

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  
Bombardier Transportation (Holdings) USA Inc.**

**Contract No. 8838**

This Agreement is made this **16th day of September, 2008**, in the City and County of San Francisco, State of California, by and between: **Bombardier Transportation (Holdings) USA Inc., 1501 Lebanon Church Road, Pittsburgh, PA 15236**, hereinafter referred to as "Contractor," and the City and County of San Francisco, a municipal corporation, hereinafter referred to as "City," acting by and through its Airport Commission or the Commission's designated agent, hereinafter referred to as "Commission."

**Recitals**

WHEREAS, Commission wishes to enter into a contract with the Contractor to provide operation and maintenance services for the AirTrain system; and,

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

WHEREAS, Commission awarded this contract to Contractor on **September 16, 2008**, pursuant to an agreement to settle a dispute among the City and County of San Francisco, Bombardier Transportation (Holdings) USA, Inc., and Factory Mutual Insurance Company which was filed in the United States District Court for the Northern District of California, case number C 04-5307 PJH, and further pursuant to Resolution No. **08-0173**; and

WHEREAS, Approval for said Agreement was obtained from the Board of Supervisors pursuant to Resolution ~~INSERT RESOLUTION NUMBER~~ on ~~INSERT DATE~~; and  
*ORDINANCE No. 266-08 on November 25, 2008*

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

Now, THEREFORE, the parties agree as follows:

**1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation**

- A. 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 the City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

- B. This Agreement will terminate without penalty, liability, or expense of any kind to the 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.
- C. The City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. The City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. The Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

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

## 2. Term of the Agreement

- A. Subject to Section 1, the term of this Agreement shall begin upon the Airport's provision of a notice to proceed and shall continue for a period of five (5) years beginning March 1, 2009, unless terminated sooner as provided in Article 21, Termination for Convenience of this Agreement.
- B. At the end of the initial five (5)-year term, as identified above, the Airport will extend the contract for an additional three (3)-year term, provided the Contractor meets all contractual obligations under the Contract and the following performance criteria measured ninety (90) days prior to the end of the current contract term: (i) averaged system availability rating of ninety-nine and one-half percent (99.5%) or higher for the prior twelve (12) month period, (ii) verification that all Airport owned spares, tools and equipment, as identified in "Appendix E - Spares, Tools, and Equipment" and as amended from time to time during the active term of the Contract, is accounted for and in good working condition, (iii) training certifications are up-to-date for appropriate Contractor's staff, and (iv) the preventative maintenance program meets or exceeds the requirements as stated in "Appendix A, Section B.5 - Adherence to Maintenance Schedule."
- C. If the Contractor fails to meet the above criteria, the Airport shall have the option, at its sole discretion, to either extend, modify or terminate the Contract by giving written notice thereof to the Contractor at least ninety (90) days prior to the end of the original or extended term.
- D. Further, at the end of the three (3) year term the Airport reserves the right to extend the contract for two (2) additional option years. The Airport also reserves the right to re-negotiate the contract terms, by reducing in whole or in part the Contractor's scope of services. The Airport will provide the Contractor with written notice of intent to extend and/or re-negotiate the contract terms at least one-hundred and eighty (180) days prior to the start of each option year.
- E. The prices to be paid for each yearly extension shall be those included in the Contractor's Contract Price Proposal, for this Agreement, escalated according to Section 4.1 - Economic Price Adjustment of the General Conditions attached hereto, or as amended by any change orders.

### **3. Effective Date of Agreement**

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

### **4. Services Contractor Agrees to Perform**

The Contractor agrees to perform the services provided for in the General Requirements and Appendix A, Services to be Provided by the Contractor attached hereto and incorporated by reference as though fully set forth herein.

### **5. Compensation**

- A. Compensation shall be made in accordance with the terms and conditions set forth in Article 4.3 of the General Requirements. In no event shall the amount of this Agreement exceed Fifty-six Million Five Hundred Thousand Dollars (\$56,500,000), except as modified pursuant to the terms of this Agreement. The breakdown of costs associated with this Agreement appears in Appendix B , "Calculation of Charges/Determination of Monthly Payments," attached hereto and incorporated by reference as though fully set forth herein.
- B. No charges shall be incurred under this Agreement nor shall any payments become due to the Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the AirTrain Manager as being in accordance with this Agreement. The City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.
- C. The Controller is not authorized to pay invoices submitted by the Contractor prior to the Contractor's submission of HRC Progress Payment Form. If the Progress Payment Form is not submitted with the Contractor's invoice, the Controller will notify the department, the Director of HRC and the Contractor of the omission. If the Contractor's failure to provide HRC Progress Payment Form is not explained to the Controller's satisfaction, the Controller will withhold twenty percent (20%) of the payment due pursuant to that invoice until the HRC Progress Payment Form is provided.
- D. Following the City's payment of an invoice, the Contractor has ten (10) days to file an affidavit using the HRC Payment Affidavit verifying that all subcontractors have been paid and specifying the amount.

### **6. Guaranteed Maximum Costs**

- A. The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification.
- B. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law.

