be investigated by Director. Director shall have sole and complete discretion to determine if the reported failure of Contractor shall result in an unsatisfactory rating.

The Contractor agrees to pay each subcontractor under this Agreement for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contractor receives from City. The Contractor agrees further to return retain payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City. This clause applies to both DBE and non-DBE subcontractors.

The Airport Accounting is not authorized to pay monthly payment requests/invoices submitted by Contractor prior to Contractor's submission of Airport Federal Progress Payment Report – Federal Form 3 and Airport Federal Contract Exit Report and Affidavit – Federal Form 5 with the final payment request/invoice.

In no event shall City be liable for interest or late charges for any late payments.

6. Guaranteed Maximum Costs. The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

7. Payment; Invoice Format. Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller, and must include a unique invoice number. All amounts paid by City to Contractor shall be subject to audit by City. Payment shall be made by City to Contractor at the address specified in the section entitled "Notices to the Parties."

8. Submitting False Claims; Monetary Penalties. Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code is available on the web at <http://www.municode.com/Library/clientCodePage.aspx?clientID=4201> . A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

9. Disallowance. If Contractor claims or receives payment from City for a service, reimbursement for which is later disallowed by the State of California or United States Government, Contractor shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other Agreement. By executing this Agreement, Contractor certifies that Contractor is not suspended, debarred or otherwise excluded from participation in federal assistance programs. Contractor acknowledges that this certification of eligibility to receive federal funds is a material terms of the Agreement.

10. Taxes. Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Agreement, or the services delivered pursuant hereto, shall be the obligation of Contractor. Contractor recognizes and understands that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

a. Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;

b. Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

c. Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

d. Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

11. Payment Does Not Imply Acceptance of Work. The granting of any payment by City, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work, equipment, or materials, although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay.

12. Qualified Personnel.

a. Personnel. Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to perform the services required under this Agreement.

b. Interests in Ground Transportation. Due to the nature of the contracted work, Contractor (including any agents, employees, officers, etc.) shall not have a financial, legal, familial, or any other business/commercial interest or affiliation in any hotel with San Francisco Bay Area properties, San Francisco Bay Area tour operator or promoter, and/or operator of charter bus/van, door-to-door van, limousine, scheduled airporter, or taxicab services (including entities holding or having a business/commercial interest in San Francisco taxicab medallions) at San Francisco International Airport. This prohibition shall commence upon signing the Agreement and shall remain in force throughout the life of the contract.

c. Key Personnel. Without limiting the generality of the foregoing, Contractor agrees that the specified Information Booth Program On-Site Management Staff shall perform the corresponding functions during the entire term of this Agreement. It is recognized that such personnel are not bound by personal employment contracts to Contractor. Contractor agrees that reassignment or replacement of any such personnel during the Agreement period requires prior written approval of the Airport Landside Operations division, which approval shall not be unreasonably withheld. On-site managers must be on-Airport on a full time basis during their respective periods of responsibility. In the event of any vacancies in the Information Booth Program On-Site Management Staff which continue for more than three (3) weeks or fifteen (15) business days, whichever is less, the Management Fee shall be reduced accordingly until such vacancy is filled.

d. Affiliates. Without the prior written consent of Director, Contractor shall not do any business with any Affiliate for any Services hereunder, including the provision of any Services or the purchase, installation, maintenance, or removal of any good. Contractor shall immediately disclose the names and relationships of any Affiliates that Contractor desires to do business with for Services hereunder.

e. Background Investigations and Airport Photo Identification Cards. All Contractor personnel assigned to perform services as required under this Agreement, including On-Site Management, shall undergo and pass a background investigation conducted by the Airport's License and Permit Bureau prior to assignment at the Airport. Reimbursement for the costs of the background investigation (including fingerprinting) and the employee's initial Airport Photo Identification Card shall be limited as set forth in Appendix E. City will not reimburse Contractor for any replacement Airport Photo Identification Cards.

13. Responsibility for Equipment. City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by City.

14. Independent Contractor; Payment of Taxes and Other Expenses.

a. **Independent Contractor.** Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

b. **Payment of Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in City's financial liability so that City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

15. Insurance.

a. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident; and

(2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

(3) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

(4) Crime/Employee Dishonesty insurance with a limit of liability not less than \$90,000 covering gross receipts from operation of Operator's business on Airport premises, with a deductible not to exceed \$1,000 each occurrence.

b. Commercial General Liability and Business Automobile Liability Insurance policies must provide the following:

(1) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. Regarding Workers' Compensation, Contractor hereby agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

d. All policies shall provide thirty (30) days' advance written notice to City of cancellation mailed to the following address:

Airport Commission
City and County of San Francisco
P.O. Box 8097
San Francisco, CA 94128-8097
Attn. Information Booth Program Administrator – Landside Operations

e. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three (3) years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

f. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

g. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

h. Before commencing any operations under this Agreement, Contractor shall do the following: (i) furnish to City certificates of insurance, and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above, and (ii) furnish complete copies of policies promptly upon City request. Failure to maintain insurance shall constitute a material breach of this Agreement.

i. Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.

j. If a subcontractor will be used to complete any portion of this agreement, the Contractor shall ensure that the subcontractor shall provide all necessary insurance and shall name the City and County of San Francisco, its officers, agents and employees and the Contractor listed as additional insureds.

16. Indemnification. Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, arising directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed. Right to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City. In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter. Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

17. Incidental and Consequential Damages. Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

18. Liability of City. CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 5 OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED

ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

19. Liquidated Damages. Left Blank by Agreement of the Parties

20. Default; Remedies.

a. Each of the following shall constitute an event of default ("Event of Default") under this Agreement:

(1) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement:

- 8. Submitting False Claims
- 10. Taxes
- 15. Insurance
- 24. Proprietary or Confidential Information of City
- 30. Assignment
- 37. Drug-free Workplace Policy,
- 53. Compliance with Laws
- 55. Supervision of Minors
- 57. Protection of Private Information
- 58. Graffiti Removal

(2) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten days after written notice thereof from City to Contractor.

(3) Contractor (a) is generally not paying its debts as they become due, (b) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (c) makes an assignment for the benefit of its creditors, (d) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property or (e) takes action for the purpose of any of the foregoing.

(4) A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (c) ordering the dissolution, winding-up or liquidation of Contractor.

b. On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any

amounts due to Contractor under this Agreement or any other agreement between City and Contractor all damages, losses, costs or expenses incurred by City as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement.

c. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

d. **Special Fines.** If Contractor defaults under any of the Agreement terms specified below, Director may elect to impose the special liquidated damages described below on the basis of violation per day:

<u>Violation</u>	<u>Section</u>	<u>Liquidated Damages</u>
Insufficient Employees to Staff all Duty Positions	Appendix A	\$1,000/Shift
Failure to Provide Written Reports as Directed by Airport Staff	Appendix A	\$500/Day
Soliciting on Behalf of a Ground Transportation Operator	Appendix A	\$500/Incident
Steering Customers to a Specific Ground Transportation Operator for Personal Economic Gain, Favors, or Other Benefit	Appendix A	\$500/Incident
Employee Not in Full Uniform	Appendix A	\$250/Incident

Director's right to obtain the foregoing special liquidated damages shall be in addition to and not in lieu of any and all other rights hereunder, in the Airport Rules and Regulations, or a law or in equity. Airport shall have no obligation to Contractor to impose liquidated damages on or otherwise take action on any other tenant, contractor, or user at the Airport. **THE PARTIES HAVE AGREED THAT A VIOLATION OF ANY OF THE ABOVE TERMS SHALL RESULT IN CITY INCURRING DAMAGES WHICH ARE IMPRACTICAL OR IMPOSSIBLE TO DETERMINE. THE PARTIES HAVE AGREED THAT THE ABOVE SPECIAL LIQUIDATED DAMAGES ARE A REASONABLE APPROXIMATION OF SUCH DAMAGES.**

Any allegations of the above violations by Contractor from a third-party shall be investigated by City. Director shall have sole and complete discretion to exercise special liquidated damages to Contractor based upon an investigation of said allegations.

