

File No. 220010

Committee Item No. 9

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee Date February 9, 2022

Board of Supervisors Meeting Date _____

Cmte Board

- | | | |
|-------------------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Resolution |
| <input type="checkbox"/> | <input type="checkbox"/> | Ordinance |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Subcontract Budget |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
| <input type="checkbox"/> | <input type="checkbox"/> | Application |
| <input type="checkbox"/> | <input type="checkbox"/> | Public Correspondence |

OTHER (Use back side if additional space is needed)

- | | | |
|-------------------------------------|--------------------------|---|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Executed Contract - 9/18/2018</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Modification No. 1 - 7/1/2020</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Airport Commission Resolution No. 21-0244 - 12/21/2021</u> |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |

Completed by: Brent Jalipa Date February 4, 2022

Completed by: Brent Jalipa Date _____

1 [Airport Professional Services Contract Modification - Covenant Aviation Security, LLC -
2 General Airport Security Services - Not to Exceed \$19,685,578]

3 **Resolution approving Modification No. 2 to Contract No. 50178 with Covenant Aviation**
4 **Security, LLC to exercise the last two-year option to extend the term through June 30,**
5 **2024, and increase the contract amount by \$7,900,324 for a new contract amount not to**
6 **exceed \$19,685,578 pursuant to Charter, Section 9.118(b).**

7
8 WHEREAS, On September 18, 2018, by Resolution No. 18-0299, the Airport
9 Commission awarded the Professional Services Contract No. 50178 to Covenant Aviation
10 Security, LLC for General Airport Security Services in an amount not to exceed \$5,500,000 for
11 a period of 20 months, ending on June 30, 2020, with two (2) two-year options to extend,
12 exercisable at the sole discretion of the Airport Commission; and

13 WHEREAS, On June 2, 2020, by Resolution No. 20-0096, the Airport Commission
14 approved Modification No. 1 to exercise the first 2-year option to extend the term through
15 June 30, 2022, and increased the contract amount by \$6,285,254 for a new contract amount
16 not to exceed \$11,785,254, and reduce the management fee for the term July 1, 2020, to
17 June 30, 2021, from \$49,576 per month to \$47,097.20 per month, due to the financial impacts
18 of the COVID-19 pandemic on the City and the Airport; and

19 WHEREAS, on July 21, 2020, by Resolution No. 342-20, the Board of Supervisors
20 approved Modification No. 1 to the Agreement; and

21 WHEREAS, On December 21, 2021, by Resolution No. 21-0244, the Airport
22 Commission approved Modification No. 2 to exercise the last 2-year option to extend the term
23 through June 30, 2024, and increased the contract amount by \$7,900,324 for a new contract
24 amount not to exceed \$19,685,578; and

1 WHEREAS, San Francisco Charter, Section 9.118(b) provides that the agreements
2 entered into by a department, board or commission requiring anticipated expenditures by the
3 City and County of ten million dollars, shall be subject to approval by the Board of Supervisors
4 by Resolution; and

5 WHEREAS, Copies of the Agreement are on file with the Clerk of the Board of
6 Supervisors in File No. 220010; now, therefore, be it

7 RESOLVED, That the Board of Supervisors hereby approves Modification No. 2 to
8 Airport Contract No. 50178 for General Airport Security Services with Covenant Aviation
9 Security, LLC, to excise the last 2-year option to extend the contract term through June 30,
10 2024, and increase the contract amount by \$7,900,324 for a new contract amount not to
11 exceed \$19,685,578; and, be it

12 FURTHER RESOLVED, That within thirty (30) days of the Contract being fully
13 executed by all parties, the Airport Commission shall provide the executed Contract to the
14 Clerk of the Board for inclusion into the official file.

15
16
17
18
19
20
21
22
23
24
25

<p>Item 9 File 22-0010</p>	<p>Department: Airport</p>
<p>EXECUTIVE SUMMARY</p>	
<p style="text-align: center;">Legislative Objectives</p> <ul style="list-style-type: none"> • The proposed resolution would approve Modification No. 2 to the General Airport Security Services contract between San Francisco International Airport (Airport) and Covenant Aviation Security, LLC (Covenant), exercising the second two-year option to extend the contract through June 2024, and increasing the not-to-exceed amount by \$7,900,324, for a total not to exceed amount of \$19,685,578. <p style="text-align: center;">Key Points</p> <ul style="list-style-type: none"> • After conducting a Request for Proposals (RFP) in 2018, the Airport awarded a General Airport Security Services contract to Covenant, for a term of approximately one year and nine months from October 2018 through June 2020, for an amount not to exceed \$5,500,000, and two 2-year options to extend. In July 2020, the Board of Supervisors approved Modification No. 1 to the contract, exercising the first two-year option to extend through June 2022, and increasing the not-to-exceed amount to \$11,785,254. In December 2021, the Airport Commission approved Modification No. 2 to the contract, which would exercise the second two-year option to extend the contract through June 2024. • Under the contract, Covenant provides required Airport screening services on vendors bringing items into the secured area of the Airport, on visitors at the entryway of the Airport Commission offices, to guard exit lanes when TSA staff is not present, and to perform badge checks on individuals using secure bypass doors throughout the Airport. The proposed Modification No. 2 specifies minimum staffing levels and hours of operations at various locations throughout the Airport. <p style="text-align: center;">Fiscal Impact</p> <ul style="list-style-type: none"> • The proposed Modification No. 2 would increase the not-to-exceed amount of the contract by \$7,900,324, for a total not to exceed \$19,685,578. • The Airport projects total expenditures of approximately \$11,511,053 through June 2022, which is approximately \$274,201 less than the current not-to-exceed amount of \$11,785,254. According to the Airport, staffing is expected to ramp up due a new screening checkpoint that will be opened in Terminal 1 and expanded hours for the Sky Terrace. <p style="text-align: center;">Recommendation</p> <ul style="list-style-type: none"> • Approve the proposed resolution. 	

MANDATE STATEMENT

City Charter Section 9.118(b) states that any contract entered into by a department, board, or commission that (1) has a term of more than ten years, (2) requires expenditures of \$10 million or more, or (3) requires a modification of more than \$500,000 is subject to Board of Supervisors approval.

BACKGROUND

The Federal Transportation Security Administration (TSA) requires that all commercial service airports have a TSA-approved Airport Security Program to provide trained security guard and inspection service throughout airport terminals and exits. In this program, airports are required to conduct inspections of all deliveries, merchandise, consumables, and employees accessing the Sterile Area, which is situated past the screening checkpoints.

In 2018, the San Francisco International Airport (Airport) issued a Request for Proposals (RFP) to award a contract for General Airport Security Services.¹ The Airport received three proposals and a four-member evaluation panel scored them, as shown in Exhibit 1 below.²

Exhibit 1: Proposals and Scores from RFP

Proposer	Written Proposal Score (out of 450)	Oral Presentation Score (out of 150)	Total Score (out of 600)
Covenant Aviation Security, LLC	380.3	133.0	513.3
Allied Universal	359.0	98.0	457.0
Securitas AB	314.7	112.0	426.7

Source: Airport

Covenant Aviation Security (Covenant) was deemed the highest scoring responsive and responsible proposer and was awarded a contract. In September 2018, the Airport Commission approved a contract with Covenant for a term of approximately one year and nine months, from October 5, 2018 through June 30, 2020, for an amount not to exceed \$5,500,000, and two 2-year options to extend.³ In July 2020, the Board of Supervisors approved Modification No. 1 to the contract, exercising the first two-year option to extend through June 2022, and increasing the not-to-exceed amount by \$6,285,254, for a total not to exceed of \$11,785,254. In December 2021, the Airport Commission approved Modification No. 2 to the contract, which is the subject of the proposed resolution.

¹ The Airport had previously issued an RFP in 2016 and awarded a contract to HSS Inc. However, Airport staff determined that HSS had defaulted on its contractual obligations by failing to provide sufficient staffing. In April 2018, the Airport Commission declared an emergency, terminating the HSS contract and awarding an emergency contract to Covenant Aviation Security, the second highest scoring proposer from the RFP. In September 2018, the Board of Supervisors retroactively approved the emergency contract (File 18-0494).

² The evaluation panel consisted of a United Airlines Customer Service Manager, an Oakland International Airport Aviation Security Manager, an Airport Aviation Security and Regulation Compliance Manager, and an Airport Safety and Security Services Communications Manager.

³ The contract did not require Board of Supervisors approval because it did not exceed 10 years or \$10 million.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve Modification No. 2 to the contract between the Airport and Covenant, exercising the second two-year option to extend the contract through June 2024, and increasing the not-to-exceed amount by \$7,900,324, for a total not to exceed \$19,685,578.

Under the contract, Covenant provides required Airport screening services on vendors bringing items into the secured area of the Airport, on visitors at the entryway of the Airport Commission offices, to guard exit lanes when TSA staff is not present, and to perform badge checks on individuals using secure bypass doors throughout the Airport. The proposed Modification No. 2 specifies minimum staffing levels and hours of operations at various locations throughout the Airport.

According to Keaboka Molwane, Acting Manager of Aviation Security and Regulatory Compliance, there are no specific benchmarks or performance measures required for Covenant to satisfy contract obligations. However, Covenant is required to submit written logs of daily post activities as well as require guard staff to check in with the Security Operation Center when on post in order to verify that they are present – which is confirmed via CCTV. Additionally, performance is monitored through random audits. These audits include tests of their screening methods such as placing a test object in a delivery to ensure they are properly inspecting all goods, as well as confirming that staff at posts are alert and properly monitoring traffic and/or verifying ID badges to ensure that no unauthorized individuals access the sterile areas. Supervisors and the Aviation Security Manager meet and coordinate regularly with Covenant management staff to ensure they have adequate FTE to meet staffing needs. Acting Manager Molwane reports that Covenant has submitted daily written logs and performed satisfactorily in audits/testing.