- C. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller.
- D. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

**7. Payment; Invoice Format**

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

**8. Submitting False Claims; Monetary Penalties**

Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for three (3) times the amount of damages which the City sustains because of the false claim. A contractor, subcontractor, or consultant who submits a false claim shall also be liable to the City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to Ten Thousand Dollars (\$10,000) for each false claim. A contractor, subcontractor, or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (i) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (ii) 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; (iii) conspires to defraud the City by getting a false claim allowed or paid by the City; (iv) 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 (v) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

**9. Disallowance - Left blank by agreement of the Parties. No state or federal funds involved.**

**10. Taxes**

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

- 1) The Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;
- 2) The 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. The Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.
- 3) The 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). The Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.
- 4) The Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

#### **11. Payment Does Not Imply Acceptance of Work**

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

#### **12. Qualified Personnel**

Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of the Contractor. The Contractor will comply with the City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at the City's request, must be supervised by the Contractor. The Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

#### **13. Responsibility for Equipment**

- A. The City shall not be responsible for any damage to persons or property as a result of the use, misuse, or failure of any equipment used by the Contractor, or by any of its employees, even though such equipment be furnished, rented, or loaned to the Contractor by the City.
- B. The acceptance or use of such equipment by the Contractor or any of its employees shall be construed to mean that the Contractor accepts full responsibility for and agrees to exonerate, indemnify, defend and save harmless the City from and against any and all claims for any damage

or injury of any type arising from the use, misuse or failure of such equipment, whether such damage be to the Contractor, its employees, City employees or third parties, or to property belonging to any of the above.

- C. The Contractor shall be totally responsible for the design and installation of all temporary structures such as shoring that may be required to perform work under this Contract. The Contractor shall also perform its work under this Contract so as not to load or overload any structural, electrical or HVAC System in any way which might endanger its present or future integrity or capacity.
- D. Subject to the Limitation of Liability set forth in Article 17 herein, the Contractor shall be totally responsible for the risk of loss or damage to any property owned by the Commission, its tenants or other third parties arising out of the careless or negligent acts or omissions of the Contractor's officers, agents, employees, or subcontractors. The Contractor shall forthwith repair, replace, and make good any such loss or damage without cost to the Commission or, at the option of the Commission, the Contractor shall reimburse the Commission for the reasonable cost of such repairs and replacements which the Commission elects, in its sole discretion, to perform.
- E. Subject to the limitation of liability set forth in article 17 herein, the Contractor shall be totally responsible for the risk of (i) all claims made by third persons or all fines or penalties assessed by courts or governmental agencies or other entities against the Contractor or the Commission, on account of injuries (including wrongful death), losses and damages, and (ii) all liability of any kind whatsoever, arising or alleged to arise out of or in connection with the willful misconduct or negligent performance of this contract by the Contractor or out of or in connection with the Contractor's operations or presence at or in the vicinity of the Commission's premises (including claims against the Contractor or the Commission for the payment of workers' compensation) whether such fines or penalties are made or assessed and whether such claims for injuries, damages, losses are sustained and liability for them imposed at any time both before and after the completion of the services provided herein.

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

##### **A. Independent Contractor**

- 1) The Contractor or any agent or employee of the 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 the City under this Agreement. The Contractor or any agent or employee of the Contractor shall not have employee status with the City, nor be entitled to participate in any plans, arrangements, or distributions by the City pertaining to or in connection with any retirement, health or other benefits that the City may offer its employees. The Contractor or any agent or employee of the Contractor is liable for the acts and omissions of itself, its employees, and its agents. The 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 the Contractor's performing services and work, or any agent or employee of the Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between the City and the Contractor or any agent or employee of the Contractor.

- 2) Any terms in this Agreement referring to direction from the City shall be construed as providing for direction as to policy and the result of the Contractor's work only, and not as to the means by which such a result is obtained. The City does not retain the right to control the means or the method by which the Contractor performs work under this Agreement.

**B. Payment of Taxes and Other Expenses.**

- 1) Should the 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 the 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 the Contractor which can be applied against this liability). The City shall then forward those amounts to the relevant taxing authority.
- 2) Should a relevant taxing authority determine a liability for past services performed by the Contractor for the City, upon notification of such fact by the City, the Contractor shall promptly remit such amount due or arrange with the City to have the amount due withheld from future payments to the Contractor under this Agreement (again, offsetting any amounts already paid by the Contractor which can be applied as a credit against such liability).
- 3) 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, the Contractor shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that the Contractor is an employee for any other purpose, then the Contractor agrees to a reduction in the City's financial liability so that the City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that the Contractor was not an employee.

**15. Insurance**

- A. Without in any way limiting the Contractor's liability pursuant to the "Indemnification" section of this Agreement, the Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:
  - 1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and
  - 2) Commercial General Liability Insurance with limits not less than \$2,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
  - 3) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 (\$2,000,000 if used on Airfield) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.
- B. Commercial General Liability and Commercial Automobile Liability Insurance policies must provide the following:

- 1) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.
  - 2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.
- C. All policies shall provide thirty (30) days' advance written notice to City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the following address:

Lee Mitchell  
SFO AirTrain Manager  
AirTrain Administration  
San Francisco International Airport  
P.O. Box 8097  
San Francisco, CA 94128

Email: [lee.mitchell@flysfo.com](mailto:lee.mitchell@flysfo.com)

- D. Should any of the required insurance be provided under a claims-made form, the Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three (3) years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.
- E. 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.
- F. 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.
- G. Before commencing any operations under this Agreement, the Contractor shall do the following: (i) furnish to the 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 the City, in form evidencing all coverages set forth above, and (ii) furnish complete copies of policies promptly upon City request. Failure to maintain insurance shall constitute a material breach of this Agreement.
- H. Approval of the insurance by the City shall not relieve or decrease the liability of the Contractor hereunder.