21. Termination for Convenience.

a. City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

b. Upon receipt of the notice, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of

termination. All such actions shall be subject to the prior approval of City. Such actions shall include, without limitation:

- (1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by City.
- (2) Not placing any further orders or subcontracts for materials, services, equipment or other items.
- (3) Terminating all existing orders and subcontracts.
- (4) At City's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
- (5) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.
- (6) Completing performance of any services or work that City designates to be completed prior to the date of termination specified by City.
- (7) Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which City has or may acquire an interest.

c. Within 30 days after the specified termination date, Contractor shall submit to City an invoice, which shall set forth each of the following as a separate line item:

- (1) The reasonable cost to Contractor, without profit, for all services and other work City directed Contractor to perform prior to the specified termination date, for which services or work City has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for services or other work. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.
- (2) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Contractor can establish, to the satisfaction of City, that Contractor would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.
- (3) The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the City or otherwise disposed of as directed by the City.
- (4) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to City, and any other appropriate credits to City against the cost of the services or other work.

d. In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative

expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).

e. In arriving at the amount due to Contractor under this Section, City may deduct: (1) all payments previously made by City for work or other services covered by Contractor's final invoice; (2) any claim which City may have against Contractor in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and (4) in instances in which, in the opinion of the City, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

f. City's payment obligation under this Section shall survive termination of this Agreement.

22. Rights and Duties upon Termination or Expiration. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement:

8. Submitting False Claims
9. Disallowance
10. Taxes
11. Payment Does Not Imply Acceptance of Work
13. Responsibility for Equipment
14. Independent Contractor; Payment of Taxes and Other Expenses
15. Insurance
16. Indemnification
17. Incidental and Consequential Damages
18. Liability of City
24. Proprietary or Confidential Information of City
26. Ownership of Results
27. Works for Hire
28. Audit and Inspection of Records
48. Modification of Agreement.
49. Administrative Remedy for Agreement Interpretation.
50. Agreement Made in California; Venue
51. Construction
52. Entire Agreement
56. Severability
57. Protection of private information

Subject to the immediately preceding sentence, upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City. This subsection shall survive termination of this Agreement.

23. Conflict of Interest. Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

24. Proprietary or Confidential Information of City. Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Contractor agrees that all information disclosed by City to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

25. Notices to the Parties. Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, or by e-mail, and shall be addressed as follows:

To City: Abubaker Azam
 Ground Transportation Manager
 Landside Operations
 San Francisco International Airport
 P.O. Box 8097
 San Francisco, CA 94128
 Email: Abubaker.azam@flysf.com
 Fax: (650) 821-6508

To Contractor: Ernie Fazio
 Polaris Research and Development, Inc.
 390 – 4th Street
 San Francisco, CA 94107
 Email: ernie@polarisinc.com
 Fax: (415) 512-9625

Any notice of default must be sent by registered mail.

26. Ownership of Results. Any interest of Contractor or its Subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to City. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

27. Works for Hire. If, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the City. If it is ever determined that any works created by Contractor or its subcontractors under this Agreement are not works for hire under U.S.

law, Contractor hereby assigns all copyrights to such works to the City, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the City, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

28. Audit and Inspection of Records. Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this Section.

29. Subcontracting. Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by City in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

30. Assignment. The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement.

31. Non-Waiver of Rights. The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

32. Earned Income Credit (EIC) Forms. Administrative Code section 12O requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found. Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If, within thirty days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law. Any Subcontract entered into by Contractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

33. Federal Non-Discrimination Provisions.

Contract Assurance: The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Parts 21 and 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate. These regulations are incorporated as though fully set forth therein. The contractor agrees to include the above statement in any subsequent concession agreement or contract that it enters and cause those businesses to similarly include the statements in further agreements.

34. Nondiscrimination; Penalties.

a. **Contractor Shall Not Discriminate.** In the performance of this Agreement, Contractor agrees not to discriminate against any employee, City and County employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

b. **Subcontracts.** Contractor shall incorporate by reference in all subcontracts the provisions of §§12B.2 (a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

c. **Nondiscrimination in Benefits.** Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

d. **Condition to Contract.** As a condition to this Agreement, Contractor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

e. **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each

person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

35. MacBride Principles—Northern Ireland. Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

36. Tropical Hardwood and Virgin Redwood Ban. Pursuant to §804(b) of the San Francisco Environment Code, the City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

37. Drug-Free Workplace Policy. Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Contractor agrees that any violation of this prohibition by Contractor, its employees, agents or assigns will be deemed a material breach of this Agreement.

38. Resource Conservation. Chapter 5 of the San Francisco Environment Code (“Resource Conservation”) is incorporated herein by reference. Failure by Contractor to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

39. Compliance with Americans with Disabilities Act. Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

40. Sunshine Ordinance. In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors’ bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization’s net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

41. Public Access to Meetings and Records. If the Contractor receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Contractor shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Contractor agrees to open its meetings and records to the public in the manner set forth in §§12L.4 and 12L.5 of the Administrative Code. Contractor further agrees to make-good faith efforts to promote community membership on its Board of Directors in the manner set forth in §12L.6 of the Administrative Code. The Contractor

acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Contractor further acknowledges that such material breach of the Agreement shall be grounds for the City to terminate and/or not renew the Agreement, partially or in its entirety.

42. Limitations on Contributions. Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Contractor further agrees to provide to City the names of each person, entity or committee described above.

43. Requiring Minimum Compensation for Covered Employees.

a. Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at www.sfgov.org/olse/mco. A partial listing of some of Contractor's obligations under the MCO is set forth in this Section. Contractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

b. The MCO requires Contractor to pay Contractor's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Contractor is obligated to keep informed of the then-current requirements. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.

c. Contractor shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

d. Contractor shall maintain employee and payroll records as required by the MCO. If Contractor fails to do so, it shall be presumed that the Contractor paid no more than the minimum wage required under State law.

e. The City is authorized to inspect Contractor's job sites and conduct interviews with employees and conduct audits of Contractor

f. Contractor's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Contractor fails to comply with these requirements. Contractor agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Contractor's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

g. Contractor understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

h. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

i. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000, but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 in the fiscal year.

44. Requiring Health Benefits for Covered Employees. Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at www.sfgov.org/olse. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

b. Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3 (e) of the HCAO, it shall have no obligation to comply with part (a) above.

c. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5 (f) (1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

d. Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

e. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

f. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

g. Contractor shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.

h. Contractor shall keep itself informed of the current requirements of the HCAO.

i. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

j. Contractor shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.

k. Contractor shall allow City to inspect Contractor's job sites and have access to Contractor's employees in order to monitor and determine compliance with HCAO.

l. City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City when it conducts such audits.

m. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the City to be equal to or greater than \$75,000 in the fiscal year.

45. First Source Hiring Program.

a. **Application of Administrative Code Provisions.** The provisions of Chapter 83 of the San Francisco Administrative Code apply to this Agreement. Contractor shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

b. **First Source Hiring Agreement.** As an essential term of, and consideration for, any contract or property contract with the City, not exempted by the FSHA, the Contractor shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the contract or property contract. Contractors shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

(1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs maybe certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

(2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

(3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

(4) Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals.

(5) Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with City departments to develop employer good faith effort requirements appropriate to the types of contracts and property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the FSHA finds that the employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

(6) Set the term of the requirements.

(7) Set appropriate enforcement and sanctioning standards consistent with this Chapter.

(8) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.