FISCAL IMPACT

The proposed Modification No. 2 would increase the not-to-exceed amount of the Covenant contract by \$7,900,324, for a total not to exceed \$19,685,578. Projected expenditures for the two-year extension term are shown in Exhibit 2 below.

Exhibit 2: Projected Expenditures for Contract Extension Term

	Year 1 (FY 2022-23)	Year 2 (FY 2023-24)	Total
Guard Hourly Rate	\$21.75	\$21.75	\$21.75
Guard Hours	96,634	96,899	193,532
Guard Wages	\$2,101,900	\$2,107,659	\$4,209,559
Supervisor Hourly Rate	\$25.16	\$25.16	\$25.16
Supervisor Hours	11,680	11,712	23,392
Supervisor Wages	\$293,920	\$294,725	\$588,646
<i>Wages Subtotal</i>	<i>\$2,395,820</i>	<i>\$2,402,384</i>	<i>\$4,798,204</i>
Management Fee (\$47,097/month) ⁴	\$565,164	\$565,164	\$1,130,328
Medical (\$34,000/month)	408,000	408,000	816,000
Phone (\$800/month)	9,600	9,600	19,200
Other Direct Costs ⁵	450,000	480,000	930,000
<i>Non-Wage Subtotal</i>	<i>\$1,432,764</i>	<i>\$1,462,764</i>	<i>\$2,895,528</i>
Contingency	74,292	132,299	206,591
Total	\$3,902,877	\$3,997,447	\$7,900,323

Source: Airport. Totals may not add due to rounding.

According to Acting Manager Molwane, the contingency increases by \$58,007, or approximately 78 percent, in the second year of the contract extension because the Airport anticipates an increase in inspections and posts as the Airport recovers from the COVID-19 pandemic. Covenant had provided approximately 55 full-time equivalent (FTE) employees before the pandemic and currently provides approximately 35 FTE employees, as well as two managers.

According to Acting Manager Molwane, actual contract expenditures to date total approximately \$10,075,421. The Airport projects total expenditures of approximately \$11,511,053 through June 2022, which is approximately \$274,201 less than the current not-to-exceed amount of \$11,785,254. According to the Airport, staffing is expected to ramp up due a new screening checkpoint that will be opened in Terminal 1 and expanded hours for the Sky Terrace.

The contract is funded by Airport operating revenues.

RECOMMENDATION

Approve the proposed resolution.

⁴ The management fee includes profit, overhead, and non-reimbursable costs. Non-reimbursable costs include recruitment, background checks, photo ID badges, food and beverages, payroll services, uniform and dry-cleaning costs, timekeeping equipment, telephones, intranet, postage, express delivery, and business cards.

⁵ Other direct costs include equipment, materials, and supplies, which require Airport approval in advance.

DS
km
DS
RF
DS
RR
DS
JL

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

Modification No. 2

THIS MODIFICATION (this “Modification”) is made as of December 21, 2021, in San Francisco, California, by and between **Covenant Aviation Security, LLC** (“Contractor”), and the City and County of San Francisco, a municipal corporation (“City”), acting by and through its Airport Commission, hereinafter referred to as “**Commission.**”

RECITALS

A. City and Contractor have entered into the Agreement for the San Francisco International Airport (the “Airport” or “SFO”) (as defined below); and,

B. The Commission is authorized to enter into all contracts which relate to matters under its jurisdiction; and

C. On September 18, 2018, by Resolution No. 18-0299, the Commission awarded this Agreement to the Contractor in an amount not-to-exceed \$5,500,000; and

D. The City has approved the contracting-out of the services under this Agreement upon the certification of the Controller that the services can be performed by a contractor at a lower cost than by City employees at current salary and benefit levels, Board of Supervisors Resolution No. 167-18, adopted May 22, 2018 and Board of Supervisors Resolution No. 418-20, adopted September 22, 2020; and

E. There is no Local Business Enterprise (“LBE”) subcontracting requirement for this Agreement; and

F. On June 2, 2020, by Resolution No. 20-0096, the Commission approved Modification No. 1 to the Agreement to reduce the reduce hourly rates under the Agreement, exercise the first two-year option, and increase the contract amount by \$6,285,254 for a new total not-to-exceed amount of \$11,785,254; and

G. On July 21, 2020, by Resolution No. 342-20, the Board of Supervisors approved Modification No. 1 under San Francisco Charter Section 9.118; and

H. On December 21, 2021, by Resolution No. 21-0244, the Commission approved Modification No. 2 to the Agreement to exercise the last two-year option and increase the contract amount by \$7,900,324 for a new total not-to-exceed amount of \$19,685,578; and

I. On _____, by Resolution No. _____, the Board of Supervisors approved Modification No. 2 under San Francisco Charter Section 9.118; and

J. The Contractor represents and warrants that it is qualified to perform the services required by City under this Agreement;

NOW, THEREFORE, Contractor and the City agree as follows:

1. Section 1.1 Agreement or Contract Document is replaced as follows:

1.1 “Agreement” or “Contract Document” means the contract document dated September 18, 2018 and Modification No. 1, including all attached appendices, and all applicable city ordinances and “Mandatory City Requirements” which are specifically incorporated by reference into the Agreement.

2. Section 1.4 Contractor or Consultant is replaced as follows:

1.4 “Contractor” or “Consultant” means Covenant Aviation Security, 1112 W. Boughton Road, Suite 355, Bolingbrook, IL 60440

3. New Section 1.14 Digital Signature is hereby added to the Agreement as follows:

1.14 “Digital Signature” means an electronic identifier, created by computer, intended by the party using it to have the same force and effect as the user of a manual signature.

4. Article 2. Term of the Agreement, Section 2.1 is hereby amended to extend the term of the Agreement for two years for a new ending date of June 30, 2024.

5. Article 3. Financial Matters, 3.3. Compensation, Section 3.3.1 Payment is hereby amended to increase the total compensation payable by an amount not to exceed \$7,900,324 for a new total not to exceed amount of \$19,685,578.

6. Article 11. General Provisions, 11.1 Notices to the Parties is replaced in its entirety as follows:

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

To City: Rob Forester, Operations & Security, P.O. Box 8097, San Francisco, CA 94128
Rob.Forester@flysfo.com, 650-821-3925

To Contractor: Christine M. Mueller, Covenant Aviation Security, 1112 W. Boughton Road, Suite 355, Bolingbrook, IL 60440, christine.mueller@covenantsecurity.com, 630-771-1133

Any notice of default must be sent by registered mail. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party. If email notification is used, the sender must specify a receipt notice.

11.1.1 The Parties consent to the use of Digital Signatures, affixed using the City’s DocuSign platform, to execute this Agreement and all subsequent modifications.

7. Appendix B, Calculation of Charges, 1. Reimbursable Costs, a) Direct Labor Costs is replaced as follows:

a) Direct Labor Costs

Direct Labor Costs include hourly wage rates and cost of fringe benefits for guard staff. Contractor shall submit payroll records supported by timecards or other verifiable documentation to support any application for reimbursement of Direct Labor Costs. The City shall reimburse

actual hourly wages. The City shall also reimburse Contractor for the actual, documented cost of fringe benefits incurred by Contractor for front line staff at the rate established at the time of contract award for the first twenty (20) months of the Agreement. This shall be the ‘first term’. In the event the actual cost of fringe benefits in subsequent contract years exceeds the ‘first term’ baseline, the cost of the increase shall be borne equally by the Contractor and the City.

Hourly wage rates for all team members.

<u>Title</u>	<u>Hourly Rate</u>
Guard	\$17.00 to \$21.95
Supervisor	\$19.50 to \$25.35

Wage rates during the initial and/or option years may be adjusted at the sole discretion of the Airport only to account for changes in any relevant City and County legislation and/or Airport Rules and Regulations. .

8. Appendix B, Calculation of Charges, 1. Reimbursable Costs, b) Staffing Plan is replaced as follows:

Contractor’s staffing plan must be sufficient to provide coverage to the locations listed below:

Minimum Hourly Staffing Levels

Location	# Posts	Hours	Hours/Day	Days/week
Vendor Post 1	1	0500-2100	16	7
Vendor Post 2	1	0230-2200	19.5	7
Vendor Post 3	1	0500-1700	12	7
Vendor Post 4	1	0500-1700	12	7
Vendor Post 5	1	0500-1800	13	7
Vendor Post 6	1	0500-1300	8	5
Administrative Offices	2	0800-1700	9	5
Exit Lane 1	1	0100-0500	4	7
Exit Lane/Checkpoint 2	2	0030-0430	8	7
Exit Lane 3	1	0030-0400	3.5	7
Exit Lane 4	1	0030-0430	4	7
Exit Lane 5	1	0015-0400	3.75	7
Exit Lane 6	1	1700-0500	12	7
Exit Lane 7	1	0100-0400	3	7
Observation Deck	1	1000-1800	8	7
Airport Controlled Exit Portal	1	0600-2200	16	7
Guard Relief	1	0001-2359	24	7
Guard Training	Varies	Varies	TBD	TBD
Insider Threat Random Employee Inspections & As-Needed Services	Variable	Random	Random	Random (Total of 200 hours/week)
Supervisor	1	0001-2359	24	7

Note: The Airport may designate alternative and/or additional locations if needed either on a permanent or on-call/temporary basis.

9. **Appendix B – Calculation of Charges, 2. Management Fee** remains at \$47,097.20 per month for the remainder of the Agreement.

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: _____ Ivar C. Satero, Airport Director	DocuSigned by: <i>Christine M. Mueller</i> _____ Authorized Signature
Attest:	<u>Christine M. Mueller</u> Printed Name
	<u>Vice President Finance and Contracts</u> Title
By _____ Kantrice Ogletree, Secretary Airport Commission	<u>Covenant Aviation Security, LLC</u> Company Name
Resolution No: <u>21-0244</u>	<u>0000030737</u>
Adopted on: <u>December 21, 2021</u>	<u>City Supplier ID</u>
Approved as to Form:	<u>1112 W. Boughton Road, Suite 355</u> Address
David Chiu City Attorney	<u>Bolingbrook, IL 60440</u> City, State, ZIP
	<u>(630) 771-1133</u> Telephone Number
By _____ Christopher Stuart Deputy City Attorney	<u>35-2161799</u> Federal Employer ID Number

**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
Covenant Aviation Security, LLC
Contract No. 50178**

This Agreement is made this 18th day of September, 2018, in the City and County of San Francisco, State of California, by and between: Covenant Aviation Security, 400 Quadrangle Drive, Suite A, Bolingbrook, IL 60440 (the “Contractor”) and the City and County of San Francisco, a municipal corporation (the “City”), acting by and through its Airport Commission (the “Commission”).