- I. If a subcontractor will be used to complete any portion of this agreement, the Contractor shall ensure that the subcontractor shall provide all necessary insurance and shall name the City and County of San Francisco, its officers, agents and employees and the Contractor listed as additional insureds.
- J. If the Contractor is unable to continue to provide the required insurance coverage as outlined in Article 15.A of this Agreement at the expiration of the initial five (5) year term, the Contractor agrees to pay to the City and County of San Francisco Four Hundred Thousand Dollars (\$400,000) in annual funding for the purchase of insurance coverage as outlined in Section 15.A of this agreement. Payment to the City and County of San Francisco shall be prior to the expiration date of the initial five (5) year term of the agreement. Said funding will be used toward the purchase of insurance as outlined in Section 15 of this agreement, with any required amount over \$400,000 to be the responsibility of the City. The City will refund to Contractor any part of the \$400,000 that is not required to fund the insurance. The City will reserve the right to procure the insurance or delegate the procurement responsibility to the Contractor. The City will reserve the right to modify the insurance requirement(s) outlined in Section 15 of this agreement in consultation with Contractor in the event the Contractor annual funding contribution of Four Hundred Thousand Dollars (\$400,000) is inadequate to procure historical limits and coverage.

#### **16. Indemnification**

- A. The Contractor shall indemnify and save harmless the City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of the Contractor or loss of or damage to property, to the extent arising from the Contractor's negligent performance of this Agreement, including, but not limited to, the Contractor's use of facilities or equipment provided by the City or others. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and the City's costs of investigating any claims against the City.
- B. In addition to the Contractor's obligation to indemnify the City, the Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City from any claim arising from the Contractor's negligent performance of this Agreement and 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 the Contractor by the City and continues at all times thereafter.
- C. The Contractor shall indemnify and hold the City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by the City, or any of its officers or agents, of articles or services to be supplied by the Contractor in the performance of this Agreement.

#### **17. Incidental and Consequential Damages & Limitation of Contractor's Liability**

- A. The Contractor shall be responsible for incidental and/or consequential damages resulting in whole or in part from the Contractor's performance of services under this Agreement. However, the Contractor will not be liable for any claim for incidental and/or consequential damages from

the Airport, Airport tenants, and/or AirTrain passengers for loss of opportunities, revenues, and/or profits. The Contractor's liability for incidental and/or consequential damages will be limited, in the aggregate, to One Million Dollars (\$1,000,000). The Contractor agrees that it will be responsible for any claim initiated by the Airport for costs incurred to operate bus services resulting from a loss of use of the AirTrain for any single incident exceeding four (4) hours to the extent arising from the Contractor's performance of this Agreement and that such claim is not subject to the One Million Dollar (\$1,000,000) cap on incidental and/or consequential damages. Further, except claims for personal injury, including wrongful death, and the costs of repair or replacement of damaged property of third parties, and costs of repair or replacement of damaged property of the Airport resulting from the gross negligence, recklessness or intentional misconduct of the Contractor, the Contractor's liability under this agreement will be limited, in the aggregate, to Ten Million Dollars (\$10,000,000).

- B. To the extent of a failure caused from the Contractor's performance of services under this Agreement that renders the system unavailable for revenue service for more than fifteen (15) consecutive days, the Airport may suspend payment to the Contractor. The Airport shall resume payment to the Contractor once the system is returned to revenue service; however, the Airport shall not be responsible for reimbursing any cost or expense whatsoever to the Contractor during the time that the system was unavailable. Any moneys withheld pursuant to this paragraph are subject to the Ten Million Dollar (\$10,000,000) cap on the Contractor's liability identified in Section 17.A. above.

#### **18. Liability of City**

CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 5 OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

#### **19. Liquidated Damages - Left blank by agreement of the Parties.**

#### **20. Default; Remedies**

- A. Each of the following shall constitute an event of default ("Event of Default") under this Agreement:
- 1) The Contractor fails or refuses to perform or observe any term, covenant, or condition contained in any of the following Sections of this Agreement: 8, 10, 15, 24, 30, 37, 53, 55, 57, or 58.
  - 2) The Contractor fails or refuses to perform or observe any other term, covenant, or condition contained in this Agreement, and such default continues for a period of ten (10) days after written notice thereof from the City to the Contractor.

