

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

Modification No. 5

THIS MODIFICATION (this "Modification") is made as of October 2, 2018, in San Francisco, California, by and between **Bombardier Transportation (Holdings) USA Inc.** ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Airport Commission or the Commission's designated agent, hereinafter referred to as "**Commission.**"

RECITALS

WHEREAS, City and Contractor have entered into the Agreement (as defined below); and

WHEREAS, the 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, on November 18, 2008, by Resolution No. 266-08, the Board of Supervisors approved the Agreement under San Francisco Charter Section 9.118; and

WHEREAS, Commission approved Modification No. 1 pursuant to Resolution No. 13-0156 on July 23, 2013; and

WHEREAS, on December 10, 2013, by Resolution No. 429-13, the Board of Supervisors approved the modification to the Agreement under San Francisco Charter Section 9.118; and

WHEREAS, Commission approved this Modification No. 2 pursuant to Resolution No. 14-0104 on May 19, 2014; and

WHEREAS, on September 9, 2014, by Resolution No. 328-14, the Board of Supervisors approved the modification to the Agreement under San Francisco Charter Section 9.118 but reduced the not to exceed amount by \$4,340 for a new not-to-exceed amount of \$100,543,834; and; and

WHEREAS, Commission approved this Modification No. 3 pursuant to Resolution No. 16-0277 on November 1, 2016; and

WHEREAS, on February 14, 2017, by Resolution No. 44-17, the Board of Supervisors approved the modification to the Agreement under San Francisco Charter Section 9.118 for a new not-to-exceed amount of \$115,444,968; and

WHEREAS, Commission approved this Modification No. 4 pursuant to Resolution No. 17-0280 on November 7, 2017; and

WHEREAS, on February 27, 2018, by Resolution No. 50-18, the Board of Supervisors approved the modification to the Agreement under San Francisco Charter Section 9.118 for a new not-to-exceed amount of \$130,299,196; and

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to extend the contract term and increase the compensation amount; and

WHEREAS, on October 2, 2018, by Resolution No. 18-0321, the Commission approved this Modification to the Agreement to extend the term four months and increase the contract amount by \$5,143,268 for a new total not-to-exceed contract amount of \$135,442,464; and

WHEREAS, on _____, by Resolution No. _____, the Board of Supervisors approved the modification to the Agreement under San Francisco Charter Section 9.118 for a new not-to-exceed amount of \$ _____; and

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

1. Definitions. The following definitions shall apply to this Amendment:

a. Agreement. The term “Agreement” shall mean the Agreement dated September 16, 2008 between Contractor and City, as amended by the:

Modification No. 1, dated August 1, 2013;
Modification No. 2, dated May 20, 2014; and
Modification No. 3, dated November 3, 2016; and
Modification No. 4, dated November 7, 2017.

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

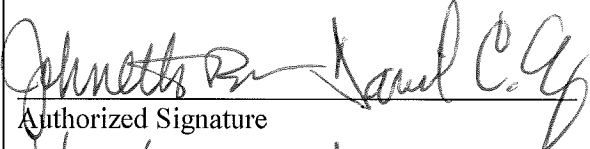
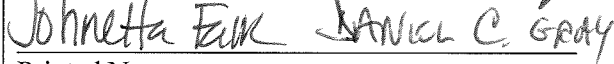


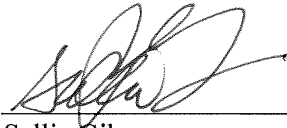
2. Section 2. Term of the Agreement is hereby amended to extend the term of the contract four months for a new ending date of June 30, 2019.

3. Section 5. Compensation is hereby amended to increase the total compensation payable by an amount not to exceed Five Million One Hundred Forty Three Thousand Two Hundred Sixty Two Dollars (\$5,143,262) for a new total not to exceed amount of One Hundred Thirty Five Million Four Hundred Forty Two Thousand Four Hundred Sixty Four Dollars (\$135,442,464).

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

5. 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:	 Printed Name
By _____ C. Corina Monzón, Secretary Airport Commission	  Title
Resolution No: _____	<u>Bombardier Transportation (Holdings) USA Inc.</u> Company Name
Adopted on: _____	<u>0000024151</u> City Supplier ID
Approved as to Form:	<u>1501 Lebanon Church Road</u> Address
Dennis J. Herrera City Attorney	<u>Pittsburgh, PA 15236</u> City, State, ZIP
By  Sallie Gibson Deputy City Attorney	<u>(412) 655-5700</u> Telephone Number
	<u>25-1579550</u> Federal Employer ID Number