Recitals

- A. The Commission wishes to provide General Airport Security Services for the San Francisco International Airport (the “Airport” or “SFO”); and,
- B. The Commission is authorized to enter into all contracts which relate to matters under its jurisdiction; and
- C. On May 9, 2018, the Commission issued a Request for Proposals (“RFP”) and as a result of the selection process prescribed in the RFP and upon the recommendation of the Airport Director, the Commission determined that the Contractor was the qualified proposer receiving the highest evaluation score; and
- D. On September 18, 2018, by Resolution No. 18-0299, the Commission awarded this Agreement to the Contractor for an initial term of approximately 20 months with an amount not-to-exceed \$5,500,000.00; and
- E. The City has approved the contracting-out of the services under this Agreement upon the certification of the Controller that the services can be performed by a contractor at a lower cost than by City employees at current salary and benefit levels, see Board of Supervisors Resolution No. 167-18, adopted May 22, 2018; and
- F. There is no Local Business Entity (“LBE”) subcontracting participation requirement for this Agreement; and
- G. The Contractor represents and warrants that it is qualified to perform the services required by City under this Agreement;

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement:

- 1.1 "Agreement" means this contract document, including all attached appendices, and all applicable City Ordinances and Mandatory City Requirements which are specifically incorporated by reference into this Agreement.
- 1.2 "City" or "the City" means the City and County of San Francisco, a municipal corporation, acting by and through both its Director of the Office of Contract Administration, referred to as "Purchasing," or the Director's designated agent, Airport Commission.
- 1.3 "CMD" means the Contract Monitoring Division of the City.
- 1.4 "Contractor" or "Consultant" means Covenant Aviation Security, 400 Quadrangle Drive, Suite A, Bolingbrook, IL 60440.
- 1.5 "Deliverables" means Contractor's work product resulting from the Services that are provided by Contractor to City during the course of Contractor's performance of the Agreement, including without limitation, the work product described in the "Scope of Services" attached as Appendix A.
- 1.6 "Effective Date" means the date upon which the City's Controller certifies the availability of funds for this Agreement as provided in Section 3.1.
- 1.7 "Mandatory City Requirements" means those City laws set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws that impose specific duties and obligations upon Contractor.
- 1.8 "Party" and "Parties" mean the City and Contractor either collectively or individually.
- 1.9 "Services" means the work performed by Contractor under this Agreement as specifically described in the "Scope of Services" attached as Appendix A, including all services, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

Article 2 Term of the Agreement

- 2.1 The term of this Agreement shall commence on the latter of: (i) October 5, 2018; or (ii) the Effective Date and expire on June 30, 2020, unless earlier terminated as otherwise provided in this Agreement.
- 2.2 The City has two (2) options to renew the Agreement for a period of two (2) years each. The City may extend this Agreement beyond the expiration date by exercising an option at the City's sole and absolute discretion and by modifying this Agreement as provided in Section 11.5, "Modification of this Agreement."

Article 3 Financial Matters

- 3.1 **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 under this Agreement 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.

3.2 Guaranteed Maximum Costs. The City's payment obligation to Contractor cannot at any time exceed the amount certified by City's Controller for the purpose and period stated in such certification. Absent an authorized Emergency per the City Charter or applicable Code, no City representative is authorized to offer or promise, nor is the City required to honor, any offered or promised payments to Contractor under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 11.5, "Modification of this Agreement."

3.3 Compensation.

3.3.1 Payment. Contractor shall provide an invoice to the City on a monthly basis for Services completed in the immediate preceding month, unless a different schedule is set out in Appendix B, "Calculation of Charges." Compensation shall be made for Services identified in the invoice that the Airport Director, in his or her sole discretion, concludes has been satisfactorily performed. Payment shall be made within 30 calendar days of receipt of the invoice, unless the City notifies the Contractor that a dispute as to the invoice exists. In no event shall the amount of this Agreement exceed Five Million Five Hundred Thousand Dollars (\$5,500,000.00). The breakdown of charges associated with this Agreement appears in Appendix B, "Calculation of Charges," attached and incorporated by reference as though fully set forth in this Agreement. A portion of payment may be withheld until conclusion of the Agreement if agreed to both parties as retainage, described in Appendix B. In no event shall City be liable for interest or late charges for any late payments.

3.3.2 Payment Limited to Satisfactory Services. Contractor is not entitled to any payments from City until Airport Commission approves Services, including any furnished Deliverables, as satisfying all of the requirements of this Agreement. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory Deliverables, including equipment, components, materials, or Services even if the unsatisfactory character of such Deliverables, equipment, components, materials, or Services may not have been apparent or detected at the time such payment was made. The City may reject Deliverables, equipment, components, materials and Services that do not conform to the requirements of this Agreement and in such case must be replaced by Contractor without delay at no cost to the City.

3.3.3 Withhold Payments. If Contractor fails to provide Services consistent with Contractor's obligations under this Agreement, the City may withhold any and all payments due Contractor until such failure to perform is cured, and Contractor shall not stop work as a result of City's withholding of payments as provided in this Agreement.

3.3.4 **Invoice Format.** Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller and City and must include a unique invoice number. Payment shall be made by City as specified in 3.3.6, or in such alternate manner as the Parties have mutually agreed upon in writing.

3.3.5 **LBE Payment and Utilization Tracking System – Not applicable.**

3.3.6 **Getting paid for goods and/or services from the City.**

(a) All City suppliers receiving new contracts, contract renewals, or contract extensions must sign up to receive electronic payments through the City's third party service that provides Automated Clearing House (ACH) payments. Electronic payments are processed every business day and are safe and secure. To sign up for electronic payments, visit www.sfgov.org/ach.

(b) The following information is required to sign up: (i) The enroller must be their company's authorized financial representative, (ii) the company's legal name, main telephone number and all physical and remittance addresses used by the company, (iii) the company's U.S. federal employer identification number (EIN) or Social Security number (if they are a sole proprietor), and (iv) the company's bank account information, including routing and account numbers.

3.4 **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 Services. 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 fewer 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 as conferred upon City by this Section. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

3.5 **Submitting False Claims.** The full text of San Francisco Administrative Code §21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Under 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. 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.

3.6 **Payment of Prevailing Wages – Not applicable.**

Article 4 Services and Resources

4.1 **Services Contractor Agrees to Perform.** Contractor agrees to perform the Services provided for in Appendix A, "Scope of Services." Officers and employees of the City are not authorized

to request, and the City is not required to reimburse the Contractor for, Services beyond the Scope of Services listed in Appendix A, unless Appendix A is modified as provided in Section 11.5, "Modification of this Agreement."

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 in this Agreement 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.

4.2 Qualified Personnel. Contractor shall utilize only competent personnel under the supervision of, and in the employment of, Contractor (or Contractor's authorized subcontractors) to perform the Services. Contractor will comply with City's reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement.

4.3 Subcontracting.

4.3.1 Contractor may subcontract portions of the Services only upon prior written approval of City. Contractor is responsible for its subcontractors throughout the course of the work required to perform the Services. All Subcontracts must incorporate the terms of Article 10 "Additional Requirements Incorporated by Reference" of this Agreement, unless inapplicable. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void.

4.3.2 City's execution of this Agreement constitutes its approval of the subcontractors listed below. No subcontractors will be used.

4.4 Independent Contractor; Payment of Employment Taxes and Other Expenses.

4.4.1 Independent Contractor. For the purposes of this Article 4, "Contractor" shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, 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, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. 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. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating

Contractor's compliance with this section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing consistent with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five (5) business days of Contractor's receipt of such notice, and consistent with Contractor policy and procedure, Contractor shall remedy the deficiency. If City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

4.4.2 Payment of Employment 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, Contractor agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this section.

4.5 Assignment. The Services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations may be assigned or delegated by Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void.

4.6 Warranty. Contractor warrants to City that the Services will be performed with the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the time the Services are performed so as to ensure that all Services performed are correct and appropriate for the purposes contemplated in this Agreement.

4.7 Liquidated Damages. By entering into this Agreement, Contractor agrees that in the event Contractor fails to fully staff each post covered in this Agreement, City will suffer actual damages that will be impractical or extremely difficult to determine. Contractor agrees that the sum of One Thousand Dollars (\$1000) per hour for each hour or portion thereof that Contractor fails to staff a post is not a penalty but is a reasonable estimate of the loss that City will incur based on inadequate staffing, established in light of the circumstances existing at the time this Agreement was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor under this Agreement or any other contract between City and Contractor. Such deductions shall not be considered a penalty, but rather agreed upon monetary damages sustained by City because of Contractor's failure to furnish deliverables to City within the time fixed or such extensions of time permitted in writing by City.

Article 5 Insurance and Indemnity

5.1 Insurance.

5.1.1 **Required Coverages.** 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:

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

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

(c) Commercial Automobile Liability Insurance with limits not less than \$2,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

(d) Professional liability insurance, applicable to Contractor's profession, with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with the Services.

5.1.2 Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

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

(b) 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.

5.1.3 All policies shall be endorsed to provide thirty (30) days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the City address set forth in Section 11.1, entitled "Notices to the Parties."

5.1.4 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 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.

5.1.5 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.

5.1.6 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.

5.1.7 Before commencing any Services, Contractor shall 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. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

5.1.8 If Contractor will use any subcontractor(s) to provide Services, Contractor shall require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees and the Contractor as additional insureds.