(9) Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.

c. **Hiring Decisions.** Contractor shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

d. **Exceptions.** Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

e. **Liquidated Damages.** Contractor agrees:

(1) To be liable to the City for liquidated damages as provided in this section;

(2) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;

(3) That the contractor's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the contractor to comply with the contract

provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.

(4) That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to \$10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;

(5) That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this section is based on the following data:

A. The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of \$348 per month, totaling approximately \$14,379; and

B. In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year;

therefore, liquidated damages that total \$5,000 for first violations and \$10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City by the failure of a contractor to comply with its first source referral contractual obligations.

(6) That the failure of contractors to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law; and

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

f. Subcontracts. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

46. Prohibition on Political Activity with City Funds. In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Contractor from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Contractor's use of profit as a violation of this section.

47. Preservative-treated Wood Containing Arsenic. Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Contractor from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

48. Modification of Agreement. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement. Contractor shall complete and submit an Airport Federal Contract Modification – Federal Form 4 with every Modification of the Agreement.

49. Administrative Remedy for Agreement Interpretation. Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to Purchasing who shall decide the true meaning and intent of the Agreement.

50. Agreement Made in California; Venue. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

51. Construction. All paragraph captions are for reference only and shall not be considered in construing this Agreement.

52. Entire Agreement. This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section 48, "Modification of Agreement."

53. Compliance with Laws. Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

54. Services Provided by Attorneys. Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by

law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

55. Supervision of Minors. Left Blank by Agreement of the Parties – Contract Does Not Involve Supervision of Minors.

56. Severability. Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

57. Protection of Private Information. Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contractor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

58. Graffiti Removal. Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti. Contractor shall remove all graffiti from any real property owned or leased by Contractor in the City and County of San Francisco within forty eight (48) hours of the earlier of Contractor's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a Contractor to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

Any failure of Contractor to comply with this section of this Agreement shall constitute an Event of Default of this Agreement.

59. Food Service Waste Reduction Requirements. Effective June 1, 2007, Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply with this provision.

60. Slavery Era Disclosure. Left Blank by Agreement of the Parties – Contract Not for Insurance or Applicable Financial Services or Textiles.

61. Cooperative Drafting. This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

62. Dispute Resolution Procedure. Left Blank by Agreement of the Parties – Contract Not with Health or Human Services Nonprofit.

63. Airport Intellectual Property. Pursuant to Resolution No. 01-0118, adopted by the Airport Commission on April 18, 2001, the Airport Commission affirmed that it will not tolerate the unauthorized use of its intellectual property, including the SFO logo, CADD designs, and copyrighted publications. All proposers, bidders, contractors, tenants, permittees, and others doing business with or at the Airport (including subcontractors and subtenants) may not use the Airport intellectual property, or any intellectual property confusingly similar to the Airport intellectual property, without the Airport Director's prior consent.

64. Labor Peace / Card Check Rule. Without limiting the generality of other provisions herein requiring Contractor to comply with all Airport Rules, Contractor shall comply with the Airport's Labor Peace / Card Check Rule, adopted on February 1, 2000, pursuant to Airport Commission Resolution No. 00-0049 (the "Labor Peace / Card Check Rule"). Capitalized terms not defined in this provision are defined in the Labor Peace/Card Check Rule. To comply with the Labor Peace/Care Check Rule, Contractor shall, among other actions: (a) Enter into a Labor Peace/Care Check Rule Agreement with any Labor Organization which requests such an agreement and which has registered with the Airport Director or his / her designee, within thirty (30) days after Labor Peace/Care Check Rule Agreement has been requested; (b) Not less than thirty (30) days prior to the modification of this Agreement, Contractor shall provide notice by mail to any Labor Organization or federation of labor organizations which have registered with the Airport Director or his / her designee (registered labor organization"), that Contractor is seeking to modify or extend this Agreement; (c) Upon issuing any request for proposals, invitations to bid, or similar notice, or in any event not less than thirty (30) days prior to entering into any Subcontract, Contractor shall provide notice to all registered Labor Organizations that Contractor is seeking to enter into such Subcontract; and (d) Contractor shall include in any subcontract with a Subcontractor performing services pursuant to any covered Contract, a provision requiring the Subcontractor performing services pursuant to any covered Contract, a provision requiring the Subcontractor to comply with the

requirements of the Labor Peace/Card Check Rule. If Airport Director determines that Contractor violated the Labor Peace/Card Check Rule, Airport Director shall have the option to terminate this Agreement, in addition to exercising all other remedies available to him / her.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

CITY	CONTRACTOR
AIRPORT COMMISSION CITY AND COUNTY OF SAN FRANCISCO	By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.
By: <u><i>John L. Martin</i></u> John L. Martin, Airport Director	I have read and understood paragraph 35, the City's statement regarding companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.
Attest:	<u><i>Ernest J. Fazio, Jr.</i></u> Authorized Signature
By: <u><i>Jean Caramatti</i></u> Jean Caramatti, Secretary Airport Commission	Ernest J. Fazio, Jr.
Resolution No: <u>11-0136</u>	Printed Name
Adopted on: <u>June 7, 2011</u>	President
Approved as to Form:	Title <u>Polaris Research & Development, Inc.</u>
Dennis J. Herrera City Attorney	Company Name
By: <u><i>Stacey A. Lucas</i></u> Stacey A. Lucas Deputy City Attorney	1473701
	City Vendor Number
	390 4 th Street
	Address
	San Rafael, CA 94107
	City, State, ZIP
	415-777-3229
	Telephone Number
	94-3229779
	Federal Employer ID Number

Appendices

- A: Services to be provided by Contractor
- B: Calculation of Charges
- C: Performance Measures
- D: Information Booth Locations
- E: Reimbursable and Non-Reimbursable Costs

Appendix A
Services to be provided by Contractor

1. Description of Services

Contractor agrees to perform the following services in accordance with the terms of its proposal dated March 30, 2011, incorporated by reference as though fully set forth herein, and further defined in this Description of Services.

This Description of Services is to be used as a general guide and is not intended to be a complete list of all work necessary to complete the project.

A. Services to be Provided

- Staff each information booth with a sufficient number of employees to perform the duties of the Contractor as described in this Agreement. At a minimum, each information booth shall be staffed with a minimum of one employee at each designated booth during all shifts on a daily basis, including weekends and holidays.
- Prepare, maintain, and update written reference materials regarding ground transportation, Airport facilities and services; and the location of Bay Area hotels, religious institutions, consulates, civic and social organizations.
- Provide visitors with information regarding Bay Area public exhibits, events, amusements, sightseeing attractions, and SFO information, as well as other business, social and civic referrals.
- Train and update information booth agents on changing regarding ground transportation conditions and services, as necessary.
- Train office staff and information booth agents to: 1) answer questions regarding ground transportation and Airport facilities and services; 2) assist Airport customers with trip planning options at Airport ground transportation kiosk and via the internet; 3) operate kiosks, including distribution of brochures; 4) provide information regarding the Airport's BART Employee Discount Program as needed; 5) answer questions relating to stand-alone ground transportation information kiosks, and 6) Maintain the appearance and supplies necessary for operation of the information booth kiosks.
- On or before July 1, 2011, assume full responsibility for the sale of public transit passes, tickets and/or tokens, including, but not limited to:
 - Contracting with SFMTA, SamTrans, BART, and Clipper, such that each information booth to maintains constant inventory of public transit passes, tokens and/or tickets for sale to the public;
 - Provision of cash boxes and transaction records, and maintain appropriate accounting procedures for the sale of public transit passes, tickets and/or tokens;

