

File No. 240672

Committee Item No. 10

Board Item No. 40

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee Date July 17, 2024

Board of Supervisors Meeting Date July 23, 2024

Cmte Board

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Department/Agency Cover Letter and/or Report |
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| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
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| <input type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
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OTHER (Use back side if additional space is needed)

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>AIR Resolution No. 14-0167/Memo 8/19/2014</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>AIR Resolution No. 19-0146/Memo 6/4/2019</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>AIR Resolution No. 24-0126/Memo 6/4/2024</u> |
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Completed by: Brent Jalipa Date July 11, 2024

Completed by: Brent Jalipa Date July 19, 2024

1 [Section 559 Reimbursable Services Agreement - Retroactive - United States Customs and
2 Border Protection at San Francisco International Airport]

3 **Resolution retroactively approving the Section 559 Reimbursable Services Agreement,**
4 **Contract No. 50020, between United States Customs and Border Protection and the**
5 **City and County of San Francisco, acting by and through its Airport Commission, with**
6 **a commencement date of November 25, 2014, for an indefinite term, terminable upon**
7 **either party by 90 days' written notice.**

8
9 WHEREAS, On January 3, 2013, the United States of America implemented the
10 Section 559 Reimbursable Services Program (Program) to enhance security and service
11 levels at airports and ports through expanded staffing by the United States Customs and
12 Border Protection (CBP); and

13 WHEREAS, On August 19, 2014, by Resolution No. 14-0167, the Airport Commission
14 (Commission) authorized the Airport Director to enter into a Section 559 Reimbursable
15 Services Agreement with CBP (Agreement) to implement the Program at San Francisco
16 International Airport (Airport) by authorizing reimbursement of as-needed overtime pay for
17 CBP staff providing federal inspection services at the International Terminal; and

18 WHEREAS, As the Agreement had no defined term, no specified funding, and is
19 terminable by either party upon 90 days' notice, the approval provided for a five-year
20 authorization period, with a projected not to exceed amount of \$1,480,000 for Fiscal Year (FY)
21 2014-2015, with Staff returning to the Commission annually for each fiscal year's funding; and

22 WHEREAS, On June 14, 2019, by Resolution No. 19-0146, the Commission approved
23 an additional four-year authorization period for the Agreement with additional funding of up to
24 \$4,500,000 for the corresponding period, which period expired on December 31, 2023; and

25

1 WHEREAS, Since the start of the Agreement to date, reimbursements to CBP have
2 totaled approximately \$5,700,000; and

3 WHEREAS, Staff sees a continued need for the Program due to anticipated increases
4 in international flight activity for the busy summer travel season, and anticipates that the
5 required funding for the Agreement for FY2024-2025 will total approximately \$750,000; and

6 WHEREAS, The Agreement is not being modified, but Staff is now seeking renewed
7 approval for the Agreement given its indefinite term, with the Agreement remaining in effect
8 until terminated by either party with 90 days' written notice, and

9 WHEREAS, Staff will seek approval for the funding of the reimbursements to CBP
10 under the Agreement as part of the Airport's annual budget approval process going forward;
11 and

12 WHEREAS, On June 4, 2024, by Resolution No. 24-0126, the Commission renewed its
13 approval of the Agreement with CBP for an indefinite term, terminable upon either party by 90
14 days' written notice, and directed the Commission Secretary to request retroactive approval of
15 the Agreement from the Board of Supervisors (Board) under Charter, Section 9.118; and

16 WHEREAS, Charter, Section 9.118(b), of the provides that agreements entered into by
17 a department, board, or commission having a term in excess of 10 years shall be subject to
18 approval by the Board by Resolution; and

19 WHEREAS, At the time of the initial approval in 2014 and at the renewed approval in
20 2019, Airport staff, in consultation with the City Attorney's Office, structured the Commission
21 approvals of the Agreement as approvals of separate limited duration authorization periods,
22 not anticipating that the term of the Agreement would exceed 10 years, and considered the
23 Agreement to be under the thresholds, which would require Board approval under Charter,
24 Section 9.118, and the Agreement was not presented to the Board for approval; and

1 WHEREAS, As the Agreement has no defined term, and now that the Agreement is
2 anticipated to exceed 10 years in duration later this year, in order to resolve any uncertainty
3 about whether Board approval is required due to the indefinite term, the Commission has
4 requested retroactive Board approval of the Agreement under Charter, Section 9.118, back to
5 2014; and

6 WHEREAS, Copies of the fully executed Agreement are on file with the Clerk of the
7 Board of Supervisors in File No. 240672; now, therefore, be it

8 RESOLVED, That the Board of Supervisors hereby retroactively approves the Section
9 559 Reimbursable Services Agreement, Contract No. 50020, with the United States Customs
10 and Border Control for an indefinite term, terminable upon either party by 90 days' written
11 notice.

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<p>Item 10 File 24-0672</p>	<p>Department: San Francisco International Airport (Airport)</p>
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EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would retroactively approve an agreement between the Airport and CBP to participate in the Reimbursable Services Program for an indefinite term commencing from November 25, 2014.

Key Points

- As authorized under Section 559 of the Consolidated Appropriations Act, 2014, the U.S. Customs and Border Protection’s (CBP) Reimbursable Services Program enables CBP to provide additional inspection services and expanded staffing at the request of participating entities, such as airports. The San Francisco International Airport (Airport) joined the program in July 2014. In August 2014, the Airport Commission approved a five-year agreement with CBP with an initial not-to-exceed funding of \$1.48 million. The agreement did not have a defined term and could be terminated by either party upon 90 days’ notice. Airport staff returned to the Commission annually for funding approval of each fiscal year. The Airport is seeking Board of Supervisors approval now because the agreement, although it does not have a definite term, will soon exceed the ten-year threshold for Board approval.
- Under the agreement, CBP provides services such as inspections processing, baggage control, agricultural processing, and administrative and enforcement functions necessary to support inspections activities. As airline passenger travel fluctuates, the Airport submits requests for CBP staff and services, on an as-needed basis. CBP overtime is then reimbursed by the Airport.