- 3) The 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 the Contractor or of any substantial part of the Contractor's property or (v) takes action for the purpose of any of the foregoing.
  - 4) A court or government authority enters an order (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to the Contractor or with respect to any substantial part of the 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 the Contractor.
- B. The Contractor shall first be given an opportunity to cure any Event of Default. The Contractor shall have ten (10) days in which to cure the Event of Default or propose a plan for cure if a ten (10) day period is not a reasonable time to cure. If the Contractor fails to cure the Event of Default or if the City is not satisfied with the Contractor's proposed plan for curing the Default, the 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, if the Contractor is unable to cure the Event of Default as set forth above, the City shall have the right (but no obligation) to cure (or cause to be cured) any Event of Default; the Contractor shall pay to the City on demand all costs and expenses incurred by the City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. The City shall have the right to offset from any amounts due to the Contractor under this Agreement or any other agreement between the City and the Contractor all damages, losses, costs or expenses incurred by the City as a result of such Event of Default and any liquidated damages due from the Contractor pursuant to the terms of this Agreement or any other agreement.
- C. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

## **21. Termination for Convenience**

- A. The 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. The City shall exercise this option by giving the Contractor at least thirty (30) days written notice of termination. The notice shall specify the date on which termination shall become effective.
- B. Upon receipt of the notice, the Contractor shall commence and perform, with diligence, all actions necessary on the part of the Contractor to effect the termination of this Agreement on the date specified by the City and to minimize the liability of the Contractor and the City to third parties as a result of termination. All such actions shall be subject to the prior approval of the City. Such actions shall include, without limitation:

- 1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by the City.
  - 2) Not placing any further orders or subcontracts for materials, services, equipment, or other items.
  - 3) Terminating all existing orders and subcontracts.
  - 4) At the City's direction, assigning to the City any or all of the Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, the City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
  - 5) Subject to the City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.
  - 6) Completing performance of any services or work that the City designates to be completed prior to the date of termination specified by the City.
  - 7) Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of the Contractor and in which the City has or may acquire an interest.
- C. Within thirty (30) days after the specified termination date, the Contractor shall submit to the City an invoice, which shall set forth each of the following as a separate line item:
- 1) The reasonable cost to the Contractor, including profit as set forth in subsection 2) below, for all services and other work the City directed the Contractor to perform prior to the specified termination date, for which services or work the City has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of ten percent (10%) of Contractor's direct costs for services or other work. Any overhead allowance shall be separately itemized. The Contractor may also recover the reasonable cost of preparing the invoice.
  - 2) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection 1), provided that the Contractor can establish, to the satisfaction of the City, that the Contractor would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed ten percent (10%) of such cost.
  - 3) The reasonable cost to the Contractor of handling material or equipment returned to the vendor, delivered to the City or otherwise disposed of as directed by the City.
  - 4) A deduction for the cost of materials to be retained by the Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to the City, and any other appropriate credits to the City against the cost of the services or other work.
- D. In no event shall the City be liable for costs incurred by the Contractor or any of its subcontractors after the termination date specified by the City, except for those costs specifically

enumerated and described in the immediately preceding subsection C, which shall also include post-termination employee salaries and post-termination administrative expenses and overhead, in accordance with but not exceeding those amounts required to be paid by the Contractor to its employees, as per the Contractor's Collective Bargaining Agreement and the Contractor's employee severance program. Such non-recoverable costs include, but are not limited to, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection C.

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

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

## **22. Rights and Duties upon Termination or Expiration**

A. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: 8 through 11, 13 through 18, 24, 26, 27, 28, 48, through 52, 56, and 57.

B. Subject to the immediately preceding subsection A, upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. The Contractor shall transfer title to the City, and deliver in the manner, at the times, and to the extent, if any, directed by the 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 the City. This subsection shall survive termination of this Agreement.

## **23. Conflict of Interest**

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

## **24. Proprietary or Confidential Information**

The Parties hereto understand and agree that, in the performance of the work or services under this Agreement or in contemplation thereof, one Party may have access to private or confidential information which may be owned or controlled by the other Party and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to

the owner of the information. The Parties therefore agree that all information disclosed by one Party to the other shall be held in confidence and used only in performance of the Agreement. The Parties shall exercise the same reasonable standard of care to protect such information as they would use to protect their own proprietary data.

## 25. Notices to the Parties

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

To City:           Lee Mitchell  
                      SFO AirTrain Manager  
                      AirTrain Administration  
                      San Francisco International Airport  
                      P.O. Box 8097  
                      San Francisco, CA 94128  
                      FAX: (650) 821-7664  
                      Email: [lee.mitchell@flysfo.com](mailto:lee.mitchell@flysfo.com)

To Contractor:   Lee LayPort  
                      SYSTEMS – General Manager Western Region  
                      Bombardier Transportation (Holdings) USA Inc.  
                      P.O. Box 281317  
                      San Francisco, CA 94128-7343  
                      FAX: (650) 821-7371  
                      Email: [lee.layport@us.transport.bombardier.com](mailto:lee.layport@us.transport.bombardier.com)

Any notice of default must be sent by registered mail.