- Fully train employees regarding the sale of public transit passes, tickets and/or tokens
- Administer the BART Voucher Program in collaboration with BART. The program involves the exchange of special BART tickets for vouchers pre-purchased on the internet by passengers.
- Provide multi-lingual personnel to assist non-English speaking visitors and Language Line Services or similar telephone interpretation service.
- Train office staff and information booth agents to answer questions regarding airline arrivals/departures using the Airport's Flight Information System (FIDs) and the Official Airline Guide (OAG).
- Establish quality control procedures for the dissemination of courteous, impartial, accurate information.
- Respond to complaints from the public and/or Airport staff in a timely manner.
- Order and display public information, including sightseeing brochures, posters announcing museum exhibits or special events, as requested and approved by the Airport.
- Copy and distribute current regional transportation handouts, as updated by the Airport.
- Maintain booths in clean, attractive, and orderly manner.
- Procure Airport-approved uniforms, fit personnel for correct sizes, clean and maintain uniform pieces in good repair, replace uniforms within the Airport's replacement timeline requirements, and coordinate uniform jacket/sweater inventory needs with the Airport's Customer Service Department.
- Obtain and maintain current Federally-mandated identification badges for all Airport-based personnel and establish standards for on-the-job appearance and behavior.
- Maintain records for Airport review regarding the number of persons served, type of service provided, and other information as requested on an hourly basis, by booth.
- Provide reports as described in the Performance Measures in Appendix C, herein.
- Maintain oversight of information booths during all hour of operations well-qualified managers and supervisors who oversee information booth agents during all operating hours.
- Use the services of up to two Traveler's Aid Volunteer Coordinator(s) with the Airport's Customer Service Department.
- Coordinate with and provide information updates to designated Traveler's Aid personnel.
- Provide information, customer service, and assistance to other Airport Departments and programs as requested by Airport staff.
- Provide information to air passengers and Airport employees in an emergency as instructed by Airport staff

- Submit reports as required by the Airport Director and the Airport Commission.
- Other related ancillary customer service functions on an as-needed basis as required by the Airport Director or his designee.

B. As Needed Services

From time to time information booth personnel are required to perform ancillary customer service functions on an as-needed basis. In the past these functions have included, but have not been limited to, the following:

- Providing Customs and Border Protection staff with crowd control assistance.
- Providing Customs and Border Protection staff with information regarding ground transportation and flight connections.
- Staffing booths after midnight to serve passengers from late night and delayed flights.
- Provide curbside passenger assistance in locating ground transportation services.

C. Employees

All successful candidates for on-site Airport jobs must pass a mandatory Federal Security screening, which includes fingerprinting, and must receive an identification badge issued by the Airport's License and Permit Bureau before they can start work on Airport property.

Contractor and sub-contractors (if any) must subscribe to the Airport Commission's general policy of equal employment opportunity and diversity in hiring at all levels of the operation (i.e., rank and file, supervisory, and management positions.)

Due to the nature of the Information Booth Program, all personnel used in the managing and staffing of the Information Booth Program shall be bona-fide employees of the Contractor. In addition, the Contractor, including agents, employees, officers, etc., shall be prohibited from having any financial, legal, or any other business/commercial interest or any family relationship with any SFO transportation service including: charter buses/vans, shared-ride vans, limousines, pre-arranged buses/vans, scheduled airporters, and taxicabs (including those holding or having a business/commercial interest in San Francisco taxicab medallions). The prohibition shall become effective upon signing the contract and shall remain in force throughout the life of the contract.

D. Employee Training and Disciplinary Procedures

Contractor must provide all Contractor and Subcontractor employees' sufficient training to respond to numerous Airport and ground transportation questions. An Airport-approved employee handbook must be given to all contractor and subcontractor employees prior to the first training class. All employees must be both fluent and easily understood in English. Bilingual employees are highly desired due to the large number of non-English speaking patrons arriving at the Airport.

The training provided by the Contractor shall include, but not be limited to, the following:

- The various types of transit passes, tickets and tokens sold at the booths and procedures for handling money, credit and debit cards, Commuter Checks, commuter debit cards and Clipper and “no return” policy.
- The operating procedures of each of the Airport’s ground transportation services, including fares, schedules, pick-up and drop-off locations, service areas, and ADA accommodations.
- Agent duties and responsibilities necessary to perform the job in a first-class manner, including training regarding all necessary equipment.
- Airport-approved procedures to be used by the Contractor or Subcontractor in the event of problems or emergencies.
- Airport-approved procedures in assisting Airport passengers with trip planning options at Airport ground transportation kiosk and electronically over the Internet.
- Familiarity with available transit data, current LBS technology such as mapping, GPS locators, real-time traffic information from 511.org, and other public data.
- Introduction to the many services and facilities available to the Airport’s patrons and customers.
- Detailed customer service and cultural sensitivity training to provide Airport patrons and customers with professional service.
- The requirements of the Americans with Disabilities Act (ADA) as it applies to customer service.
- Operation of ITT FIDs system and stand alone touch-screen kiosks.
- SFO website and operation of computerized ground transportation information kiosks.
- Operation of the Clipper system location at the information booths.
- Operation of the Point of Sale system located at the information booths.
- Operation of TTY courtesy phones located at the information booths.
- Instructions for enrolling SFO employees in the BART SFO Employee Discount Card program online.
- Operation of Information Booth cell phone and use policies.

The Contractor must supply the Airport with a written training guide. Written Airport approval is required prior to implementing the training program. Any and all changes to the training program must have written Airport approval prior to implementing the proposed changes.

Annual in-service training must be provided to all Contractor employees and Subcontractor employees who interact with Airport patrons and customers. Prior to implementation, the Airport must approve the

in-service training program. Updated employee handbooks, approved by the Airport, shall be distributed at this training class.

The Airport retains the right to require an employee of the Contractor or Subcontractor to undergo employee training again if they fail to possess and exercise the level of knowledge necessary to perform the job as described in the Airport-approved training guide. The Airport will not reimburse the Contractor if an employee is required to undergo the initial training classes a subsequent time in such a situation or as a result of disciplinary action.

Contractor must provide the Airport Director with a detailed disciplinary procedure policy for approval prior to the commencement of the contract. The policy must detail specific procedures for responding to employee misconduct including, but not limited to, soliciting on behalf of particular ground transportation operator(s) for personal or institutional gain, accepting monetary or other services from an Airport ground transportation driver or operator, failure to give unbiased information, etc. Nothing in the policy shall supersede any rights the Airport retains herein.

E. Employee Uniforms

Contractor's employees must wear an Airport-approved uniform at all times while working at the Airport. Employees must present themselves in a professional manner to Airport patrons and customers.

Uniform shall include a Federally mandated SFO-employee ID badge, which must be displayed as required by all Contractor and Subcontractor employees at all times while on duty.

The Airport Director retains the right to require the Contractor to change or modify the uniform at any time at City's expense. The contractor must make the requested change(s) within thirty (30) days after notification by the Airport Director.

The Airport retains the right to immediately remove a Contractor's employee from his/her post without pay if the employee is not in uniform, does not have his/her required Airport identification badge properly displayed, or is not presenting him or herself in a professional manner. In this event, the Contractor is required to provide a suitable replacement within two (2) hours. Contractor shall not bill the Airport for the time the post is unstaffed.

F. Reports

In addition to the written reports noted in the Contractor's proposal, the Airport reserves the right to request any and all reports deemed necessary from the Contractor in the performance and auditing of this agreement at no additional cost to the Airport. These reports must be submitted within two (2) weeks from the date the request was made unless instructed otherwise in writing from the Airport.