Fiscal Impact

- Based on monthly invoices between FY 2014-15 through FY 2019-20, CBP reimbursements have totaled approximately \$5.7 million.
- The Airport is anticipating a need for services in FY 2024-25 due to a projected increase in international passenger travel. The department projects that funding for CBP services in FY 2024-25 will total approximately \$750,000. The source of funds for the reimbursements is the Airport’s operating funds.

Recommendations

- Amend the proposed resolution to correctly state that the agreement is terminable upon either party by 90 days’ written notice.
- 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

As authorized under Section 559 of the Consolidated Appropriations Act, 2014, the U.S. Customs and Border Protection's (CBP) Reimbursable Services Program enables CBP to provide additional inspection services and expanded staffing at the request of participating entities, such as airports. The San Francisco International Airport (Airport) joined the program in July 2014. In August 2014, the Airport Commission approved a five-year authorization for the Airport Director to contract with CBP with an initial not-to-exceed funding of \$1.48 million. The agreement did not have a defined term and could be terminated by either party upon 90 days' notice. Airport staff returned to the Commission annually for funding approval of each fiscal year. In June 2019, the Commission approved an additional four-year funding period with CBP for up to \$4.5 million through December 31, 2023.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would retroactively approve an agreement between the Airport and CBP to participate in the Reimbursable Services Program for an indefinite term commencing from November 25, 2014. The agreement states that it can be terminated by either party upon 90 days' written notice; however, the proposed resolution incorrectly states 60 days' written notice. We recommend that the resolution be amended to state the correct number of days.

According to the Airport, CBP's required agreement template does not define or allow for an end term date. Consequently, the agreement with CBP does not specify an end term date. The Airport is seeking retroactive Board approval because the agreement will exceed 10 years after August 2024.

Scope of Services

Under the agreement, CBP provides services such as inspections processing, baggage control, agricultural processing, and administrative and enforcement functions necessary to support inspections activities. As airline passenger travel fluctuates, the Airport submits requests for CBP staff and services on a voluntary, as-needed basis. CBP is then reimbursed for overtime pay of staff. According to the Airport, the department audits monthly billing against overtime hours requested. Invoices from CBP include information on how the overtime hours were allocated to support international passenger processing. CBP does not share staffing levels or scheduling assignments due to security concerns, which limits auditing work.

FISCAL IMPACT

According to the Airport, based on monthly invoices between FY 2014-15 through FY 2019-20, CBP reimbursements have totaled approximately \$5.7 million. During the COVID-19 pandemic, there were no requests for CBP services, and services have currently not restarted. However, the Airport is anticipating a need for services in FY 2024-25 due to a projected increase in international passenger travel. The department projects that funding for CBP services in FY 2024-25 will total approximately \$750,000.¹ The source of funds for the reimbursements is the Airport’s operating funds.

RECOMMENDATIONS

- 1. Amend the proposed resolution to correctly state that the agreement is terminable upon either party by 90 days’ written notice.
- 2. Approve the proposed resolution.

¹ The Airport projected \$750,000 by totaling the average expenditures for the months of June through September and January (which the Airport states are roughly the heavier travel periods) for the timeframe of FY 2014-15 through FY 2019-20, equaling \$712,783. The Airport then added 5 percent to this amount for unexpected needs and rounded up to \$750,000.

U.S. CUSTOMS AND BORDER PROTECTION
“SECTION 559” REIMBURSABLE SERVICES AGREEMENT
BETWEEN

U.S. CUSTOMS AND BORDER PROTECTION AND CITY AND COUNTY OF SAN FRANCISCO

I. General

Under the provisions of Section 559 of Division F of the *Consolidated Appropriations Act, 2014* (Public Law 113-76) (hereinafter, “the Act”) the Commissioner of U.S. Customs and Border Protection (“CBP”) is authorized to enter into agreements to provide CBP services to requesting parties on a reimbursable basis. However, CBP is prohibited by law from entering into any agreement that would unduly and permanently impact other services funded by an appropriations act or any other account derived by the collection of fees.

The purpose of this document is to establish a partnership and agreement between CBP and the party requesting such services (“Requestor”) that will generate an alternative funding source to reimburse CBP for services in order to promote the United States economy and border security (“Agreement”). Under this Agreement, the payments received by CBP shall be used to reimburse CBP for the costs incurred in providing any requested services, which may include additional or expanded services at existing CBP facilities or the provision of services at new facilities. As a partnership, it is the intention of the parties to this Agreement to maintain an ongoing spirit of transparency, collaboration, and mutual respect with regards to this program.

The Requestor shall be considered a private sector or government entity requesting CBP services as the term is used in the Act. The party requesting to enter into this Agreement with CBP is:

Requestor Name: City and County of San Francisco, acting by and through its Airport Commission (“SFO or Airport”)

Location(s) covered by this Agreement: San Francisco International Airport

Locations covered by this Agreement may be reduced or expanded upon mutual agreement in writing by both parties pursuant to Section XI, and in accordance with the Act and other applicable laws and regulations.

A determination has been made by the Commissioner of CBP, upon the recommendation of CBP’s Office of Field Operations (“OFO”), that the Requestor named above has met the requirements for entering into an agreement for provision of CBP services as authorized by the Act.

The Requestor and CBP (collectively, “the parties”) will also develop and mutually agree upon the terms of a separate Memorandum of Understanding (“MOU”) that will contain further details about the specific services, schedules, and other conditions for the location(s) covered by this

Agreement. The MOU will not be a legally binding document, like the terms of this Agreement, and the terms of the MOU will not affect or in any way override the terms of this Agreement. Although the MOU may be amended by the parties, such an amendment will have no effect on the terms of this Agreement.

Any part of this Agreement found to be unlawful or unenforceable in any respect shall be construed so as to give it the maximum effect permitted by law and, where such a construction is not permitted by law, that part of this Agreement shall be deemed severable from the rest of the Agreement, which will remain in full force and effect.

Designated Representatives:

The Requestor and CBP each name and designate the following officials as having respectively the authority, for the Requestor, to request or cancel services for the location(s) under this Agreement and, for CBP, the authority to approve or deny services.