5.2 **Indemnification.** Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) arising from or in any way connected with any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; so long as such injury, violation, loss, or strict liability (as set forth in subsections (i) – (v) above) arises 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 or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, 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 arising directly or indirectly from the receipt by City, or any of its officers or agents, of Contractor's Services.

Article 6 Liability of the Parties

6.1 **Liability of City.** CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1, "PAYMENT," 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.

6.2 **Liability for Use of Equipment.** City shall not be liable for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or any of its subcontractors, or by any of their employees, even though such equipment is furnished, rented or loaned by City.

6.3 **Liability for 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.

Article 7 Payment of Taxes

7.1 Except for any applicable California sales and use taxes charged by Contractor to City, Contractor shall pay all taxes, including possessory interest taxes levied upon or as a result of this Agreement, or the Services delivered under this Agreement. Contractor shall remit to the State of California any sales or use taxes paid by City to Contractor under this Agreement. Contractor agrees to promptly provide information requested by the City to verify Contractor's compliance with any State requirements for reporting sales and use tax paid by City under this Agreement.

7.2 Contractor acknowledges 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:

7.2.1 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.

7.2.2 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 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.

7.2.3 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 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.

7.2.4 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.

Article 8 Termination and Default

8.1 Termination for Convenience

8.1.1 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.

8.1.2 Upon receipt of the notice of termination, 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:

- (a) Halting the performance of all Services under this Agreement on the date(s) and in the manner specified by City.
- (b) Terminating all existing orders and subcontracts, and not placing any further orders or subcontracts for materials, Services, equipment or other items.
- (c) 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.
- (d) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.
- (e) Completing performance of any Services that City designates to be completed prior to the date of termination specified by City.
- (f) 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.

8.1.3 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:

- (a) The reasonable cost to Contractor, without profit, for all Services prior to the specified termination date, for which Services 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. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

(b) A reasonable allowance for profit on the cost of the Services described in the immediately preceding subsection (a), provided that Contractor can establish, to the satisfaction of City, that Contractor would have made a profit had all Services under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

(c) The reasonable cost to Contractor of handling material or equipment returned to the supplier, delivered to the City or otherwise disposed of as directed by the City.

(d) 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.

8.1.4 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 Section 8.1.3. Such non-recoverable costs include, but are not limited to, anticipated profits on the Services under 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 Section 8.1.3.

8.1.5 In arriving at the amount due to Contractor under this Section, City may deduct: (i) all payments previously made by City for Services covered by Contractor's final invoice; (ii) any claim which City may have against Contractor in connection with this Agreement; (iii) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection 8.1.4; and (iv) in instances in which, in the opinion of the City, the cost of any Service performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected Services, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced Services in compliance with the requirements of this Agreement.

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

8.2 Termination for Default; Remedies.

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

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

3.5	Submitting False Claims.	10.10	Alcohol and Drug-Free Workplace
4.5	Assignment	10.13	Working with Minors
Article 5	Insurance and Indemnity	11.10	Compliance with Laws
Article 7	Payment of Taxes	13.1	Nondisclosure of Private, Proprietary or Confidential Information

(b) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or

statute and incorporated into this Agreement by reference, and such default continues for a period of ten days after written notice thereof from City to Contractor.

(c) Contractor (i) is generally not paying its debts as they become due; (ii) 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; (iii) makes an assignment for the benefit of its creditors; (iv) 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 (v) takes action for the purpose of any of the foregoing.

(d) A court or government authority enters an order (i) 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, (ii) 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 (iii) ordering the dissolution, winding-up or liquidation of Contractor.

8.2.2 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, where applicable, 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: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Contractor pursuant to the terms of this Agreement; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with the City.

8.2.3 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. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

8.2.4 Any notice of default must be sent by registered mail to the address set forth in Article 11.

8.3 **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.

8.4 **Rights and Duties upon Termination or Expiration.**

8.4.1 This Section and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

3.3.2	Payment Limited to Satisfactory Services	9.2	Works for Hire
3.4	Audit and Inspection of Records	11.6	Dispute Resolution Procedure
3.5	Submitting False Claims	11.7	Agreement Made in California; Venue
Article 5	Insurance and Indemnity	11.8	Construction
6.1	Liability of City	11.9	Entire Agreement
6.3	Liability for Incidental and Consequential Damages	11.10	Compliance with Laws
Article 7	Payment of Taxes	11.11	Severability
8.1.6	Payment Obligation	13.1	Nondisclosure of Private, Proprietary or Confidential Information
9.1	Ownership of Results		

8.4.2 Subject to the survival of the Sections identified in Section 8.4.1, above, if this Agreement is terminated prior to expiration of the term specified in Article 2, this Agreement shall 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.

Article 9 Rights In Deliverables

9.1 **Ownership of Results.** Any interest of Contractor or its subcontractors, in the Deliverables, including any drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors for the purposes of this agreement, shall become the property of and will be transmitted to City. However, unless expressly prohibited elsewhere in this Agreement, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

9.2 **Works for Hire.** If, in connection with Services, Contractor or its subcontractors creates Deliverables including, without limitation, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes, or any other original works of authorship, whether in digital or any other format, 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 shall be the property of the City. If any Deliverables created by Contractor or its subcontractor(s) under this Agreement are ever determined not to be works for hire under U.S. law, Contractor assigns all Contractor's copyrights to such Deliverables to the City, agrees to provide any material and execute any documents necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon subcontractor(s). With City's prior written approval, Contractor and its subcontractor(s) may retain and use copies of such works for reference and as documentation of their respective experience and capabilities.

Article 10 Additional Requirements Incorporated by Reference

10.1 **Laws Incorporated by Reference.** The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement ("Mandatory City Requirements") are available at http://www.amlegal.com/codes/client/san-francisco_ca/.

10.2 **Conflict of Interest.** By executing this Agreement, Contractor certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

10.3 **Prohibition on Use of Public Funds for Political Activity.** In performing the Services, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

10.4 **Reserved.**

10.5 **Nondiscrimination Requirements**

10.5.1 **Nondiscrimination in Contracts.** Contractor shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

10.5.2 **Nondiscrimination in the Provision of Employee Benefits.** San Francisco Administrative Code 12B.2. 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 employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

10.6 **Local Business Enterprise and Non-Discrimination in Contracting Ordinance.** Contractor shall comply with all applicable provisions of Chapter 14B ("LBE Ordinance"). Contractor is subject to the enforcement and penalty provisions in Chapter 14B.

10.7 **Minimum Compensation Ordinance.** Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. By signing and executing this Agreement, Contractor certifies that it is in compliance with Chapter 12P.

10.8 **Health Care Accountability Ordinance.** Contractor shall comply with San Francisco Administrative Code Chapter 12Q. Contractor shall choose and perform one of the Health Care Accountability options set forth in San Francisco Administrative Code Chapter 12Q.3. Contractor is subject to the enforcement and penalty provisions in Chapter 12Q.

10.9 **First Source Hiring Program.** Contractor must comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement, and Contractor is subject to the enforcement and penalty provisions in Chapter 83.

10.10 Alcohol and Drug-Free Workplace. City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

10.11 Limitations on Contributions. By executing 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. 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. Contractor must inform each such person of the limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to City.

10.12 Slavery Era Disclosure – Not applicable.

10.13 Working with Minors – Not applicable.

10.14 Consideration of Criminal History in Hiring and Employment Decisions

10.14.1 Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code ("Chapter 12T"), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement. The text of the Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. A partial listing of some of Contractor's obligations under Chapter 12T is set forth in this Section. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

10.14.2 The requirements of Chapter 12T shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco which excludes Airport property. Chapter 12T shall not apply when the application in a particular context

would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

10.15 Public Access to Nonprofit Records and Meetings – Not applicable.

10.16 Food Service Waste Reduction Requirements. Contractor shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the provided remedies for noncompliance.

10.17 Sugar-Sweetened Beverage Prohibition. Contractor agrees that it will not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Agreement.

10.18 Tropical Hardwood and Virgin Redwood Ban. Under San Francisco Environment Code Section 804(b), the City urges Contractor not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

10.19 Preservative Treated Wood Products – Not applicable.

Article 11 General Provisions

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

To City: Rob Forester, Operations & Security, P.O. Box 8097, San Francisco, CA 94128
Rob.Forester@flysfo.com, 650-821-3925

To Contractor: Christine M. Mueller, Covenant Aviation Security, 400 Quadrangle Drive, Suite A, Bolingbrook, IL 60440, christine.mueller@covenantsecurity.com, 630-771-1133

Any notice of default must be sent by registered mail. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party. If email notification is used, the sender must specify a receipt notice.

11.2 Compliance with Americans with Disabilities Act. Contractor shall provide the Services in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

11.3 Reserved.

11.4 Sunshine Ordinance. Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code §6250 *et. seq.*), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

11.5 Modification of this Agreement. This Agreement may not be modified, nor may compliance with any of its terms be waived, except as noted in Section 11.1, "Notices to Parties,"

regarding change in personnel or place, and except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with Department to submit to the Director of CMD any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (CMD Contract Modification Form).

11.6 **Dispute Resolution Procedure.**

11.6.1 **Negotiation; Alternative Dispute Resolution.** The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. If the Parties are unable to resolve the dispute, then, under San Francisco Administrative Code Section 21.36, Contractor may submit to the Contracting Officer a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the Contracting Officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, the Parties may resolve disputes by a mutually agreed-upon alternative dispute resolution process. If the parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations consistent with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

11.6.2 **Government Code Claim Requirement.** No suit for money or damages may be brought against the City until a written claim has first been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Contractor's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

11.7 **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.

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

11.9 **Entire Agreement.** This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 11.5, "Modification of this Agreement."

11.10 **Compliance with Laws.** Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and duly adopted rules 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.

11.11 **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.

11.12 **Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of City and Contractor, 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.