G. Department Liaison

In performing the services provided for in this Agreement, Contractor's liaison with the Airport, Landside Operations Division will be:

Abubaker Azam, Ground Transportation Manager
Ground Transportation Manager
Landside Operations
San Francisco International Airport
P.O. Box 8097
San Francisco, CA 94128
Email: Abubaker.azam@flysfo.com
Fax: (650) 821-6508

**Appendix C
Performance Measures**

INFORMATION BOOTH PROGRAM PERFORMANCE MEASURES (effective July 1, 2011)

Program Objectives	Description of Items Measured	How Performance Will Be Measured	Evaluation/Rating Methodology
ENHANCE SERVICE QUALITY			
Improve customer satisfaction with SFO	One of the principal objectives of the Information Booth Program is to improve overall customer satisfaction. To determine whether this objective is being met, the Airport will conduct an annual Air Passenger Survey. The results will be evaluated by the Airport to determine if the Information Booth Program has had a positive effect on customer satisfaction.	Annual Air Passenger Survey	Passengers provide numerical ratings in accordance with methodology used in the evaluation of Airport-wide facilities and services. These ratings are: 5 (outstanding), 4 (good), 3 (average), 2 (below average), 1 (unacceptable). Goal for the 2007 ²⁰¹¹ Air Passenger Survey is to, at minimum, maintain a rating equal to that in the 2006 ²⁰¹¹ Survey.
	All complaints received must be investigated, reported, and responded to within 1 week of receipt with a copy of response to Landside Operations.	Airport staff	Failure to properly respond to and address any complaints is unacceptable.
CONTRACT MANDATES			
Staffing	Booths must be staffed as directed by Airport during designated service hours.	Random observations performed and documented by Airport staff.	Staffing booths 10 minutes or more after designated start time or closing booths 10 minutes before designated close time is unacceptable. Booth closings for breaks shall not be more than 15 minutes and for lunch breaks should not be more than 1 hour 10 minutes in Terminal 1, and 1 hour 20 minutes in Terminal 3 and the International Terminal.
	Provide a quarterly roster of staff by classification within ten (10) working days after the end of the quarter and calculate the turnover rate for the quarter.	Airport staff	A turnover rate in excess of 25% without adequate explanation constitutes poor performance.

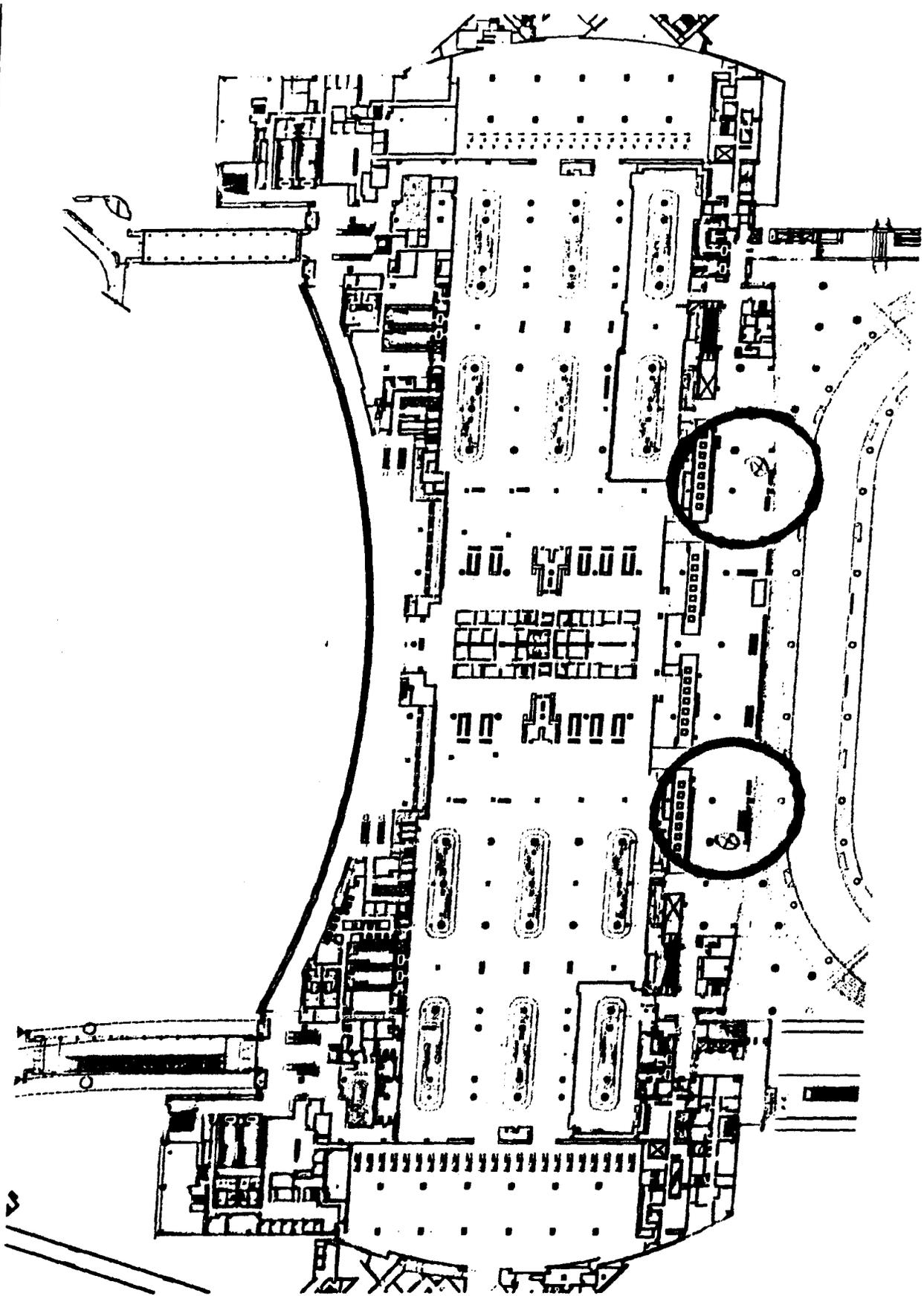
CONTRACT MANDATES (cont.)

Reporting	All reports must be received by Airport within fifteen (15) working days after month end. The specific reports and format required may be amended from time to time. Operational reports required include: (1) Number of individuals served at each booth, (2) Number and types of questions answered at each booth, (3) Number of Ground Transportation handouts copied per week, (4) summary of significant problems identified by passengers.	Airport staff	Late or incomplete reports are unacceptable.
	Transit Pass Sales Summary.	Airport Staff	Late or incomplete reports are unacceptable.