The party entering into this Agreement on behalf of CBP is the Commissioner of CBP. With respect to CBP's authority under this Agreement, the Commissioner hereby designates the Director of Field Operations ("DFO") with jurisdiction over the location(s) the authority to review and approve requests for CBP services under this Agreement. In the absence of the DFO, this official for CBP will be the Port Director for the location(s). In the absence of the Port Director, this official for CBP will be an Assistant Port Director. This designation will also apply to any person acting in the capacity of the DFO, Port Director, and/or Assistant Port Director.

The party entering into this Agreement on behalf of the Requestor and who is also the deciding and approving official for the Requestor is the Airport Director of the Airport. For purposes of this Agreement, the Airport Director hereby delegates his/her authority as the reviewing and approving official to Chief of Business and Finance Officer. This delegated authority will also reside in any person Acting in the capacity of the Chief of Business and Finance Officer and their designee.

Additional Designees: Each party may, from time to time, appoint additional designees to act on its behalf by sending advanced written notice to the other party.

II. Definitions

1. "Baseline overtime amount" means CBP's budgeted overtime allocation for a port of entry at the time that services are requested under this Agreement. Baseline amounts may be subject to change during the fiscal year due to appropriations and budgeting conditions wherein, for example, CBP may determine to adjust overtime allocations for ports of entry. Regardless of

any reimbursements received by CBP from the Requestor for overtime services, CBP may, within its sole discretion, expend its baseline overtime amounts in a reasonable manner so as to maximize the total amount of overtime services it provides.

2. "CBP personnel" or "employees" means employees of CBP, such as CBP Officers, CBP Agriculture Specialists, or any other CBP employees or contractors, that are authorized to provide the services outlined in this agreement on a reimbursable basis.
3. "Overtime services" means services for which CBP personnel, pursuant to applicable law, are entitled to receive overtime pay that are in excess of services payable from the baseline overtime amount.
4. "Overtime pay" means the compensation that a CBP employee, pursuant to applicable law, is entitled to receive, in excess of the employee's base pay, for performing officially-assigned work in excess of the 40 hours of the employee's regularly-scheduled administrative workweek or in excess of 8 hours in a day. This term also includes the compensation which CBP personnel, pursuant to applicable law, are entitled to receive in excess of the employee's base pay for performing officially-assigned work on holidays, Sundays, evenings, and/or any other purpose authorized by law, as well as any benefits and indirect costs incurred by CBP related to overtime services.
5. "Reimbursable costs" means the costs of CBP services that are to be provided according to this Agreement and for which CBP will seek reimbursement from the Requestor. Such costs may include all costs incurred by CBP involving the provision of such CBP services, which include but are not limited to, salaries (including overtime pay) and benefits of CBP employees as well as other direct and indirect costs incurred by CBP related to those services, such as hiring, training, and equipping costs, program administration, additions of facilities, alterations or expansions of facilities (where appropriate), technology and equipment, travel and transportation expenses, and any temporary or permanent relocation expenses incurred as a result of the services requested. For CBP-serviced air ports of entry, the term "reimbursable costs" is limited to mean "overtime pay," as defined above.
6. "Services" or "CBP Services" means any activities of any employee or contractor of CBP pertaining to customs, agricultural processing, border security, and/or immigration inspection-related matters at ports of entry.

III. Facility Requirements

At existing CBP-serviced facilities, the Requestor agrees to provide, maintain, and equip any necessary alteration or expansion of the facility at no cost to the U.S. Government in accordance

with Section 559(e)(1)(C) of the Act. At facilities where CBP does not currently provide services, the Requestor agrees to provide, maintain, and equip such facilities at no cost to the U.S. Government. In the event new facilities are required or alterations and/or expansions of existing facilities are required, such requirements will be specified in a separate agreement, such as a nominal or no-cost lease. All facilities are required to meet relevant CBP safety and technical design standards. In addition, for any altered, expanded, or new CBP facility covered by this Agreement, the Requestor also agrees to reimburse CBP for costs associated with those CBP requirements that can only be met by CBP acquiring the necessary equipment and related services. CBP will regularly inspect the facilities to verify that all CBP requirements are met. The Requestor's failure to meet these requirements throughout the duration of this Agreement may result in CBP denying service requests and/or terminating this Agreement in accordance with Section XI.

IV. CBP Services to be Reimbursed

The CBP services to be reimbursed by the Requestor will only include those reimbursable costs in excess of that which CBP would have regularly provided at the location under existing resource, budget, and operating conditions.

The new or additional services to be provided under this Agreement may include, but are not limited to, primary inspections processing, secondary inspections processing, baggage control, border security services, agricultural processing, and any enforcement or administrative functions necessary to support increased inspectional activities as requested under this Agreement. Services may be performed in any area of the designated port of entry or any place where CBP personnel have the authority to perform their duties. Such services may even include the hiring and training of new CBP employees required as a result of any requested services, where CBP deems appropriate.

V. Requests for CBP Services

The Requestor will initiate a request for services electronically by sending an email to an established CBP email account. Upon receipt, CBP will consider whether to grant the request. In assessing whether to approve a request, CBP will determine the number of CBP personnel and total hours needed to perform the requested services, based on any available advance passenger, conveyance, cargo information, other service requests that may have been received, and/or any other relevant information, including the availability of necessary resources. In an effort to maintain reasonable wait times by pre-identifying travelers, conveyances, or cargo requiring additional security reviews, the Requestor will use its best efforts to obtain and provide CBP with available and accessible advance passenger, conveyance, and/or cargo data.

The Requestor must make a request for services as far in advance as possible so that CBP has adequate time to review resource availability and evaluate the impact on overall operations. If CBP is not given adequate time to consider a request, CBP may not be able to approve the request for services.

CBP and the Requestor will jointly review the resources needed to provide any requested services covered by this Agreement. Protocols for establishing the duration of requested services (e.g., work assignments for CBP personnel) and consultations about scheduling services will be further outlined in the MOU.