11.13 **Order of Precedence.** Contractor agrees to perform the services described below consistent with the terms and conditions of this Agreement, implementing task orders, the RFP, and Contractor's proposal dated June 29, 2018. The RFP and Contractor's proposal are incorporated by reference into this Agreement. Should there be a conflict of terms or conditions, this Agreement and any implementing task orders shall control over the RFP and the Contractor's proposal.

Article 12 Requirements For Airport Contracts

12.1 **Airport Commission Rules and Regulations.** Contractor agrees to comply with the Airport Commission's Rules and Regulations for the San Francisco International Airport as amended from time to time. A copy of the current Rules and Regulations can be found at: <http://www.flysfo.com/about-sfo/the-organization/rules-and-regulations>.

12.2 **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.

12.3 **Labor Peace / Card Check Rule.** Without limiting the generality of other provisions in this Agreement 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/Card Check Rule, Contractor shall, among other actions: (a) Enter into a Labor Peace/Card 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/Card 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.

12.4 **Federal Fair Labor Standards Act.** This Agreement incorporates by reference the provisions of 29 USC §201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor

standards for full and part time workers. Contractor has full responsibility to monitor compliance to the referenced statute or regulation. Contractor must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

12.5 Occupational Safety and Health Act of 1970. This Agreement incorporates by reference the requirements of 29 CFR §1910 with the same force and effect as if given in full text. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. Contractor retains full responsibility to monitor its compliance and their subcontractor’s compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (29 CFR §1910). Contractor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

12.6 Federal Nondiscrimination Requirements. During the performance of this Agreement, Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as “Contractor”) agrees as follows:

12.6.1 Compliance with Regulations. Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.

12.6.2 Nondiscrimination. Contractor, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR §21.

12.6.3 Solicitations for Subcontracts. Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by Contractor of Contractor's obligations under this Agreement and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.

12.6.4 Information and Reports. Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Airport or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Airport or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

12.6.5 Sanctions for Noncompliance. In the event of a contractor's noncompliance with the Non-discrimination provisions of this Agreement, the Airport will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

(a) Withholding payments to the contractor under the contract until the contractor complies; and/or

(b) Cancelling, terminating, or suspending a contract, in whole or in part.

12.6.6 Incorporation of Provisions. Contractor will include the provisions of paragraphs 12.6.1 through 12.6.6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. Contractor will take action with respect to any subcontract or procurement as the Airport or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, Contractor may request the Airport to enter into any litigation to protect the interests of the Airport. In addition, Contractor may request the United States to enter into the litigation to protect the interests of the United States.

12.6.7 Title VI List of Pertinent Nondiscrimination Acts and Authorities. During the performance of this Agreement, Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC §2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC §4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 USC. §794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR §27;
- The Age Discrimination Act of 1975, as amended, (42 USC §6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC §471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR §37 and 38 and the Department of Justice regulations at 28 CFR, parts 35 and 36;
- The Federal Aviation Administration’s Non-discrimination statute (49 USC §47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 CFR at 74087 to 74100);

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC §1681 *et seq.*).

12.7 **Quality Standards Program.** This Agreement is subject to the Airport's Quality Standards Program. The Airport's Employment and Quality Standards (EQS) office oversees the Airport's Quality Standards Program (QSP) which is applicable to Service Providers at the Airport whose employees are involved in performing services that have an impact on Airport security and safety. More information may be found at: <http://www.flysfo.com/about-sfo/the-organization/rules-and-regulations> . EQS may be contacted at (650) 821-1003.

Article 13 Data and Security

13.1 Nondisclosure of Private, Proprietary or Confidential Information.

13.1.1 If this Agreement requires City to disclose "Private Information" to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services. Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

13.1.2 In the performance of Services, Contractor may have access to City's proprietary or confidential information, the disclosure of which to third parties may damage City. If City discloses proprietary or confidential information to Contractor, such information must be held by Contractor in confidence and used only in performing 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 or confidential information.

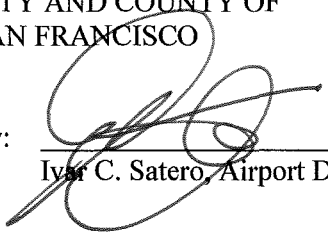

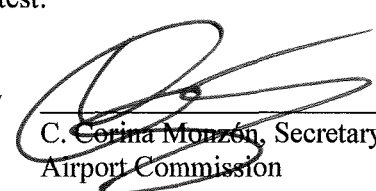
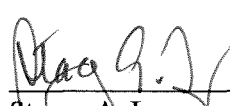
13.2 Payment Card Industry ("PCI") Requirements – Not applicable.

13.3 Business Associate Agreement – Not applicable.

Article 14 MacBride And Signature

14.1 **MacBride Principles -Northern Ireland.** The provisions of San Francisco Administrative Code §12F are incorporated by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

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

CITY AIRPORT COMMISSION CITY AND COUNTY OF SAN FRANCISCO	CONTRACTOR
By:  Ivan C. Satero, Airport Director	 Authorized Signature Christine M. Mueller
Attest:	Printed Name Vice President Finance and Contracts
By:  C. Corina Monzón, Secretary Airport Commission	Title Covenant Aviation Security, LLC
Resolution No: <u>18-0299</u>	Company Name 0000030737
Adopted on: <u>September 18, 2018</u>	City Supplier Number 400 Quadrangle Drive, Suite A
Approved as to Form:	Address Bolingbrook, Illinois 60440
Dennis J. Herrera City Attorney	City, State, ZIP 630-771-1133
By:  Stacey A. Lucas Deputy City Attorney	Telephone Number 35-2161799
	Federal Employer ID Number

Appendices

- A: Scope of Services
- B: Calculation of Charges

Appendix A Scope of Services

1. Description of Services

1.1 Contractor shall maintain a trained security staff of agreed upon size and capability to provide security guard and inspection services at San Francisco International Airport at the locations specified below. The days, locations and times of each post may vary. The guard service duties will include the following, depending on the location:

- a) Airport media identification inspection and validation
- b) Pre/Post security inspection of employees and their belongings
- c) Pre/Post security inspection of concession/tenant deliveries and merchandise
- d) General security services in response to TSA security directives or emergencies
- e) Security services at passenger security checkpoints and exit lanes during non-TSA screening hours
- f) Air Operations Area (AOA) access gate vehicle inspections and security services
- g) Maintaining a written log of daily post activities

1.2 All post positions operate in a highly regulated security environment, and inspectors/guards will be responsible for duties related to securing the Airport against all threats. Additionally, the nature of these posts requires that:

- a) Inspectors/guards be familiar with current TSA regulations regarding prohibited items; and
- b) Inspectors/guards have a State of California Guard Card.
- c) Contractor shall conform to the post staffing and hours of operation set forth in Appendix B and incorporated herein as though fully set forth.
- d) Contractor shall provide at least one (1) relief person when guards are on duty to ensure adequate relief. Uniformed Supervisors (as covered in 1.2(e) below) can augment the relief function and will provide relief on the back shift when it is efficient to do so.
- e) Contractor shall provide at least one (1) on-site supervisory personnel at the Airport when guards are on duty to ensure efficient provision of services. This position will be direct billed.
- f) Contractor shall ensure proper training and performance of all staff. Training occurring off post will be direct billable, as will On-the-Job-Training for new hires prior to them assuming Post responsibilities. Direct billable training is estimated at 12 hours per incumbent guard hired by the Contractor and 40 hours per new guard. Contractor shall provide the Airport with an advance copy of its training guide and curriculum and proposed schedule of training, and shall take into consideration and incorporate any changes and comments from the Airport. Contractor shall provide any necessary retraining as needed and/or when new TSA security directives are issued which affect these guard services. The Airport has the right to request that the Contractor reassign or remove any employee at any time for improper or unsatisfactory performance, including but not limited to theft, poor customer service, or violating any section of the Airport's Rules and Regulations, or TSA security directives.

- g) Services shall be performed by unarmed uniformed guard licensed by the State of California, possessing a State of California Guard Card, and familiar with current TSA regulations regarding prohibited items.
- h) Guards shall be uniformed, badged and neat in appearance and shall comply at all times with the Airport Rules and Regulations. Uniforms shall be provided and maintained at Contractor's expense. Uniforms shall be consistent in appearance style and color. Contractor's employees must also wear Airport-issued/approved valid identification badges, issued to the employee by the Airport's Security Access Office, at all times while on duty. These identification badges must be worn in a manner that makes them clearly visible at all times so as to present themselves in a professional manner.
- i) Conduct vendor screening consisting of conducting post-security inspections of all deliveries, merchandise, consumables, and employees accessing the Sterile Area (post security) from the Secured Areas (excluding airline flight crews and their belongings) in accordance with the Airport's TSA-Approved ASP, TSA Regulations and Security Directives. These inspection activities will occur at designated access points as noted in the charts above.
- j) Conduct inspection of deliveries/merchandise for items prohibited by TSA in accordance with current regulatory requirements, and verifying that commercially packaged in boxes, cartons, containers, racks or packages have not been altered or tampered with.
- k) Inspections of employees and their belongings shall consist of ensuring that employees are not bringing any items prohibited by TSA, in accordance with TSA regulatory requirements and the current TSA Permitted and Prohibited Items list. Relevant Airport Security and/or Operations Bulletins or other Airport instructional/directive documents may apply, including Airport Rules and Regulations.
- l) Contractor shall perform general security services as needed and respond to new Airport requests for compliance to new or revised TSA Security Directives and emergency situations. The Airport shall outline the conditions under which the additional work would apply. Contractor shall provide cell phones (Smartphones with voice and data service) as follows:
 - 6 Smartphones for Vendor Screening posts
 - 1 Smartphone for the on-site supervisor
 - 1 Smartphone for the Boarding Area E Exit Portal Post
 - 1 Smartphone for the Direct Access Point Inspection Team
 - Any new posts/assignments as determined by the Airport.
- m) The Airport will service and replace batteries for radios that are provided by SFO to the guards.
- n) Airport may conduct audits of activities of service provider.