ADDITIONAL PERFORMANCE AREAS

Recruitment of New Hires	As applicable, contractor will recruit a minimum of 10% of new hires for Welfare-to-Work roles.	Airport Staff	Recruitment of less than 10% of new hires from Welfare-to-Work roles is unacceptable and will receive a score of 1. Recruitment, training, and retention of these employees for one year or longer will receive a score of 4 or more.
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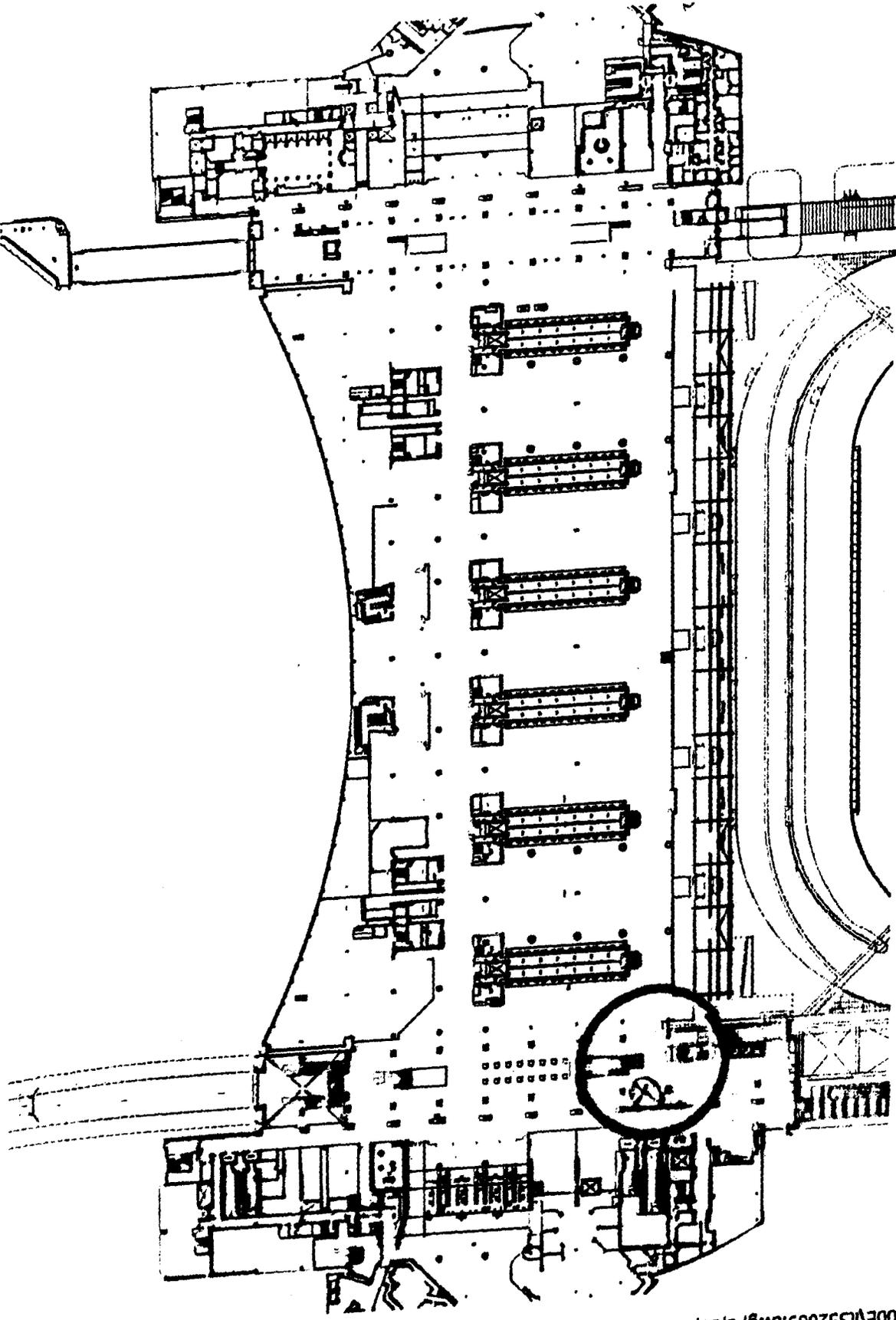
Appendix D
Information Booth Locations