Notwithstanding any other provision of this Agreement, CBP retains sole administrative and operational control over the CBP personnel or its contracted employees at the port of entry and/or location(s) covered by this Agreement. The Requestor shall not exercise any control or authority over CBP employees, methods of operation, policies or training of employees.

VI. CBP Responsibilities

CBP will consult with the Requestor to establish the length and frequency of services requested under this Agreement. The details of this process will be memorialized in the MOU.

CBP will send bills to the Requestor every four weeks to recover the reimbursable costs for all CBP services provided during that four-week period.

CBP will provide monthly reports to the Requestor, which will include information on how the CBP services billed for under this Agreement are being utilized and additional metrics on how they may be impacting operations for the location(s) affected by this Agreement. If no services are requested or provided during a given month, CBP will not generate such a report for that month.

CBP must adhere to the provisions of the CBP Collective Bargaining Agreement relating to CBP personnel and for overtime assignments which include, but are not limited to, least cost principles. Efforts will be made by CBP to accommodate requests for overtime, subject to such applicable constraints.

VII. Requestor Responsibilities

The Requestor agrees to reimburse CBP for all reimbursable costs requested under this Agreement. Requestor also agrees to remit payments electronically to CBP as instructed on each bill.

The Requestor agrees to immediately notify CBP once the Requestor becomes aware of the need for any changes to requests made pursuant to this Agreement that have already been approved by CBP. Regardless of such notice, the Requestor will still be responsible for all of CBP's reimbursable costs relating to such approved requests that cannot be reasonably avoided.

Moreover, the Requestor should maintain liquid assets sufficient to pay all of CBP's reimbursable costs that it is anticipated will be owed by the Requestor for a two-month period. The Requestor agrees to notify CBP within a reasonable amount of time if it expects to become unable to pay the reimbursable costs owed to CBP pursuant to this Agreement.

The Requestor agrees to execute and adhere to the terms of an appropriate non-disclosure agreement ("NDA") pertaining to all information marked as For Official Use Only, including operational reporting data and metrics provided to the Requestor by CBP. Each member, partner, or employee of the Requestor who has a justifiable need to view such sensitive CBP-provided information must sign an NDA. Failure of the Requestor and/or any member, partner, or employee of the Requestor to adhere to the terms of the NDA may result in penalties as outlined in that document, the denial of service requests under this Agreement, and/or the termination of this Agreement pursuant to Section XI. The further dissemination of any CBP-provided information that is not subject to an NDA and that was received pursuant to this Agreement requires the advance approval in writing of CBP.

VIII. Unanticipated Service Adjustments

The Requestor acknowledges that during emergency situations, contingency operations, sudden changes in workload, unanticipated operational impacts, changes to CBP's budget and/or resource allocations for the ports of entry affected by this Agreement, CBP reserves the right to terminate, suspend, or reduce unapproved or approved services under this Agreement. The occurrence of such event(s) shall be solely determined at the discretion of CBP, and CBP is not limited to the events listed herein. CBP shall promptly notify the Requestor when any such event described in this paragraph occurs. The Requestor further acknowledges that, were such an event to occur, CBP may be required to redirect officers on assignment under the terms of this Agreement to other duties. Any bill for any of these unanticipated service adjustments will reflect any corresponding reduction made to the level of service and reimbursable costs pursuant to this section.

The Requestor also acknowledges that there will be situations where CBP experiences an unanticipated increase in workload as a direct result of a request made by the Requestor under this Agreement. In such situations, in order to maintain safe and essential operating conditions, CBP may be required to retain personnel on assignment pursuant to the request beyond the original times sought by the Requestor. When this occurs, the Requestor agrees that its original

request will be amended by CBP to require the Requestor to reimburse CBP for the additional costs incurred by CBP when having to extend the workload assignments. If this occurs, CBP will promptly notify the Requestor and CBP's corresponding bill to the Requestor will reflect the increased charges.

IX. Payment of Reimbursable Costs

All reimbursable costs charged by CBP will be assessed in accordance with CBP accounting principles and standards, and applicable statutes and regulations including, without limitation, Title 19 of the Code of Federal Regulations, Part 24. Reimbursable costs will be billed every four weeks and shall be remitted by the Requestor to CBP within 15 calendar days of the transmission of each bill. The Requestor will electronically remit these payments to CBP in the manner described on each bill's instructions. Each bill will state the amount due, the location, and the total number of hours of services performed under the Agreement for that billing period.

If the Requestor disagrees with any aspect of a bill, it must contest the bill in writing to the CBP Port Director with jurisdiction over the location where the billed service was provided within 60 days of the date of mailing of the bill. Failure to contest a bill in a timely fashion will result in the waiver of any refund claims as to such bill. The Requestor acknowledges that, even if the Requestor contests any charge(s) for which CBP makes demand, the Requestor will continue to make timely payment of all CBP charges demanded pursuant to this Agreement. This includes, but is not limited to, demands for payment made at all times during the pendency of any administrative level reviews or during any periods of judicial review. CBP will coordinate an immediate review of a contested charge and provide a response or corrective action within 30 calendar days of CBP's receipt of the Requestor's written notice of contesting any bill.

If the Requestor fails to comply with the requirement to continue making timely payments of CBP charges, in addition to a reservation of CBP's termination rights provided in Section XI, the Requestor acknowledges that CBP may deny requests for service under this Agreement until such time as full payment of any outstanding amounts owed to CBP have been paid to CBP. Requestor further acknowledges that Section 559(e)(6) of the Act provides CBP with certain non-contractual remedies for non-payment in the form of a penalty, liquidated damages, and/or interest assessments. If all outstanding charges have been paid to CBP, CBP may consider mitigation of any penalty and/or liquidated damages it is authorized to impose under the Act. Further, the Requestor may also be subjected to cross servicing referral and enrollment in the Treasury Offset Program, collection procedures, credit bureau reporting, and litigation by the Department of Justice.

X. Service Commencement Date

Reimbursable services will become available on a date mutually determined by CBP and the Requestor.