## 26. Ownership of Results

- A. Any drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents ("Information") prepared by the Contractor or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to the City. However, it is understood that the Contractor retains the right in the intellectual property contained in the Information and may use the Information for any purpose whatsoever, whether related to this Agreement or otherwise. It is also understood that any and all proprietary information of the Contractor, as defined under the Base Contract, shall be included in the escrow agreement previously agreed upon between the City and the Contractor for a period of twenty (20) years from the date of execution of such escrow agreement.
- B. The Commission shall have the non-exclusive right to use or permit the use of the Information only for the sole purpose of operating and maintaining the System, without additional compensation. The obligations of confidentiality set forth in Article 24.A above shall apply to the Commission's use of these materials.
- C. Proprietary software for products, components, subsystems and other items shall be protected and restricted as provided herein. All "proprietary" Software shall be provided to a Trustee under a

Trust Agreement entered into by the Commission, the Contractor, and the Trustee. The basic terms of said Trust Agreement shall be as follows:

- 1) The Trustee shall be a trust company qualified to do business in California or a bank authorized to engage in a trust business in California. The bank or trust company shall be mutually acceptable to both the Commission and the Contractor.
  - 2) All proprietary Software shall be placed with the Trustee for safekeeping.
  - 3) If the Contract is terminated for default in accordance with the General Conditions herein, the Trustee, upon receipt of written notice from the Commission shall turn over to the Commission all proprietary software in its possession, and which has not already been deposited into escrow under the original Trust Agreement, within a sixty (60)-day period from the date of receipt of such notice.
  - 4) At such time the proprietary Software is turned over to the Commission by the Trustee, the Commission shall have the right and license to use said Software without restrictions for the System and any future re-supply, expansion, or extension of the System. However, the Commission may not sell said proprietary Software or allow any party to use same for any other project without the Contractor's written consent. The Contractor shall continue to have the full and complete right to use any and all duplicates or other originals of said Software in any manner it chooses and without restriction.
  - 5) The Trust Agreement shall automatically terminate after twenty (20) years and all such proprietary Software shall be turned over to the Commission. Upon termination of the Trust Agreement, the Commission shall have the right and license to utilize the proprietary Software for its own use only for the Automated Rail Transit (ART) and its expansion but not for the purposes of building another separate ART. However, title to any designs shall remain with the Contractor.
- D. Subject to the provisions regarding the use of the materials stated in paragraph 26.C above, all materials to become part of the System including but not limited to, spare parts, tools, equipment, expendables, and consumables inventory shall be and become the property of the Commission upon delivery or upon being especially adapted for use in or as part of the System, whichever may first occur.
- E. The Contractor shall promptly furnish to the Commission such bills of sale and other instruments as may be required by it, properly executed, acknowledged and delivered, assuring to it title to such materials, free of encumbrances and shall mark or otherwise identify all such materials as the property of the Commission.

## **27. Copyright of Original Works**

If, in connection with services performed under this Agreement, the Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship ("Works"), such Works shall not be considered works for hire as it is defined under Title 17 of the United States Code, rather such Works shall be considered instruments of service of the

Contractor and the Contractor shall grant to the City a non-exclusive, royalty-free license to use the Contractor's Works. It is expressly agreed that any such use of the Contractor's Works by the City shall be limited to the sole purpose of operating and maintaining the System. All copyrights in these Works shall remain with the Contractor.

## **28. Audit and Inspection of Records**

The Contractor agrees to maintain and make available to the City, during regular business hours, accurate books, and accounting records relating in any way to its work under this Agreement. The 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. The Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five (5) years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon the City by this Section.

## **29. Subcontracting**

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

## **30. Assignment**

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

## **31. Non-Waiver of Rights**

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

## **32. Earned Income Credit (EIC) Forms**

- A. Administrative Code section 120 requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.
- B. The Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty (30) days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in



which such effective date falls); (ii) promptly after any Eligible Employee is hired by the Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

- C. Failure to comply with any requirement contained in subparagraph A of this Section shall constitute a material breach by the Contractor of the terms of this Agreement. If, within thirty (30) days after the Contractor receives written notice of such a breach, the Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, the Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law.
- D. Any Subcontract entered into by the Contractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section.
- E. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 120 of the San Francisco Administrative Code.

### **33. Local Business Enterprise Utilization; Liquidated Damages**

#### **A. The LBE Ordinance**

The Contractor, shall comply with all the requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "LBE Ordinance"), provided such amendments do not materially increase the Contractor's obligations or liabilities, or materially diminish the Contractor's rights, under this Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. The Contractor's willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of the Contractor's obligations under this Agreement and shall entitle the City, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, the Contractor shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

#### **B. Compliance and Enforcement**

##### **1) Enforcement**

- a) If the Contractor willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Agreement pertaining to LBE participation, the Contractor shall be liable for liquidated damages in an amount equal to the Contractor's net profit on this Agreement, or ten percent (10%) of the total amount of this Agreement, or One Thousand Dollars (\$1,000), whichever is greatest. The Director of the City's Human Rights Commission or any other public official authorized to enforce the LBE Ordinance (separately and

collectively, the "Director of HRC") may also impose other sanctions against the Contractor authorized in the LBE Ordinance, including declaring the Contractor to be irresponsible and ineligible to contract with the City for a period of up to five (5) years or revocation of the Contractor's LBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14B.17.

- b) By entering into this Agreement, the Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to the City upon demand. The Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to the Contractor on any contract with the City.
- c) The Contractor agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three (3) years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of HRC or the Controller upon request.