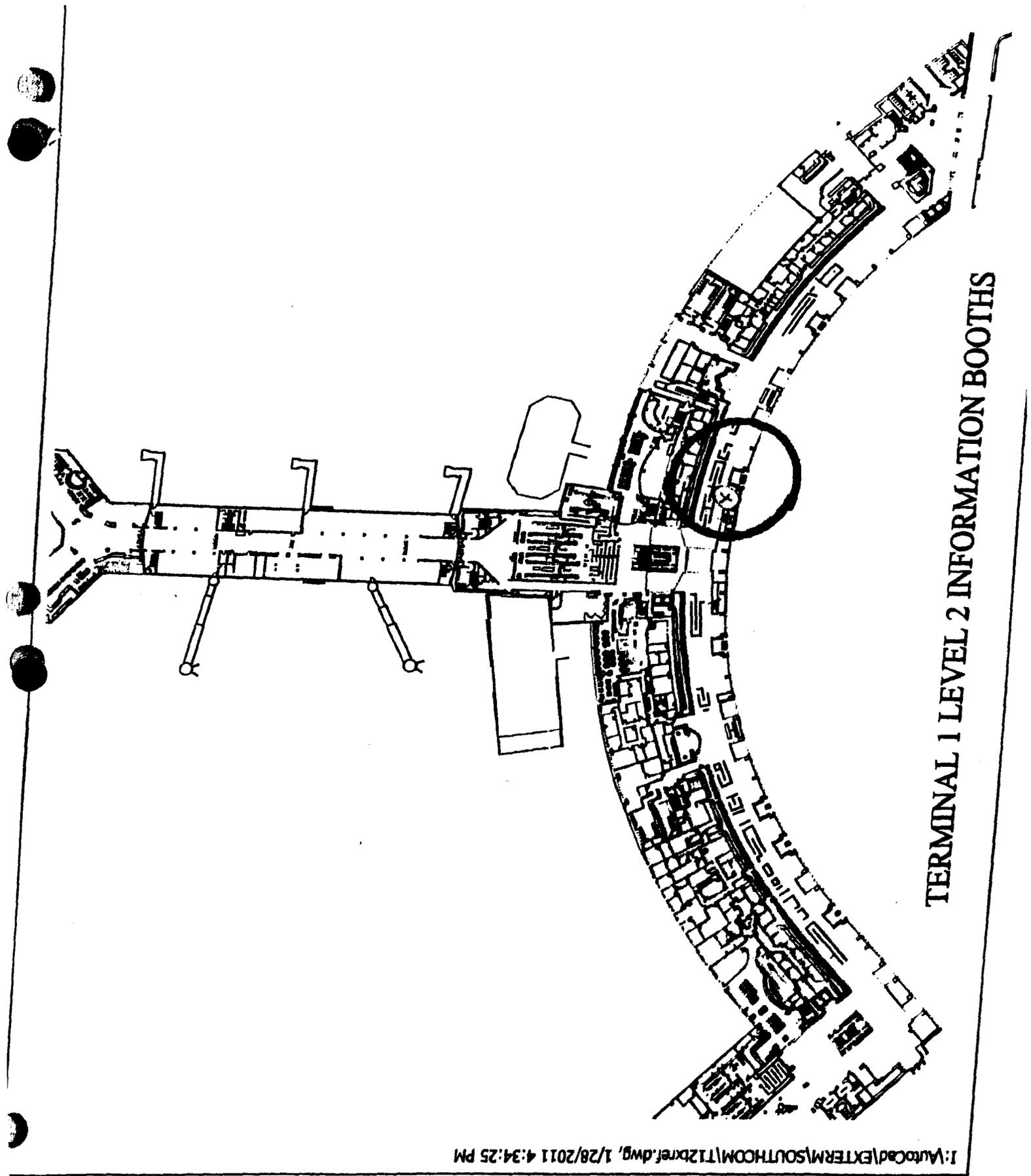


INTERNATIONAL TERMINAL LEVEL 2 INFORMATION BOOTHS

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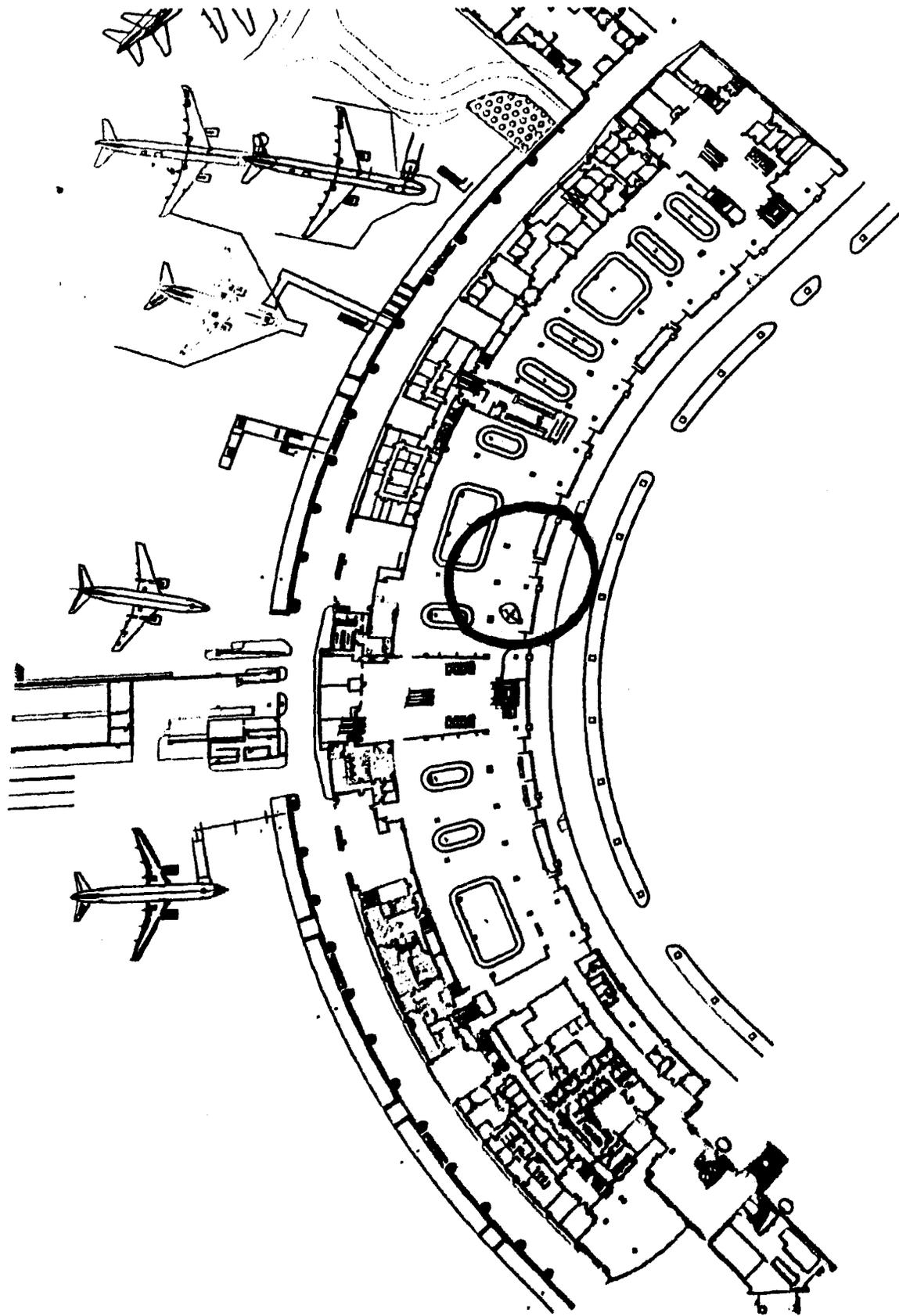
INTERNATIONAL TERMINAL LEVEL 3 INFORMATION BOOTHS