XI. Duration, Revision, and Termination of Agreement

This Agreement shall become effective on the day that all signatures of the required parties have been made, as listed at the end of this Agreement. Further, this Agreement may be amended in writing at any time by mutual agreement of the parties.

If any amounts billed and due to CBP under the terms of this Agreement are not paid within 15 calendar days of demand, subject to such terms as stated in Section IX above, or if CBP determines that the Requestor breached any other material condition of this Agreement, CBP has the right to deny service requests under this Agreement immediately and/or terminate this Agreement effective upon 30-days prior written notice.

In addition, this Agreement may be terminated for any reason by either party upon 90-days written notice to the other party.

XII. Availability of Funds

In accordance with 31 U.S.C. § 1341, 41 U.S.C. § 6301, and any other applicable federal laws, CBP's provision of services and every term and condition set forth in this Agreement is contingent upon the availability of appropriated funds. Nothing in this Agreement may be considered as implying that Congress will at a later date appropriate funds sufficient to meet any deficiencies. Additionally, nothing in this Agreement may be construed or interpreted to obligate CBP to any current or future expenditure of funds in advance of, or in excess of, the availability of appropriations, nor does this Agreement obligate CBP to spend funds for any particular project or purpose, even if funds are available.

XIII. Consultation Process

In the event of a dispute concerning any aspect of this Agreement, either party may request consultations at any time. The attendance of any outside party during the consultation process is permitted if necessary to resolve the dispute and mutually agreed to by the parties to this Agreement in advance of any such consultation.

The parties will first attempt to resolve any disputes arising under this Agreement through consultation with the other party at the CBP port level, i.e., with the Port Director and his/her staff at the affected location(s).

If an issue raised by the Requestor at the CBP port level cannot be resolved, the Requestor shall then seek resolution through the CBP Director, Field Operations (“DFO”), with jurisdiction over the affected location(s).

If the issue raised by the Requestor continues to be unresolved after consultation with the DFO, the Requestor shall then seek resolution through CBP’s OFO Headquarters, which shall provide the final agency decision. The Requestor may only seek OFO Headquarters review after exhausting its administrative remedies both at the port-level and the DFO level.

Consultations requested with respect to the amounts of any CBP bill for services do not absolve the Requestor of its obligations, stated in section IX, to continue to pay reimbursable costs to CBP while the consultation process continues.

XIV. Assignment, Sale, Transfer

Only upon CBP’s advanced written approval, the Requestor may transfer, assign, or sell its rights under this Agreement to a third party. The new party will be required to execute a novation agreement to substitute its name for the party to this Agreement. Further, upon such transfer, assignment, or sale, all obligations contained in this Agreement will remain in effect as to CBP and the new party to the Agreement.

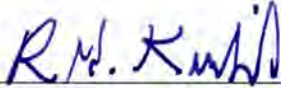
XV. Limitation of Liability

This Agreement is not intended to establish any liability, unless otherwise established by law, between the Requestor and CBP employees or the general public, nor is the Agreement intended to alter or reallocate any potential defense or immunity of any party which may be authorized by law.

Under the Federal Tort Claims Act, 28 U.S.C. § 2671, *et seq.* (“FTCA”), the United States is liable for the negligent or wrongful acts or omissions of any employee of the Government and claims for money damages, injury, loss of property, personal injury or death, that occur while that employee is acting within the scope of his or her office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

XVI. Authorization

Agreement to these terms is attested to by the signatures ascribed below. It is agreed that each individual who is signing on behalf of each party is authorized to enter into this binding Agreement.



Commissioner
U.S. Customs and Border Protection
Date: **NOV 25 2014**



John L. Martin, Airport Director
San Francisco International Airport
Date:

Handwritten initials

NOV 17 2014

CBP for such services. In 2013, under Section 560 of the Act, the pilot Program was implemented wherein five international airports were designated and entered into Agreements with CBP, including Houston Intercontinental, Dallas/Fort Worth, Miami, El Paso, and South Texas.

On April 14, 2014, in anticipation of expanded flight schedules at SFO by carriers such as United Airlines and Etihad Airways, and to maintain SFO's competitive edge for growing new international flight activity, SFO submitted an application to CBP to be designated as one of five airports in the Program for 2014 under Section 559 of the Act. On April 22, 2014, CBP announced that SFO had been designated as a participating airport.

The first beneficiary of the expanded CBP staffing will be our newest carrier, Etihad Airways, which will commence direct flights between San Francisco and Abu Dhabi on November 18, 2014, with arrival times in the early morning.

Proposal

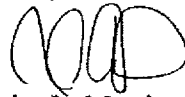
Staff is requesting that the Airport Commission delegate to the Airport Director the authority to enter into an Agreement with CBP under the following terms and conditions, which are consistent with Federal law:

- Term:** Five (5) years commencing upon execution of the Agreement by both parties.
- Early Termination:** Upon ninety (90) days' written notice by either party.
- Form of Agreement:** "Section 559" Reimbursable Fee Agreement and a supplementary Annex, which sets forth details about specific services, schedules, and other conditions for the port location.
- CBP Services:** Activities of any employee or contractor of CBP pertaining to customers and immigration inspection-related matters. Specific services are to be requested by SFO and mutually agreed to by both parties.
- Reimbursable Costs:** Limited to "overtime pay", defined as compensation that a CBP officer, pursuant to applicable law, is entitled to receive, in excess of officer's base pay, for performing officially assigned work in excess of 40 hours of the regularly scheduled work week or in excess of 8 hours in a day. Overtime pay also includes any benefits and indirect costs incurred by CBP related to overtime services. Reimbursable Costs are to be paid monthly.
- Program Cost:** Projected at an amount not-to-exceed \$1.48 million for FY 2014/15. Staff will return to the Commission annually for each fiscal year's funding.

Upon execution of the Agreement, the Airport Director will return to the Commission to provide further details on the CBP Services to be provided and related Reimbursable Costs.

Recommendation

I recommend adoption of the attached Resolution that delegates to the Airport Director the authority to enter into a "Section 559" Reimbursable Fee Agreement (Contract No. 50020) with U.S. Customs and Border Protection for provision of CBP Services in the International Terminal for a period of five (5) years and at a projected cost not-to-exceed \$1.48 million for FY 2014/15. Thereafter, staff will return to the Commission annually for each fiscal year's funding.