2. Services Provided by Attorneys. The City Attorney must review in advance and approve in writing any request for services to be provided by a law firm or attorney. The City will not pay any invoices for services provided by law firms or attorneys, including as subcontractors of Contractor, unless the provider receives advance written approval from the City Attorney.

3. Reports. Contractor shall submit written reports as requested by the Airport Commission. Format for the content of such reports shall be determined by the Airport Commission. The timely submission of all reports is a necessary and material term and condition of this Agreement. The reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

4. **Department Liaison.** In performing the services provided for in this Agreement, Contractor's liaison with the Airport will be the person identified in Agreement at Section 11.1, Notices to the Parties. Such individual shall be the Contractor's primary point of contact for all purposes under this Agreement.

**Appendix B
Calculation of Charges**

The City will not pay any invoices for services provided by law firms or attorneys, including as subcontractors of Contractor, unless the provider receives advance written approval from the City Attorney.

Compensation under this contract shall consist of two categories: Reimbursable Costs and Management Fee Amount.

1. Reimbursable Costs

Contractor acknowledges and agrees that as the employer, it alone shall be responsible for fulfilling its obligation to its employees under the law and under any collective bargaining agreement(s), if applicable.

The Airport shall only reimburse actual costs approved by the Airport in advance and supported by documentation acceptable to the Airport. There shall be no mark-up on reimbursable costs.

a) Direct Labor Costs

Direct Labor Costs include hourly wage rates and cost of fringe benefits for guard staff. Contractor shall submit payroll records supported by timecards or other verifiable documentation to support any application for reimbursement of Direct Labor Costs. The City shall reimburse actual hourly wages. The City shall also reimburse Contractor for the actual, documented cost of fringe benefits incurred by Contractor for front line staff at the rate established at the time of contract award for the first twenty (20) months of the Agreement. This shall be the 'first term'. In the event the actual cost of fringe benefits in subsequent contract years exceeds the 'first term' baseline, the cost of the increase shall be borne equally by the Contractor and the City.

Hourly wage rates for all team members.

<u>Title</u>	<u>Hourly Rate</u>
Guard	\$17.00 to \$20.52
Supervisor	\$19.50 to \$23.74

Wage rates during the initial and/or option years may be adjusted at the sole discretion of the Airport only to account for changes in any relevant City and County legislation and/or Airport Rules and Regulations.

b) Staffing Plan

Contractor's staffing plan must be sufficient to provide coverage to the locations listed below:

Minimum Hourly Staffing Levels

Location	# Posts	Hours	Hours/Day	Days/week
Vendor Post 1	1	0500-2100	16	7
Vendor Post 2	1	0230-2200	19.5	7
Vendor Post 3	1	0500-1700	12	7
Vendor Post 4	1	0500-1700	12	7
Vendor Post 5	1	0500-1800	13	7
Vendor Post 6	1	0500-1300	8	5
Administrative Offices	2	0800-1700	9	5
Exit Lane 1	1	0100-0500	4	7
Exit Lane/Checkpoint 2	2	0030-0430	8	7
Exit Lane 3	1	0030-0400	3.5	7
Exit Lane 4	1	0030-0430	4	7
Exit Lane 5	1	0015-0400	3.75	7
Exit Lane 6	1	1700-0500	12	7
Exit Lane 7	1	0100-0400	3	7
Airport Controlled Exit Portal	1	0001-2359	24	7
Guard Relief	1	0001-2359	24	7
Guard Training	Varies	Varies	TBD	TBD
Insider Threat Random Employee Inspections & As-Needed Services	Variable	Random	Random	Random (Total of 200 hours/week)
Supervisor	1	0001-2359	24	7

Note: The Airport may designate alternative and/or additional locations if needed either on a permanent or on-call/temporary basis.

c) Indirect Labor Costs

The following Indirect Labor Costs are not reimbursable:

- Employee Recruitment
- Initial background investigations for employee security access badging
- Additional, subsequent background investigations
- Airport Photo Identification Badge
- Replacement of lost or stolen Airport photo identification badge
- Replacement of lost or stolen employee name badges
- Food and beverages
- Payroll Services
- Employee Uniform and Dry Cleaning Costs
- Timekeeping Equipment, Telephones, Intranet
- Postage, Express Delivery, and Business Cards

No other Indirect Labor Costs are reimbursable in the absence of prior written approval by the Airport Director or designee.

d) Equipment

- Airport will provide hand-held two-way radios for Employee use.
- Other equipment, materials, and supplies shall be reimbursable only if such costs are reasonable and have been approved in advance by the Airport

2. Management Fee

The amount set forth below shall constitute full compensation to the Contractor for any and all management fees, profit, overhead and nonreimbursable costs (direct or indirect), associated with the performance of services under this Contract. An itemized list of reimbursable and non-reimbursable costs is provided in Section 1 above.

The Management Fee shall include all costs associated with all principals, managers, assistant managers and administrative staff. The Management Fee shall not change for the entire contract term. Contractor shall invoice the City for payment of the Management Fee on a regular monthly basis.

49,576.00
Monthly Management Fee

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

Modification No. 1

THIS MODIFICATION (this “Modification”) is made as of July 1, 2020, in San Francisco, California, by and between **Covenant Aviation Security, LLC** (“Contractor”), and the City and County of San Francisco, a municipal corporation (“City”), acting by and through its Airport Commission, hereinafter referred to as “**Commission.**”

RECITALS

- A. City and Contractor have entered into the Agreement for the San Francisco International Airport (the “Airport” or “SFO”) (as defined below); and,
- B. The Commission is authorized to enter into all contracts which relate to matters under its jurisdiction; and
- C. On September 18, 2018, by Resolution No. 18-0299, the Commission awarded this Agreement to the Contractor in an amount not-to-exceed \$5,500,000; and
- D. The City has approved the contracting-out of the services under this Agreement upon the certification of the Controller that the services can be performed by a contractor at a lower cost than by City employees at current salary and benefit levels, Board of Supervisors Resolution No. 167-18, adopted May 22, 2018; and
- E. City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to exercise the first two-year option, increase the contract amount, and update standard contractual clauses; and
- F. Due to the financial impacts that the Airport and City are currently experiencing as a result of the COVID-19 pandemic, City requested that all service contractors reduce the management fees by at least 5% under their contracts, which will assist in maintaining the financial feasibility of Airport’s continued procurement of Services under this Agreement, of acknowledged value to Contractor;
- G. On June 2, 2020, by Resolution No. 20-0096, the Commission approved this Modification to the Agreement to exercise the first two-year option, increase the contract amount by \$6,285,254 for a new total not-to-exceed amount of \$11,785,254; and
- H. On July 21, 2020, by Resolution No. 342-20, the Board of Supervisors approved the Agreement under San Francisco Charter Section 9.118; and
- I. The Contractor represents and warrants that it is qualified to perform the services required by City under this Agreement;

Now, THEREFORE, the parties agree that the following Articles have been changed as follows:

- 1. New Section 1.1 Agreement or Contract Documents** is replaced as follows:

1.1 “Agreement” or “Contract Document” means this document, including all attached appendices, and all applicable City Ordinances and “Mandatory City Requirements” which are specifically incorporated by reference into this Agreement. The term “Agreement” shall mean the Agreement dated September 18, 2018 between Contractor and City.

2. **New Section 1.10 “Other Terms”** is hereby added to the Agreement as follows:

1.10 “Other Terms.” Terms used and not defined in this Modification shall have the meanings assigned to such terms in the Agreement.

3. **New Section 1.11 “City Data”** is hereby added to the Agreement as follows:

1.11 “City Data”. “City Data” or “Data” includes all data collected, used, maintained, processed, stored, or generated by or on behalf of the City in connection with this Agreement. This includes data that is provided by a third-party for use under this Agreement but shall exclude Contractor Intellectual Property.

4. **Section 1.12 “Confidential Information”** is hereby added to the Agreement as follows:

1.12 Confidential Information.

1.12.1 “Confidential Information” means confidential City information including, but not limited to, personally-identifiable information (“PII”), protected health information (“PHI”), or individual financial information (collectively, “Proprietary or Confidential Information”) that is subject to local, state or federal laws restricting the use and disclosure of such information, including, but not limited to, Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 et seq.); the California Confidentiality of Medical Information Act (Civil Code § 56 et seq.); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C, and E of part 164); and Administrative Code Chapter 12M (“Chapter 12M”).

1.12.2 “Confidential Information” also means any and all nonpublic information, whether written, electronic, or oral, concerning or relating to Airport technology, computer, or data systems, processes, or procedures, or Critical Infrastructure Information or Protected Critical Infrastructure Information as defined under the Homeland Security Act of 2002 and 6 CFR §29.2, which information or access to such information is supplied by the Airport or on behalf of the Airport to Contractor or otherwise acquired by Contractor during the course of dealings with the Airport. Additionally, “Confidential Information” includes security or security-related information, whether or not such information constitutes sensitive security information (“SSI”) as provided under 49 CFR Part 1520. In the event Contractor acquires SSI, it shall treat such information in conformance with federal law and the provisions of this Contract.

1.12.3 “Confidential Information” is confidential regardless of whether such information is in its original form, a copy, or a derivative product. “Derivative” means written or electronic material created from or with, or based on Confidential Information (i.e., a report analyzing Confidential Information shall also be considered Confidential Information). Confidential Information shall also mean proprietary, trade secret or other protected information, identified as Confidential Information by the Airport.

5. **New Section 1.13 “Administrative Code”** means San Francisco Administrative Code.

6. **Article 2. Term of the Agreement, Section 2.1** is hereby amended to extend the term of the contract for two years for a new ending date of June 30, 2022.

7. **Article 3. Financial Matters, 3.3. Compensation, Section 3.3.1 Payment** is hereby amended to increase the total compensation payable by an amount not to exceed \$6,285,254 for a new total not to exceed amount of \$11,785,254.

