

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

**Modification No. 1**

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

RECITALS

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

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

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

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

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

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

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

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

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

1.12 Confidential Information.

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

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

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

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

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

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

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

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

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

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

**7.2 Possessory Interest Taxes.** Contractor acknowledges that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

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

7.2.2 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information

required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

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

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

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

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

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

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

**10.11 Limitations on Contributions.** By executing this Agreement, Contractor acknowledges its obligations under section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

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

**10.20 Management of City Data and Confidential Information**

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

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

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

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

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

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

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

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

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

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

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


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

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

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

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

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

CITY	CONTRACTOR
AIRPORT COMMISSION CITY AND COUNTY OF SAN FRANCISCO	
By: _____ Ivar C. Satero, Airport Director	 _____ Authorized Signature
Attest:	Christine M. Mueller _____ Printed Name
By _____	Vice President Finance and Contracts _____ Title
C. Corina Monzón, Secretary Airport Commission	Covenant Aviation Security, LLC _____ Company Name
Resolution No: <u>20-0096</u>	000030737 _____ City Supplier ID
Adopted on: <u>June 2, 2020</u>	400 Quadrangle Drive, Suite A _____ Address
Approved as to Form:	Bolingbrook, IL 60440 _____ City, State, ZIP
Dennis J. Herrera City Attorney	(630) 771-1133 _____ Telephone Number
By _____	35-2161799 _____ Federal Employer ID Number
Stacey A. Lucas, Deputy City Attorney	