John L. Martin
Airport Director

Prepared by: Leo Fermin
Chief Business and Finance Officer

Attachment

AIRPORT COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 14-0167

DELEGATION OF AUTHORITY TO THE AIRPORT DIRECTOR TO ENTER INTO A "SECTION 559" REIMBURSABLE FEE AGREEMENT BETWEEN U.S. CUSTOMS AND BORDER PROTECTION ("CBP") AND THE SAN FRANCISCO INTERNATIONAL AIRPORT TO PROVIDE EXPANDED CBP SERVICES IN THE INTERNATIONAL TERMINAL AT A MAXIMUM NOT-TO-EXCEED AMOUNT OF \$1.48 MILLION

- WHEREAS, on January 3, 2013, the United States of America implemented a pilot program, known as the Reimbursable Fee Agreement Program (the "Program") under Section 560 of the Consolidated and Further Continuing Appropriations Act of 2013; and
- WHEREAS, the intent of the Program is to enhance security and improve service levels at ports of entry into the United States pursuant to Reimbursable Fee Agreements, which create public-private partnerships between CBP and private sector or government entities, thereby enabling designated airports to request expanded hours of CBP staffing in the Federal Inspection Services ("FIS") areas to accommodate flights that arrive outside the established operational hours of CBP; and
- WHEREAS, on April 22, 2014, CBP announced that the San Francisco International Airport ("SFO") had been designated as a participating airport in the Program for 2014 and is eligible to enter into a "Section 559" Reimbursable Fee Agreement, Contract No. 50020 (the "Agreement") with CBP; and
- WHEREAS, the Agreement will be for a term of five (5) years and provide for reimbursement to CBP for certain CBP services (the "Reimbursable Costs"), as proposed by SFO and negotiated with CBP, pertaining to customer and immigration inspection-related matters; and
- WHEREAS, the Reimbursable Costs will be limited to payment of "overtime pay", as defined in the Memorandum, at a projected cost not-to-exceed \$1.48 million for FY 2014/15; thereafter, staff will return to the Commission annually for each fiscal year's funding; a
- WHEREAS, staff is requesting that the Airport Commission delegate to the Airport Director the authority to enter into the Agreement with CBP to expand CBP staffing in the International Terminal; now, therefore, be it
- RESOLVED, that this Commission hereby delegates to the Airport Director the authority to enter into a "Section 559" Reimbursable Fee Agreement, Contract 50020, with U.S. Customs and Border Protection, with a term of five (5) years and at a projected cost not-to-exceed \$1.48 million for FY 2014/15 for provision of CBP Services in the International Terminal; and be it further
- RESOLVED, that amounts remaining unspent for FY 2014/15 costs may be carried over to subsequent fiscal years; and be it further
- RESOLVED, that staff will return to the Commission annually for approval of each fiscal year's funding.

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

at its meeting of

AUG 19 2014


Secretary

AIRPORT COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 19-0146

AUTHORIZATION TO EXTEND THE COMMISSION-APPROVED REIMBURSEMENT PERIOD FOR THE “SECTION 559” REIMBURSABLE FEE AGREEMENT, WITH U.S. CUSTOMS AND BORDER PROTECTION, AND APPROVAL OF UP TO AN ADDITIONAL \$4.5 MILLION IN FUNDING THROUGH DECEMBER 31, 2023

WHEREAS, on January 3, 2013, the United States of America implemented the Reimbursable Fee Agreement Program to enhance security and service levels at airports and ports through expanded staffing by U.S. Customs and Border Protection (CBP) pursuant to “Section 559” Reimbursable Fee Agreement (Agreement); and

WHEREAS, on August 19, 2014, pursuant to Resolution No. 14-0167, the Airport Commission (Commission) approved the Agreement between San Francisco International Airport (Airport) and CBP for a five-year period (CBP Reimbursement Period), which expires December 13, 2019; and

WHEREAS, the Agreement authorizes reimbursement of as-needed overtime pay for CBP staff providing Federal Inspection Services at the International Terminal; and

WHEREAS, from commencement of the Agreement to date, reimbursements to CBP total approximately \$4.7 million; and

WHEREAS, the Airport now seeks Commission authorization to extend the CBP Reimbursement Period through December 31, 2023 (Extended Reimbursement Period) and approve additional funding up to \$4.5 million for the corresponding period; now, therefore, be it

RESOLVED, this Commission hereby authorizes the Extended CBP Reimbursement Period; and, be it further

RESOLVED, this Commission hereby approves funding up to an additional \$4.5 million over the Extended CBP Reimbursement Period; and, be it further

RESOLVED, funding is subject to the City Controller’s certification of available funds; and, be it further

RESOLVED, amounts remaining unspent each fiscal year may be carried over to subsequent fiscal years.

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

at its meeting of ~~2019~~ **JUN 4** = 2019


Secretary



MEMORANDUM

June 4, 2019

TO: AIRPORT COMMISSION
Hon. Larry Mazzola, President
Hon. Linda S. Crayton, Vice President
Hon. Eleanor Johns
Hon. Richard J. Guggenlime
Hon. Malcolm Yeung

19-0146

JUN 4 - 2019

FROM: Airport Director

SUBJECT: Authorization to Extend the Commission-Approved Reimbursement Period and Approval of a Funding Request of up to an Additional \$4.5 Million for the "Section 559" Reimbursable Fee Agreement with U.S. Customs and Border Protection

DIRECTOR'S RECOMMENDATION: AUTHORIZE THE EXTENSION OF THE COMMISSION-APPROVED REIMBURSEMENT PERIOD FOR THE "SECTION 559" REIMBURSABLE FEE AGREEMENT WITH U.S. CUSTOMS AND BORDER PROTECTION, AND APPROVE A FUNDING REQUEST OF UP TO AN ADDITIONAL \$4.5 MILLION FOR THE CORRESPONDING PERIOD.