## 2) Subcontracting Goals

- a) The LBE subcontracting participation goal for this contract is **five percent (5%)**. The Contractor shall fulfill the subcontracting commitment made in its bid or proposal. Each invoice submitted to the City for payment shall include the information required in the HRC Progress Payment Form and the HRC Payment Affidavit. Failure to provide the HRC Progress Payment Form and the HRC Payment Affidavit with each invoice submitted by the Contractor shall entitle the City to withhold twenty percent (20%) of the amount of that invoice until the HRC Payment Form and the HRC Subcontractor Payment Affidavit are provided by the Contractor.
- b) The Contractor shall not participate in any back contracting to the Contractor or lower-tier subcontractors, as defined in the LBE Ordinance, for any purpose inconsistent with the provisions of the LBE Ordinance, its implementing rules and regulations, or this Section.

## 3) Subcontract Language Requirements

- a) The Contractor shall incorporate the LBE Ordinance into each subcontract made in the fulfillment of the Contractor's obligations under this Agreement and require each subcontractor to agree and comply with provisions of the ordinance applicable to subcontractors.
- b) The Contractor shall include in all subcontracts with LBEs made in fulfillment of the Contractor's obligations under this Agreement, a provision requiring the Contractor to compensate any LBE subcontractor for damages for breach of contract or liquidated damages equal to five percent (5%) of the subcontract amount, whichever is greater, if the Contractor does not fulfill its commitment to use the LBE subcontractor as specified in the bid or proposal, unless the Contractor received advance approval from the Director of HRC and contract awarding authority to substitute subcontractors or to otherwise

modify the commitments in the bid or proposal. Such provisions shall also state that it is enforceable in a court of competent jurisdiction.

- c) Subcontracts shall require the subcontractor to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three (3) years following termination of this contract and to make such records available for audit and inspection by the Director of HRC or the Controller upon request.

#### **4) Payment of Subcontractors**

- a) The Contractor shall pay its subcontractors within three (3) working days after receiving payment from the City unless the Contractor notifies the Director of HRC in writing within ten (10) working days prior to receiving payment from the City that there is a bona fide dispute between the Contractor and its subcontractor and the Director waives the three-day payment requirement, in which case the Contractor may withhold the disputed amount but shall pay the undisputed amount.
- b) The Contractor further agrees, within ten (10) working days following receipt of payment from the City, to file the HRC Payment Affidavit with the Controller, under penalty of perjury, that the Contractor has paid all subcontractors. The affidavit shall provide the names and addresses of all subcontractors and the amount paid to each. Failure to provide such affidavit may subject the Contractor to enforcement procedure under Administrative Code §14B.17.

### **34. Nondiscrimination; Penalties**

#### **A. Contractor Shall Not Discriminate**

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

#### **B. Subcontracts**

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

#### **C. Nondiscrimination in Benefits**

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

#### **D. Condition to Contract**

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

#### **E. Incorporation of Administrative Code Provisions by Reference**

The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. The Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, the Contractor understands that pursuant to §§12B.2 (h) and 12C.3 (g) of the San Francisco Administrative Code, a penalty of Fifty Dollars (\$50) for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against the Contractor and/or deducted from any payments due the Contractor.

#### **35. MacBride Principles—Northern Ireland**

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

#### **36. Tropical Hardwood and Virgin Redwood Ban**

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

#### **37. Drug-Free Workplace Policy**

The Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is

prohibited on City premises. The Contractor agrees that any violation of this prohibition by the Contractor, its employees, agents or assigns will be deemed a material breach of this Agreement.

#### **38. Resource Conservation**

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

#### **39. Compliance with Americans with Disabilities Act**

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

#### **40. Sunshine Ordinance**

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

#### **41. Public Access to Meetings and Records**

If the Contractor receives a cumulative total per year of at least Two Hundred Fifty Thousand Dollars (\$250,000) in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, the Contractor shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Contractor agrees to open its meetings and records to the public in the manner set forth in §§12L.4 and 12L.5 of the Administrative Code. The Contractor further agrees to make-good faith efforts to promote community membership on its Board of Directors in the manner set forth in §12L.6 of the Administrative Code. The Contractor acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Contractor further acknowledges that such material breach of the Agreement shall be grounds for the City to terminate and/or not renew the Agreement, partially or in its entirety.

#### **42. Limitations on Contributions**

Through execution of this Agreement, the 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 (i) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (ii) a candidate for the office held by such individual, or (iii) 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 (6) months after the date the contract is approved. The Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of Fifty Thousand Dollars (\$50,000) or more. The Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than twenty (20) percent in the Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by the Contractor. Additionally, the Contractor acknowledges that the Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

**43. Requiring Minimum Compensation for Covered Employees - This section omitted pursuant to San Francisco Administrative Code Chapter 12P, section 12P.2(e)(4), exempting contracts entered into pursuant to a settlement of a legal proceeding.**

**44. Requiring Health Benefits for Covered Employees - This section omitted pursuant to San Francisco Administrative Code Chapter 12Q, section 12Q.2.4(b)(3), exempting contracts entered into pursuant to a settlement of a legal proceeding.**

**45. First Source Hiring Program**

**A. Incorporation of Administrative Code Provisions by Reference**

The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. The Contractor shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

**B. First Source Hiring Agreement**

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

- 1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral, and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs may be certified as meeting the requirements of

this Chapter. Failure either to achieve the specified goal or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

- 2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed ten (10) days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.
- 3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.
- 4) Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals.
- 5) Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with City departments to develop employer good faith effort requirements appropriate to the types of contracts and property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the FSHA finds that the employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.
- 6) Set the term of the requirements.
- 7) Set appropriate enforcement and sanctioning standards consistent with this Chapter.