8. **Section 4.5 Assignment** is hereby deleted in its entirety and replaced with **New Section 4.5 Assignment** as follows:

4.5 Assignment. The Services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations may be directly or indirectly assigned, novated, hypothecated, transferred, or delegated by Contractor, or, where the Contractor is a joint venture, a joint venture partner, (collectively referred to as an “Assignment”) unless first approved by City by written instrument executed and approved in the same manner as this Agreement in accordance with the Administrative Code. The City’s approval of any such Assignment is subject to the Contractor demonstrating to City’s reasonable satisfaction that the proposed transferee is: (i) reputable and capable, financially and otherwise, of performing each of Contractor’s obligations under this Agreement and any other documents to be assigned, (ii) not forbidden by applicable law from transacting business or entering into contracts with City; and (iii) subject to the jurisdiction of the courts of the State of California. A change of ownership or control of Contractor or a sale or transfer of substantially all of the assets of Contractor shall be deemed an Assignment for purposes of this Agreement. Contractor shall immediately notify City about any Assignment. Any purported Assignment made in violation of this provision shall be null and void.

9. **Article 7, Payment of Taxes** is hereby replaced in its entirety with the following:

7.1 Contractor to Pay All Taxes. Except for any applicable California sales and use taxes charged by Contractor to City, Contractor shall pay all taxes, including possessory interest taxes levied upon or as a result of this Agreement, or the Services delivered under this Agreement. Contractor shall remit to the State of California any sales or use taxes paid by City to Contractor under this Agreement. Contractor agrees to promptly provide information requested by the City to verify Contractor’s compliance with any State requirements for reporting sales and use tax paid by City under this Agreement.

7.2 Possessory Interest Taxes. Contractor acknowledges 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:

7.2.1 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.

7.2.2 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 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.

7.2.3 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 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.

7.2.4 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.

7.3 Withholding. Contractor agrees that it is obligated to pay all amounts due to the City under the San Francisco Business and Tax Regulations Code during the term of this Agreement. Pursuant to Section 6.10-2 of the San Francisco Business and Tax Regulations Code, Contractor further acknowledges and agrees that City may withhold any payments due to Contractor under this Agreement if Contractor is delinquent in the payment of any amount required to be paid to the City under the San Francisco Business and Tax Regulations Code. Any payments withheld under this paragraph shall be made to Contractor, without interest, upon Contractor coming back into compliance with its obligations.

10. Section 8.2.1(a) is amended to include 10.20 Management of City Data and Confidential Information to the table.

11. Section 8.4.1 is amended to include 10.20 Management of City Data and Confidential Information to the table.

12. Section 10.11 Limitations on Contributions is hereby deleted in its entirety and replaced with **New Section 10.11** as follows:

10.11 Limitations on Contributions. By executing this Agreement, Contractor acknowledges its obligations under section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of 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, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. 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 10% in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

13. New Section 10.20 Management of City Data and Confidential Information is hereby added to the Agreement as follows;

10.20 Management of City Data and Confidential Information

10.20.1 Access to City Data. City shall at all times have access to and control of City Data and shall be able to retrieve it in a readable format, in electronic form and/or print, at any time, at no additional cost.

10.20.2 Use of City Data and Confidential Information. Contractor agrees to hold City Data and Confidential Information received from or created on behalf of the City in strictest confidence. Contractor shall not use or disclose City Data or Confidential Information except as permitted or required by this Agreement or as otherwise authorized in writing by the City. Any storage of City Data outside the United States is subject to prior written authorization by the City. Access to City Data and Confidential Information must be strictly controlled and limited to Contractor's staff assigned to this project on a need-to-know basis only. Contractor is provided a limited non-exclusive license to use the City Data or Confidential Information solely for performing its obligations under the Agreement and not for Contractor's own purposes or later use. Nothing herein shall be construed to confer any license or right to the City Data or Confidential Information, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data or Confidential Information by Contractor, subcontractors or other third-parties is prohibited. For purpose of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted by the service, for commercial purposes, advertising or advertising-related purposes, or for any purpose other than service delivery, security analysis or service delivery analysis that is not explicitly authorized.

10.20.3 Disposition of City Data and Confidential Information. Upon termination of Agreement or request of City, Contractor shall within forty-eight (48) hours or such time as agreed by the City and Contractor return all City Data and Confidential Information, including all original media. After Contractor has received written confirmation from City that City Data and Confidential Information has been successfully transferred to City, Contractor shall within ten (10) business days purge all City Data and Confidential Information from its servers, any hosted environment Contractor has used in performance of this Agreement, work stations that were used to process the data or for production of the data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such purge occurred within five (5) business days of the purge.

14. New Section 10.21 Consideration of Salary History is hereby added to the Agreement as follows:

10.21 Consideration of Salary History. Contractor shall comply with Administrative Code Chapter 12K ("Chapter 12K"), the Consideration of Salary History Ordinance or "Pay Parity Act." Contractor is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Chapter 12K. Information about and the text of Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history> . Contractor is required to

comply with all of the applicable provisions of 12K, irrespective of the listing of obligations in this Section

15. New Section 11.14 Incorporation of Recitals is hereby added to the Agreement as follows:

11.14 Incorporation of Recitals. The matters recited above are hereby incorporated into and made part of this Agreement.

16. New Section 11.15 Notification of Legal Requests is hereby added to the Agreement as follows:

11.15 Notification of Legal Requests. Contractor shall immediately notify City upon receipt of any subpoenas, service of process, litigation holds, discovery requests and other legal requests (“Legal Requests”) related to all data given to Contractor by City in the performance of this Agreement (“City Data” or “Data”), or which in any way might reasonably require access to City’s Data, and in no event later than 24 hours after it receives the request. Contractor shall not respond to Legal Requests related to City without first notifying City other than to notify the requestor that the information sought is potentially covered under a non-disclosure agreement. Contractor shall retain and preserve City Data in accordance with the City’s instruction and requests, including, without limitation, any retention schedules and/or litigation hold orders provided by the City to Contractor, independent of where the City Data is stored.

17. Appendix A – Scope of Services, 1.2(I), is amended to increase the number of Smartphones for Vendor Screening posts from 6 to 7.



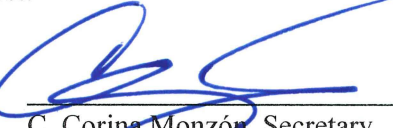
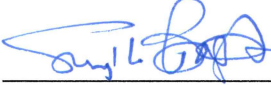
18. Appendix B – Calculation of Charges, 1 a) Direct Labor Costs is amended to add the following sentence to the end of that first paragraph: The preceding direct labor costs will also apply to the option years if both option years are exercised.

19. Appendix B – Calculation of Charges, 2. Management Fee is amended to reduce the Monthly Management Fee for the term July 1, 2020 to June 30, 2021 from \$49,576 per month to \$47,097.20 per month.

20. Effective Date. Each of the changes set forth in this Modification shall be effective on and after the date of this Modification.

21. Legal Effect. Except as expressly changed by this Modification, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and City have executed this Modification as of the date first referenced above.

CITY	CONTRACTOR
AIRPORT COMMISSION CITY AND COUNTY OF SAN FRANCISCO	
By:  Ivar C. Satero, Airport Director	 Authorized Signature
Attest:	Christine M. Mueller Printed Name
By:  C. Corina Monzón, Secretary Airport Commission	Vice President Finance and Contracts Title
Resolution No: <u>20-0096</u>	Covenant Aviation Security, LLC Company Name
Adopted on: <u>June 2, 2020</u>	0000030737 City Supplier ID
Approved as to Form: Dennis J. Herrera City Attorney	400 Quadrangle Drive, Suite A Address
By:  Stacey A. Lucas, Deputy City Attorney	Bolingbrook, IL 60440 City, State, ZIP
	(630) 771-1133 Telephone Number
	35-2161799 Federal Employer ID Number

AIRPORT COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 21-0244

APPROVAL OF MODIFICATION NO. 2 TO CONTRACT NO. 50178, WITH COVENANT AVIATION SECURITY, LLC TO EXERCISE THE LAST 2-YEAR OPTION TO EXTEND THE CONTRACT TERM THROUGH JUNE 30, 2024, AND INCREASE THE CONTRACT AMOUNT BY \$7,900,324 FOR A NEW TOTAL NOT-TO-EXCEED AMOUNT OF \$19,685,578

WHEREAS, the Airport's Security Program (ASP), approved by the Transportation Security Administration (TSA) requires the Airport to conduct inspections of all deliveries, merchandise, consumables, and employees accessing the Sterile Area of the Airport and to provide other security services around the Airport; and

WHEREAS, on September 18, 2018, by Resolution No. 18-0299, the Commission awarded Contract No. 50178, General Airport Security Services to Covenant Aviation Security, LLC for an initial period of twenty (20) months, with two 2-year options to extend, at the sole discretion of the Commission, for an amount not to exceed \$5,500,000; and

WHEREAS, on June 2, 2020, by Resolution No. 20-0096, the Commission approved Modification No. 1 to exercise the first 2-year option to extend the contract term through June 30, 2022, and increase the contract amount by \$6,285,254 for a new not-to-exceed amount of \$11,785,254, and reduce the management fee for the term July 1, 2020 to June 30, 2021 from \$49,576 per month to \$47,097.20 per month, due to the financial impacts of the COVID-19 pandemic on the City and the Airport; and

WHEREAS, Staff seeks Commission approval to exercise the last 2-year option to extend the contract term and increase the contract amount; now, therefore, be it

RESOLVED, that this Commission approves Modification No. 2 to Contract No. 50178 with Covenant Aviation Security, LLC to exercise the last 2-year option to extend the contract term through June 30, 2024, and increase the contract amount by \$7,900,324, for a new total not-to-exceed amount of \$19,685,578; and, be it further

RESOLVED, that the Commission Secretary is hereby directed to request approval of the Modification No. 2 to Contract No. 50178 from the Board of Supervisors pursuant to Section 9.118 of the Charter of the City and County of San Francisco.