Executive Summary

San Francisco International Airport (Airport) entered into an agreement with U.S. Customs and Border Protection (CBP) to provide expanded overtime services of CBP inspection officers at the International Terminal (Agreement). Although the Agreement with CBP, which commenced on December 14, 2014, does not have a specific term, the Airport Commission authorized a five-year reimbursement period. From the start of the Agreement to date, reimbursements to CBP total approximately \$4.7 million. Staff seeks Airport Commission (Commission) authorization to extend the Commission-approved reimbursement period to December 31, 2023 (Extended Reimbursement Period) and approval of additional funding of up to \$4.5 million for the corresponding period.

Background

On January 3, 2013, the United States of America implemented the Reimbursable Fee Agreement Program under Sections 559 and 560 of the Consolidated and Further Continuing Appropriations Act of 2013 (Program). The Program improves security and service levels in the processing of international travelers and cargo in excess of what CBP regularly provides under existing resource, budget, and operating conditions.

THIS PRINT COVERS CALENDAR ITEM NO. 12

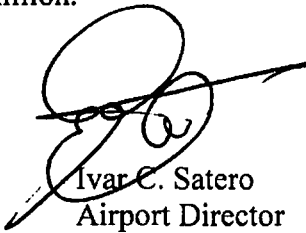
By Resolution No. 14-0167, adopted by the Commission on August 19, 2014, the Commission approved a five-year CBP reimbursement period, from December 14, 2014 through December 13, 2019. Since the start of the Agreement to date, reimbursements to CBP total approximately \$4.7 million. Staff sees a continued need for the Program due to consistent increases in international flight activity and associated incoming passenger wait times at the Airport.

Proposal

Staff requests the Commission's authorization of the Extended Reimbursement Period. Staff further requests the Commission's approval of up to an additional \$4.5 million in funding for the corresponding period.

Recommendation

I recommend the Commission approves the Extended Reimbursement Period with corresponding funding of up to an additional \$4.5 million.



Ivar C. Satero
Airport Director

Prepared by: Leo Fermin
Chief Business and Finance Officer

Attachment

AIRPORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO
RESOLUTION NO. 24-0126

**APPROVAL OF THE SECTION 559 REIMBURSABLE SERVICES AGREEMENT
WITH U.S. CUSTOMS AND BORDER PROTECTION**

- WHEREAS, on January 3, 2013, the United States of America implemented the Section 559 Reimbursable Services Program (Program) to enhance security and service levels at airports and ports through expanded staffing by U.S. Customs and Border Protection (CBP); and
- WHEREAS, on August 19, 2014, by Resolution No. 14-0167, the Airport Commission (Commission) authorized the Airport Director to enter into a Section 559 Reimbursable Services Agreement with CBP (Agreement) to implement the Program at San Francisco International Airport (Airport) by authorizing reimbursement of as-needed overtime pay for CBP staff providing Federal Inspection Services at the International Terminal; and
- WHEREAS, as the Agreement had no definite term, no specified funding, and is terminable by either party upon 60 days' notice, the approval provided for a five-year funding period, with a projected cost not to exceed amount of \$1.48 million for FY 2014/15 and Staff returning to the Commission annually for each fiscal year's funding; and
- WHEREAS, on June 4, 2019, by Resolution No. 19-0146, the Commission approved an additional four-year funding period for the Agreement with additional funding of up to \$4.5 million for the corresponding period, which period expired on December 31, 2023; and
- WHEREAS, since the start of the Agreement to date, reimbursements to CBP have totaled approximately \$5.7 million; and
- WHEREAS, Staff sees a continued need for the Program due to anticipated increases in international flight activity for the busy summer travel season, and anticipates that the required funding for the Agreement for FY 24/25 will total approximately \$750,000; and
- WHEREAS, the Agreement is not being modified, but Staff is now seeking renewed approval for the Agreement given its indefinite term, with the Agreement remaining in effect until terminated by either party with 60 days' written notice; and

AIRPORT COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 24-0126

WHEREAS, Staff will seek approval for the funding of the reimbursements to CBP under the Agreement as part of the Airport's annual budget approval process going forward; and

WHEREAS, at the time of the initial approval in 2014 and at the renewed approval in 2019, Airport staff, in consultation with the City Attorney's Office, structured the Commission approvals of the Agreement as approvals of separate four and five-year authorization periods, not anticipating that the term of the Agreement would exceed 10 years, and considered the Agreement to be under the thresholds which would require Board of Supervisors' (Board) approval under Section 9.118 of the Charter of the City and County of San Francisco (Charter); and

WHEREAS, as the Agreement has no defined term, and now that the Agreement is anticipated to exceed 10 years in duration later this year, the City Attorney's Office advised Staff that to resolve any uncertainty about whether Board approval is required due to the indefinite term, the safest course is to seek retroactive Board approval under Charter Section 9.118 of the Agreement back to 2014; now, therefore, be it

RESOLVED, this Commission hereby approves the Section 559 Reimbursable Services Agreement Contract No. 50020 with U.S. Customs and Border Control for an indefinite term, terminable upon either party by 60 days' written notice, and directs the Commission Secretary to request retroactive approval of the agreement from the Board of Supervisors under Section 9.118 of the Charter of the City and County of San Francisco.

Page 2 of 2

*I hereby certify that the foregoing resolution was adopted by the Airport Commission
at its meeting of*

JUN 4 2024


Secretary



MEMORANDUM

June 4, 2024

TO: AIRPORT COMMISSION
Hon. Malcolm Yeung, President
Hon. Everett A. Hewlett Jr., Vice President
Hon. Jane Natoli
Hon. Jose F. Almanza
Hon. Mark Buell

24-0126

JUN 4 2024

FROM: Airport Director

SUBJECT: Approval of the Section 559 Reimbursable Services Agreement Contract No. 50020 with U.S. Customs and Border Protection

DIRECTOR'S RECOMMENDATION: APPROVE THE SECTION 559 REIMBURSABLE SERVICES AGREEMENT CONTRACT NO. 50020 WITH U.S. CUSTOMS AND BORDER PROTECTION AND DIRECT THE COMMISSION SECRETARY TO REQUEST APPROVAL OF THE AGREEMENT FROM THE BOARD OF SUPERVISORS PURSUANT TO SECTION 9.118 OF THE CHARTER OF THE CITY AND COUNTY OF SAN FRANCISCO.