- 8) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.
- 9) Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.

#### **C. Hiring Decisions**

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

#### **D. Exceptions**

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

#### **E. Liquidated Damages**

The Contractor agrees:

- 1) To be liable to the City for liquidated damages as provided in this section;
- 2) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;
- 3) That the Contractor's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the Contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to Five Thousand Dollars (\$5,000) for every notice of a new hire for an entry level position improperly withheld by the Contractor from the first source hiring process, as determined by the FSHA during its first investigation of a Contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the Contractor's failure to comply with its first source referral contractual obligations.
- 4) That the continued failure by a Contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to Ten Thousand Dollars (\$10,000) for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a result of the Contractor's continued failure to comply with its first source referral contractual obligations;



- 5) That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this section is based on the following data:
  - a) The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of Three Hundred Forty-eight Dollars (\$348) per month, totaling approximately Fourteen Thousand Three Hundred Seventy-nine Dollars (\$14,379); and
  - b) In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six (6) months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one (1) year; therefore, liquidated damages that total Five Thousand Dollars (\$5,000) for first violations and Ten Thousand Dollars (\$10,000) for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City by the failure of a Contractor to comply with its first source referral contractual obligations.
- 6) That the failure of Contractors to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law; and
- 7) That in the event the City is the prevailing party in a civil action to recover liquidated damages for breach of a contract provision required by this Chapter, the Contractor will be liable for the City's costs and reasonable attorneys fees.
- 8) Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of Five Thousand Dollars (\$5,000) for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

#### **F. Subcontracts**

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

#### **46. Prohibition on Political Activity with City Funds**

In accordance with San Francisco Administrative Code Chapter 12.G, the Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. The Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and

provisions of Chapter 12.G are incorporated herein by this reference. In the event the Contractor violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit the Contractor from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Contractor's use of profit as a violation of this section.

#### **47. Preservative-treated Wood Containing Arsenic**

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

#### **48. Modification of Agreement**

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement. The Contractor shall cooperate with the Department to submit to the Director of HRC any amendment, modification, supplement, or change order that would result in a cumulative increase of the original amount of this Agreement by more than twenty percent (20%) (HRC Contract Modification Form).

#### **49. Administrative Remedy for Agreement Interpretation**

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

#### **50. Agreement Made in California; Venue**

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

#### **51. Construction**

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

## **52. Entire Agreement**

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

## **53. Compliance with Laws**

The Contractor shall keep itself fully informed of the City's Charter, codes, ordinances, and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time. Notwithstanding anything contained herein to the contrary, if a change in any local codes, ordinances, regulations or applicable state or federal laws, including any changes in law related to the oversight of the California Department of Occupational Safety and Health ("DOSH"), which cause an increase to the Contractor's scope of services or an increase in the Contractor's costs to perform its services, the Contractor may seek equitable adjustment from the City and if agreed to by the City, any such equitable adjustment shall be treated as a change order under this Agreement.

## **54. Services Provided by Attorneys**

Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

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

## **56. Severability**

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

## **57. Protection of Private Information**

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

## 58. Graffiti Removal

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

## 59. Food Service Waste Reduction Requirements

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

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

**61. Dispute Resolution Procedure**

- A. Any disputes arising under this Agreement shall first be dealt with between members of the Contractor's and the City's senior management. If the dispute is not resolved, the Contractor and the City agree to submit themselves to non-binding mediation. The Parties may then choose to arbitrate or litigate any unresolved dispute. Rules for arbitration shall be those set forth under the guidelines of the American Arbitration Association. Venue for arbitration or litigation shall be California.
- B. Either Party shall have sixty (60) days from the date of discovery that a claim exists to begin the dispute resolution procedure as against the other Party. This sixty (60) day time frame may be increased upon mutual agreement of the Parties.
- C. If the Contractor has a claim against the City, within sixty (60) days (or within an additional time frame, as mutually agreed upon by the Parties) the Contractor shall submit to the City a formal claim and all arguments, justifications, cost or estimates and detailed documentation supporting its position. The Contractor shall submit the claim justification in the following format:
  - 1) Cover letter and certification that the claim is made in good faith;
  - 2) Summary of the claim, including:
    - a) Underlying facts;
    - b) Entitlement;
    - c) Calculations;
    - d) Contract provisions supporting relief, if applicable;
  - 3) List of documents relating to the claim;
  - 4) Chronology of events and correspondence;
  - 5) Analysis of claim merit;
  - 6) Analysis of claim cost; and
  - 7) Any attachments required to support the claim.
- D. If the City has a claim against the Contractor, within sixty (60) days (or within an additional time frame, as mutually agreed upon by the Parties) the City shall submit to the Contractor a written notification of the claim, including a detailed description of the claim and all relevant supporting documentation.
- E. The Parties agree that any claims not raised in a timely manner by written notice, as set forth above, and not first dealt with between the Parties' senior management, may not be asserted in any Government Code Claim, subsequent litigation, or legal action.