I hereby certify that the foregoing resolution was adopted by the Airport Commission

= DEC 21 2021

at its meeting of _____


Secretary



MEMORANDUM

December 21, 2021

TO: AIRPORT COMMISSION
Hon. Larry Mazzola, President
Hon. Eleanor Johns, Vice President
Hon. Everett A. Hewlett, Jr.
Hon. Jane Natoli
Hon. Malcolm Yeung

21-0244
= DEC 21 2021

FROM: Airport Director

SUBJECT: Approval of Modification No. 2 to Contract No. 50178 with Covenant Aviation Security, LLC

DIRECTOR'S RECOMMENDATION: APPROVE MODIFICATION NO. 2 TO CONTRACT NO. 50178, WITH COVENANT AVIATION SECURITY, LLC TO EXERCISE THE LAST 2-YEAR OPTION TO EXTEND THE CONTRACT TERM THROUGH JUNE 30, 2024, AND INCREASE THE CONTRACT AMOUNT BY \$7,900,324 FOR A NEW TOTAL NOT-TO-EXCEED AMOUNT OF \$19,685,578 AND DIRECT THE COMMISSION SECRETARY TO SEEK APPROVAL OF THE MODIFICATION FROM THE BOARD OF SUPERVISORS PURSUANT TO SECTION 9.118 OF THE CHARTER OF THE CITY AND COUNTY OF SAN FRANCISCO.

Executive Summary

Commission approval is requested for Modification No. 2 to Contract No. 50178 with Covenant Aviation Security, LLC to exercise the last 2-year option to extend the contract term through June 30, 2024, and increase the contract amount by \$7,900,324. for a new total not-to-exceed amount of \$19,685,578.

Background

SFO's Airport's Security Program (ASP), approved by the Transportation Security Administration (TSA), requires the Airport to conduct inspections of all deliveries, merchandise, consumables, and employees accessing the Sterile Area, which is situated past the screening checkpoints. TSA requires the Airport to provide guards to staff the passenger security checkpoint exit lanes during non-TSA screening hours and perform random employee inspections at direct access points. Covenant Aviation Security provides the required Airport screening services on vendors bringing items to the secured area of the Airport, on visitors at the entryway of the Airport Commission offices, to guard exit lanes when TSA personnel are not on site, and to perform badge checks on individuals using secure bypass doors throughout the Airport.

THIS PRINT COVERS CALENDAR ITEM NO. 2

AIRPORT COMMISSION		CITY AND COUNTY OF SAN FRANCISCO				
LONDON N. BREED MAYOR	LARRY MAZZOLA PRESIDENT	ELEANOR JOHNS VICE PRESIDENT	EVERETT A. HEWLETT, JR.	JANE NATOLI	MALCOLM YEUNG	IVAR C. SATERO AIRPORT DIRECTOR

On September 18, 2018, by Resolution No. 18-0299, the Commission awarded Contract No. 50178, General Airport Security Services to Covenant Aviation Security, LLC for an initial period of twenty (20) months, with two 2-year options, for an amount not to exceed \$5,500,000 for the initial 20-month period.

On June 2, 2020, by Resolution No. 20-0096, the Airport entered into Modification No. 1 to exercise the first 2-year option to extend the contract term through June 30, 2022, and increase the contract amount by \$6,285,254 for a new total not-to-exceed amount of \$11,785,254, and reduce the management fee for the term July 1, 2020 to June 30, 2021 from \$49,576 per month to \$47,097.20 per month, due to the financial impacts of the COVID-19 pandemic on the City and the Airport.

Staff seeks Commission approval to exercise the last 2-year option to extend the contract term through June 30, 2024, and increase the contract amount by \$7,900,324, for a new total not-to-exceed amount of \$19,685,578.

Because the contract exceeds \$10,000,000, approval of the Board of Supervisors is required for Modification No. 2 to Contract No. 50178 pursuant to San Francisco Charter Section 9.118(b).

Recommendation

I recommend this Commission adopt the attached resolution (i) approving Modification No. 2 to Contract No. 50178 with Covenant Aviation Security, LLC to exercise the last 2-year option to extend the term through June 30, 2024, and increase the contract amount by \$7,900,324 for a new total not-to-exceed amount of \$19,685,578 and (ii) directing the Commission Secretary to seek approval of the Modification from the Board of Supervisors pursuant to Section 9.118 of the Charter of the City and County of San Francisco.



Ivar C. Satero
Airport Director

Prepared by: Jeff Littlefield
Chief Operating Officer

Attachment



San Francisco Ethics Commission

25 Van Ness Avenue, Suite 220, San Francisco, CA 94102

Phone: 415.252.3100 . Fax: 415.252.3112

ethics.commission@sfgov.org . www.sfethics.org

Received On:

File #: 220010

Bid/RFP #: 50178

Notification of Contract Approval

SFEC Form 126(f)4

(S.F. Campaign and Governmental Conduct Code § 1.126(f)4)

A Public Document

Each City elective officer who approves a contract that has a total anticipated or actual value of \$100,000 or more must file this form with the Ethics Commission within five business days of approval by: (a) the City elective officer, (b) any board on which the City elective officer serves, or (c) the board of any state agency on which an appointee of the City elective officer serves. For more information, see: <https://sfethics.org/compliance/city-officers/contract-approval-city-officers>

1. FILING INFORMATION

TYPE OF FILING	DATE OF ORIGINAL FILING (for amendment only)
Original	
AMENDMENT DESCRIPTION – Explain reason for amendment	

2. CITY ELECTIVE OFFICE OR BOARD

OFFICE OR BOARD	NAME OF CITY ELECTIVE OFFICER
Board of Supervisors	Members

3. FILER'S CONTACT

NAME OF FILER'S CONTACT	TELEPHONE NUMBER
Angela Calvillo	415-554-5184
FULL DEPARTMENT NAME	EMAIL
office of the clerk of the Board	Board.of.Supervisors@sfgov.org

4. CONTRACTING DEPARTMENT CONTACT

NAME OF DEPARTMENTAL CONTACT	DEPARTMENT CONTACT TELEPHONE NUMBER
Cathy widener	650-821-5023
FULL DEPARTMENT NAME	DEPARTMENT CONTACT EMAIL
AIR Airport Commission	cathy.widener@flsfo.com

5. CONTRACTOR	
NAME OF CONTRACTOR Covenant Aviation Security, LLC (CAS)	TELEPHONE NUMBER 630-771-1133
STREET ADDRESS (including City, State and Zip Code) 1112 W. Boughton Road, Suite 355, Bolingbrook, IL 6044	EMAIL

6. CONTRACT		
DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)	ORIGINAL BID/RFP NUMBER 50178	FILE NUMBER (If applicable) 220010
DESCRIPTION OF AMOUNT OF CONTRACT \$19,685,578		
NATURE OF THE CONTRACT (Please describe) Contractor to provide General Airport Security Services in domestic and international terminals at SFO, including Airport media identification inspection and validation, pre/post security inspection of employees and their belongings, pre/post security inspection of concessions/tenant deliveries and merchandise, general security in response to TSA security directives or emergencies, security services at passenger security checkpoints and exit lanes during non-TSA screening hours, Air Operations Area (AOA) access gate vehicle inspections and security services, and maintaining written log of daily post activities		

7. COMMENTS

8. CONTRACT APPROVAL	
This contract was approved by:	
<input type="checkbox"/>	THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM
<input checked="" type="checkbox"/>	A BOARD ON WHICH THE CITY ELECTIVE OFFICER(S) SERVES Board of Supervisors
<input type="checkbox"/>	THE BOARD OF A STATE AGENCY ON WHICH AN APPOINTEE OF THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM SITS

9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
1	Jacobson/CAS/Contractor	Melinda	Board of Directors
2	Rascia/CAS/Contractor	Louis	Board of Directors
3	Murray/CAS/Contractor	Michael	CEO
4	Bolles/CAS/Contractor	Michael	Other Principal Officer
5	Park/CAS/Contractor	Jerry	CFO
6	Mueller/CAS/Contractor	Christine	Other Principal Officer
7	Brown/CAS/Contractor	James	Other Principal Officer
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			

9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor’s board of directors; (B) the contractor’s principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
20			
21			
22			
23			
24			
25			
26			
27			
28			
29			
30			
31			
32			
33			
34			
35			
36			
37			
38			

9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor’s board of directors; (B) the contractor’s principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
39			
40			
41			
42			
43			
44			
45			
46			
47			
48			
49			
50			

Check this box if you need to include additional names. Please submit a separate form with complete information. Select “Supplemental” for filing type.

10. VERIFICATION

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information I have provided here is true and complete.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

<p>SIGNATURE OF CITY ELECTIVE OFFICER OR BOARD SECRETARY OR CLERK</p> <p>BOS Clerk of the Board</p>	<p>DATE SIGNED</p>
---	---------------------------

January 7, 2022

Ms. Angela Calvillo
Clerk of the Board
Board of Supervisors
City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

Subject: Approval of Modification No. 2 to Contract No. 50178 for General Airport Security Services with Covenant Aviation Security, LLC for General Airport Security Services

Dear Ms. Calvillo:

Pursuant to Section 9.118 of the City Charter, I am forwarding for the Board of Supervisors' approval a proposed Resolution approving Modification No. 2 to Contract No. 50178 for General Airport Security Services with Covenant Aviation Security, LLC, and the City and County of San Francisco, acting by and through its Airport Commission.

The following is a list of accompanying documents:

- Board of Supervisors Resolution; and
- Approved Airport Commission Resolution No. 21-0244 and
- Memorandum to the Airport Commission recommending Resolution No. 21-0244; and
- Form SFEC Form 126f4BOS for the Board of Supervisors; and
- Copy of Original Agreement No. 50178; and
- Copy of Modification No. 1 Agreement No. 50178.

The following person may be contacted regarding this matter:

Rob Forester, Director, Security Emergency Management & Communications, Safety & Security Services
Rob.Forester@flysfso.com (650) 821-3925

Very truly yours,

Kantrice Ogletree /s/

Kantrice Ogletree
Commission Secretary

Enclosures

cc: Rob Forester, Safety, Security and Airside Services
Cathy Widener, Governmental Affairs