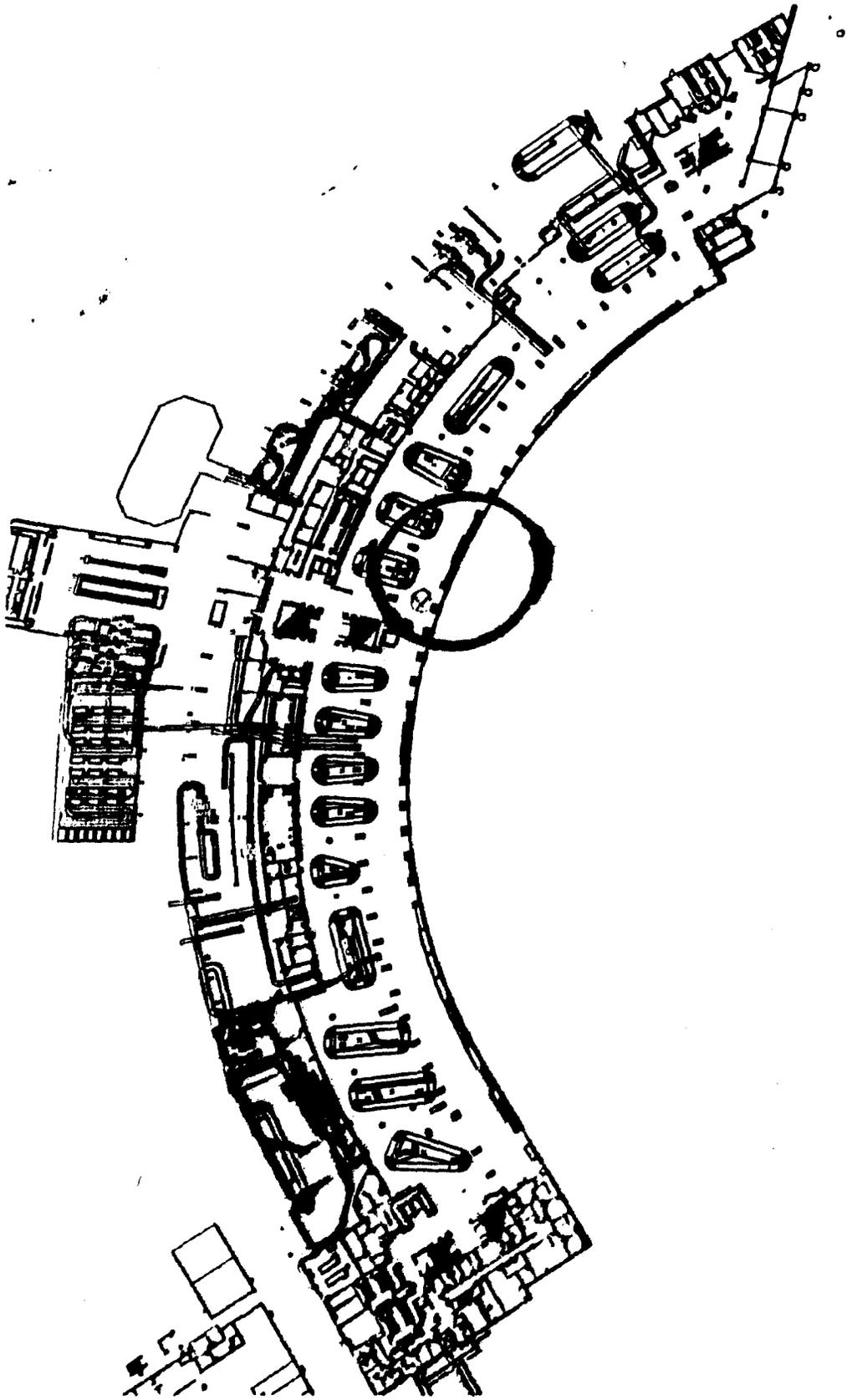
TERMINAL 1 LEVEL 2 INFORMATION BOOTHS

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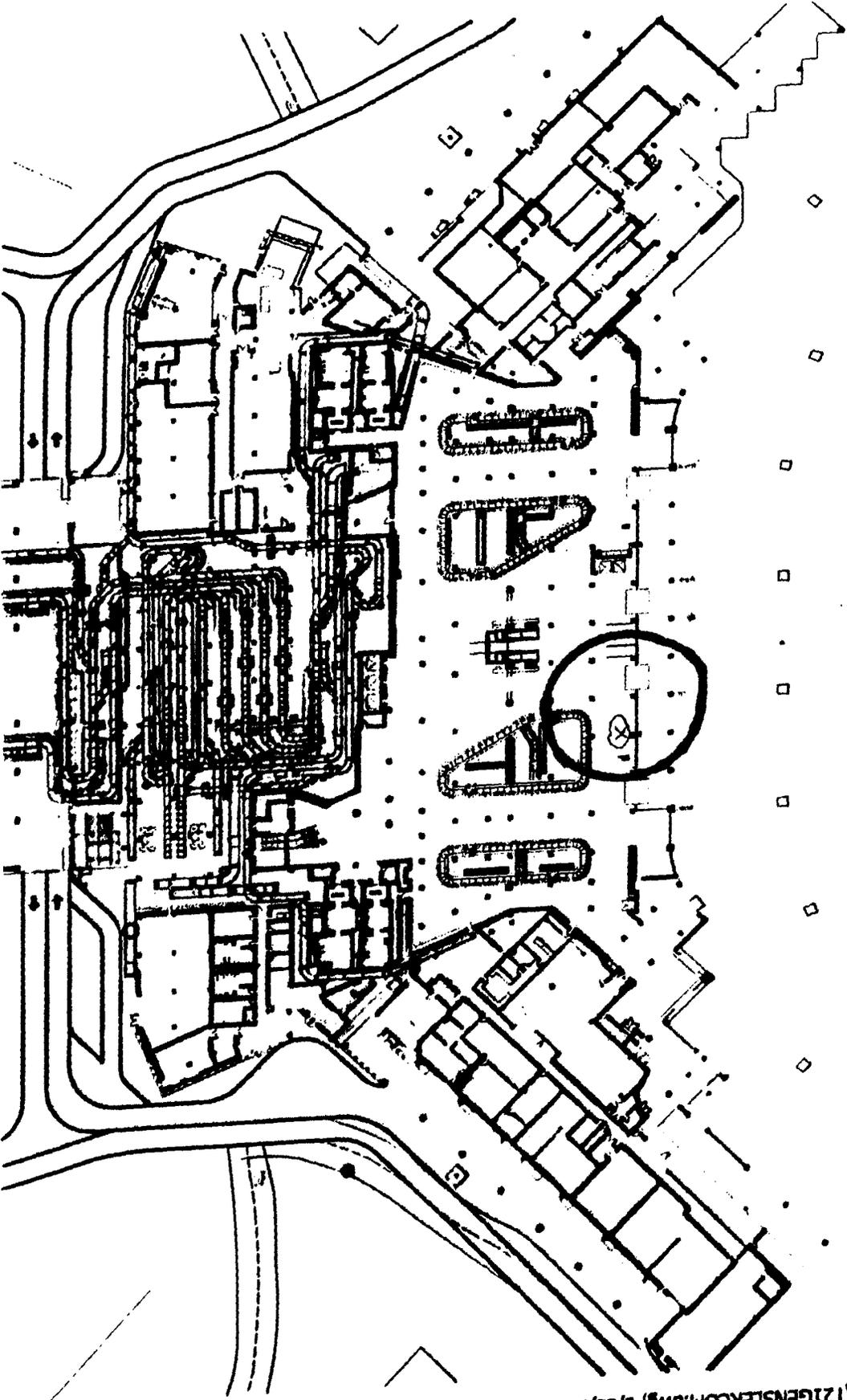
TERMINAL 3 LEVEL 1 INFORMATION BOOTHS

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TERMINAL 1 LEVEL 1 INFORMATION BOOTHS

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TERMINAL 2 LEVEL 1 INFORMATION BOOTHS

Appendix E

Reimbursable and Non-Reimbursable Costs

A. Reimbursable Cost

All direct costs exceeding \$500 and which are not specified in reasonable detail in the Annual Cost Proposal shall be subject to the Director's prior written approval. Unless otherwise stated, the City shall reimburse Contractor for the following direct costs, all of which must be reasonable and necessary to effectuate the purpose of this Agreement:

1. Contractor's Employee

- Expenses incurred in recruiting new, non-management employees, when approved in advance by the Airport and supported with actual invoices.
- Initial background investigations of employees and applicants by the Airport's License and Permit Bureau, *excluding* costs incurred for subsequent background checks made necessary by the Contractor, employee or job applicant, which costs shall be borne by the Contractor.
- Airport photo identification badges issued by the Airport's License and Permit Bureau, *excluding* costs associated with replacing lost, stolen or damaged badges, which costs shall be borne by the Contractor.
- Employee name tags when pre-approved by the Airport, excluding the costs associated with lost, stolen or damaged name tags, which costs shall be borne by the Contractor.
- Fifty dollars (\$50) per employee for employee recognition awards with a cap of one hundred dollars (\$100) per twelve (12) month Period.
- Purchase and cleaning of uniform jackets worn by line and immediate personnel only, if any uniform jackets are worn.
- Food or beverages consumed in Airport-approved training sessions.
- Personnel timekeeping equipment and equipment maintenance approved by the Airport prior to purchase and/or maintenance.
- Initial employee training, *excluding* the cost of re-training for employees who fail initial training, which costs shall be borne by the Contractor.

2. Telephone/Internet

- The Airport will provide: (a) four (4) telephones and phone lines with voicemail service for the administrative offices of the Information Booth Program; (b) up to six (6) telephones and telephone lines in each information booth; and (c) up to six (6) cell phones for Contractor's use in operating Information Booth Program. The City shall not reimburse contractor for lost, damages or stolen cell phones.

- All use of telephone, internet services shall be limited to perform the Contractor's duties related to this contract.
- Monthly service fees for cellular telephone service. Contractor must enter into and maintain service agreement with cellular telephone service that provides reliable, full signal coverage throughout the Airport and Bay Area.
- City's own intranet access and SFP e-mail system and internet services specifically used for trip planning, ground transportation applications and/or ticket sales operations.
- All local calls and such long distance call as are necessary for operation of the Information Booth Program. "Long Distance" shall mean a phone call to a number with an area code other than "650." To be eligible for reimbursement, for long distance calls, Contractor must provide a log of all such calls, including the date of the call, name of the person called, the telephone number and the purpose of the call.

3. Mail

- Postage for routine certified, first-class, and priority United States Postal Service mail emanating from the Contractor in the operation of the Information Booth Program. All other postage charges and charges from any other postage service shall be borne by the Contractor.

4. Equipment for Administrative Office of Information Booth Program

- Computers and related peripheral equipment (e.g., printer, monitors) used for administrative office functions, and maintenance of computers and related peripheral equipment.
- Computer supplies (e.g., laser cartridges, inkjet cartridges, toner, disks, paper) except that all such purchases shall be pre-approved by the Airport.
- Two (2) photocopiers (one high volume and one countertop), and maintenance of photocopiers.
- Office furniture (e.g., desk surface, file cabinets, chairs, table(s)).
- Locking safe to secure cash generated by transit pass sales.
- Office supplies approved in advance by the Airport.

5. Booth Equipment and Operations

- Equipment and services for: (a) ITS flight information services in A/B domestic short term parking garage elevator core; (b) the Rental Car Center; (c) the cell phone lot; and (d) flight information feed for the SFP website and information kiosks, dynamic signage on the Terminal 1 mezzanine and GT kiosks. All such costs shall be re-approved by the Airport.

- Telecommunications Device for the Deaf (TDD), also known as a Teletypewriter (TTY), in each staffed information booth, including necessary maintenance and replacement.
- Chairs for staffed information booths and maintenance and/or replacement when pre-approved by the Airport.
- One personal space heater not exceeding 800 watts for use in each International Terminal booth; one personal space heater not to exceed 1200 watts in each Domestic Terminal booth. Replacement heaters are reimbursable if per-approved by the Airport.
- Fifty dollars (\$50.00) per month as petty cash for Traveler Aid to assist stranded passengers. Use of all petty cash must be documented with date, name of passenger and purpose of expenditure.
- Information booth supplies (e.g., cleaning supplies, first aid kits, facial tissue, cash boxes, etc.)
- BART tickets for stranded passengers. Distribution of BART tickets must be documented with date and name of passenger.
- Subway gift cards for stranded passengers. Distribution of Subway gift cards must be documented with date and name of passenger.

B. Non Reimbursable Costs

The following items are not reimbursable:

- Food and beverages, unless they are provided as part of an Airport-approved training program
- Computer software unrelated to purpose of Agreement
- Any other cost that are deemed by Airport staff not to be reasonable.