## 62. 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, with the Airport Director's prior consent.

## 63. Labor Peace / Card Check Rule

Without limiting the generality of other provisions herein requiring the Contractor to comply with all Airport Rules, the 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, the Contractor shall, among other actions: (i) 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; (ii) Not less than thirty (30) days prior to the modification of this Agreement, the 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 the Contractor is seeking to modify or extend this Agreement; (iii) 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, the Contractor shall provide notice to all registered Labor Organizations that the Contractor is seeking to enter into such Subcontract; and (iv) the 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 the Contractor violated the Labor Peace/Card Check Rule, the Airport Director shall have the option to terminate this Agreement, in addition to exercising all other remedies available to him / her.

## 64. Force Majeure

Neither Party under this Agreement shall be liable to the other for any failure, delay or interruption of the performance of its obligations hereunder due to causes or conditions beyond the control of that Party, including, without limitation, acts of God, explosions, fire and other accidents, including those resulting from seismic activity. The Contractor shall have the ability to request an equitable adjustment for both time and cost as it relates to an event of force majeure and the City's approval of such equitable adjustment shall not be unreasonably withheld.

## 65. Warranty

A. The Contractor represents and warrants that it is and will be at all times fully qualified and capable of performing every phase of the work and shall complete the work in accordance with the terms of the Contract Documents. The Contractor warrants that all work and related services shall be performed in accordance with generally accepted professional standards of good and

sound transit industry practices and all requirements of the Contract Documents. Subject to the last sentence of this paragraph, the Contractor warrants that the work, including but not limited to each item of materials and equipment incorporated therein, shall be new, shall be of suitable grade of its respective kind for its intended use, shall be free from defects in design, engineering, materials, construction and workmanship, and shall conform in all respects with all applicable requirements of federal, state and local laws, licenses, and permits, the Drawings and Specifications and all descriptions set forth therein, applicable construction codes and standards, and all other requirements of the Contract Documents. Notwithstanding the foregoing, the Contractor shall not be responsible for the negligence of others in the specification of specific equipment, materials, design parameters, means, or methods of construction where that it is shown and expressly required by the Contract Documents.

- B. The Contractor further warrants that operation and maintenance methods and procedures employed on the AirTrain shall have in the past proven to be suitable for the results expected. If the Contractor proposes to use an unproven and untried (i) operation of maintenance method or procedure or, (ii) part, material or component, the Commission must be advised of that fact, in advance and in writing. The Commission may permit experimentation, but it may require special guarantees of the Contractor to cover the work produced by the new and untried method or the part, material or component. Any Commission approved experimentation that requires special guarantees by the Contractor will be incorporated into the Contract by a Contract modification.

The Contractor shall provide all of the labor, parts, materials and components which are required to repair or replace any work which does not satisfy the quality of work warranty described above and shall replace and install any parts, materials or components which do not comply with the Contractor's warranty for a period of one (1) year after the repair or replacement is completed at no cost to the Commission. In the event that the Contractor is no longer performing Operation & Maintenance (O&M) of the system within the warranty period, the Airport must demonstrate that equipment has been maintained in accordance with the Contractor's written procedures as provided to the Airport.

#### **66. Contract Documents**

The Contract Documents which comprise the entire agreement between the Commission and the Contractor concerning the Work consist of the following documents, including all changes, addenda, and modifications thereto:

- A. Agreement between the City and County of San Francisco and Bombardier Transportation (Holdings) USA Inc.; Contract 8838
- B. General Requirements
- C. Appendix A – Services to be Provided by the Contractor
- D. Appendix B – Calculation of Charges/Determination of Monthly Payments
- E. Appendix C – Incident Grace Period Table
- F. Appendix D – K Factor Table

G. Appendix E – Spare Parts, Tools and Equipment List

H. Appendix F – Base Contract Price Breakdown



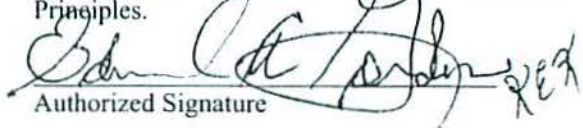
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

CITY  
AIRPORT COMMISSION  
CITY AND COUNTY OF  
SAN FRANCISCO

CONTRACTOR

By signing this Agreement, I certify that I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

By:  John L. Martin, Airport Director

  
Authorized Signature

Attest:

Edward A. Gordon  
Printed Name

  
Jean Caramatti, Secretary  
Airport Commission

Vice President  
Title

  
Authorized Signature

Resolution No: 08-0173

Michael E. Fetsko  
Printed Name

Adopted on: September 16, 2008

Vice President  
Title

Approved as to Form:

Bombardier Transportation (Holdings) USA Inc.  
Company Name

Dennis J. Herrera  
City Attorney

40554  
City Vendor Number

By:   
Deputy City Attorney

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