Executive Summary

In 2014, the San Francisco International Airport (Airport) was selected by U.S. Customs and Border Protection (CBP) to participate in a pilot program, commonly known as the Section 559 Reimbursable Services Program (Program), which allowed the Airport to reimburse CBP for expanded hours of staffing in the Federal Inspection Services (FIS) areas to accommodate flights that arrive outside of CBP's established operational hours. The Airport Commission (Commission) first approved this Section 559 Reimbursable Services Agreement (Agreement) in 2014. The Agreement has no defined term but is terminable by either party upon 60 days' notice. At the time, the Airport did not anticipate that the Agreement would last beyond 10 years. The Commission initially approved a five-year authorization period for the Agreement that lasted through December 2019, and approved an additional four-year authorization period, which expired on December 31, 2023. Staff desires to retain the ability to use CBP's expanded services provided under the Agreement, which are anticipated to become more necessary and desirable for the busy summer travel season. Staff now seeks renewed Commission approval of the Agreement. Given that the Agreement has an indefinite term which will likely exceed 10 years later this year, Staff also recommends directing the Commission Secretary to request Board of Supervisors' (Board) retroactive approval of the Agreement under Section 9.118 of the Charter of the City and County of San Francisco (Charter).

THIS PRINT COVERS CALENDAR ITEM NO. 9

Background

On January 3, 2013, the United States of America implemented the Program, which was designed to enhance security and improve service levels of CBP at select ports of entry into the United States. Under the Program, designated airports could request expanded hours of staffing by CBP in the FIS areas to accommodate flights that arrive outside the established operational hours of CBP, subject to reimbursement agreements entered into between airports and CBP.

On August 19, 2014, by Resolution No. 14-0167, the Commission first approved the Agreement. Pursuant to CBP standards for this type of agreement, the Agreement has no definite term, no specified funding amount, and is terminable by either party upon 60 days' notice. The Commission's approval provided for a five-year authorization period with a projected cost not to exceed \$1.48 million for FY 2014/15 and Staff returning to the Commission annually for each fiscal year's funding.

On June 4, 2019, by Resolution No. 19-0146, the Commission approved an additional four-year authorization period for the Agreement with additional funding of up to \$4.5 million for the corresponding period, which expired on December 31, 2023. During the COVID-19 pandemic, passenger traffic decreased as did the need for these additional services by CBP.

Proposal

Since the start of the Agreement to date, reimbursements to CBP have totaled approximately \$5.7 million. Staff see a continued need for the Program due to anticipated increases in international flight activity for the busy summer travel season. Staff anticipates that the required funding for the Agreement for FY 24/25 will total approximately \$750,000. The Agreement is not being modified, but Staff is now seeking renewed approval for the Agreement given its indefinite term which will continue in effect until terminated by either party with 60 days' written notice. Going forward, Staff will seek approval for the funding of the reimbursements to CBP under the Agreement as part of its annual budget approval process.

Board Approval

As described above, the Agreement dates back to 2014. Charter Section 9.118 requires Board approval of certain contracts with a term that exceeds 10 years or requiring anticipated expenditures by the City of \$10 million or more. The Agreement was not previously presented to the Board for approval, as Staff did not anticipate that the term of the Agreement would exceed 10 years. At the time, Airport staff, in consultation with the City Attorney's Office, structured the approvals for the Agreement as approval of separate four and five-year authorization periods. As the Agreement has no defined term, and it is anticipated the Agreement will exceed 10 years in duration later this year, the City Attorney's Office advised Staff that to resolve any uncertainty about whether Board approval is required due to the indefinite term, the safest course is to seek retroactive Board approval under Charter Section 9.118 of the Agreement back to 2014.

Recommendation

I recommend the Commission approve the Section 559 Reimbursable Services Agreement Contract No. 50020 with U.S. Customs and Border Protection and direct the Commission Secretary to request Board of Supervisors' retroactive approval of the Agreement under Charter Section 9.118.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Ivar C. Satero
Airport Director

Prepared by: Jeff Littlefield
Chief Operating Officer

Attachment



San Francisco International Airport

June 6, 2024

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: Section 559 Reimbursable Services Agreement, Contract No. 50020 with U.S. Customs and Border Protection

Dear Ms. Calvillo:

Pursuant to Section 9.118 of the City Charter, I am forwarding to the Board of Supervisors the proposed Resolution retroactively approving the Section 559 Reimbursable Services Agreement Contract No. 50020 between United States Customs and Border Protection and the City and County of San Francisco, acting by and through its Airport Commission, with a commencement date of November 25, 2014, for an indefinite term.

The following is a list of accompanying documents:

- Board of Supervisors Resolution;
- Airport Commission Resolution No. 24-0126;
- Memorandum accompanying Airport Commission Resolution No. 24-0126;
- Airport Commission Resolution No. 19-0146;
- Memorandum accompanying Airport Commission Resolution No. 19-0146;
- Airport Commission Resolution No. 14-0167;
- Memorandum accompanying Airport Commission Resolution No. 14-0167;
- Copy of Original Agreement No. 50020, executed by U.S. Customs and Border Protection.

Please contact Dyanna Volek, Government Affairs Manager, at 650-821-4005 if you have any questions or concerns regarding this matter.

Very truly yours,

Kantrice Ogletree /s/

Kantrice Ogletree
Commission Secretary

Enclosures

cc: Dyanna Volek, Government Affairs

AIRPORT COMMISSION CITY AND COUNTY OF SAN FRANCISCO

LONDON N. BREED
MAYOR

MALCOLM YEUNG
PRESIDENT

EVERETT A. HEWLETT, JR.
VICE PRESIDENT

JANE NATOLI

JOSE F. ALMANZA

MARK BUELL

IVAR C. SATERO
AIRPORT DIRECTOR