

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

First Modification

THIS MODIFICATION (this “Modification”) is made as of February 21, 2017, in San Francisco, California, by and between Airport Research and Development Foundation (“ARDF”), 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

- A. City and ARDF have entered into the License and Services Agreement (as defined below); and
- B. On January 20, 2015 by Resolution No. 15-0008, the Commission awarded this License and Services Agreement (“Agreement”) to ARDF; and
- C. On March 20, 2015, by Resolution No. 58-15, the Board of Supervisors approved the Agreement under San Francisco Charter Section 9.118; and
- D. City exercised all three of its options to extend the Agreement, extending the Services Term to March 12, 2020, and City and ARDF desire to modify the Agreement on the terms and conditions set forth herein to increase the contract amount and update standard contractual clauses; and
- E. On February 21, 2017, by Resolution No. 17-0034, the Commission exercised the options to extend and approved this Modification, and on [insert date], by Resolution No. [insert resolution number], the Board of Supervisors approved this Modification.

NOW, THEREFORE, ARDF and City agree as follows:

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

a. Agreement. The term “Agreement” shall mean the Agreement dated March 12, 2015 between ARDF and City.

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

2. Article 3.3. Administrative Services Fee is hereby replaced in its entirety to read as follows:

3.3 Administrative Services Fee. The City shall pay to ARDF an “Administrative Services Fee” for the Licensee Services (defined in Section 4.1) at the following rates: (a) during the first year of the Services Term (defined in Section 6.3), for free and without any fee, charge, or cost pass through to the City; and (b) during the second year of the Services Term and each one-year extension of the Services Term if any such option to extend is exercised by the City, five percent (5%) of the moneys collected by ARDF from the ABCT Providers and paid to the City. City shall pay the Administrative Services Fee to ARDF on a monthly basis with payments for each month to be made within thirty (30) days after the close of such month. Invoicing for and payment of the Administrative Services Fee shall be made in a

manner and form as required by the City. The Administrative Services Fee paid by the City to ARDF shall constitute Gross Revenue as defined in Section 3.2 for the purpose of calculating the Service Development Fee. The City may withhold payment to ARDF in any instance in which ARDF has failed or refused to satisfy any material obligation provided for under this Agreement. The City's Administrative Services Fee shall not exceed \$500,000 during the initial Services Term, the two years from the Effective Date (defined in Section 6.3). The City's Administrative Services Fee shall not exceed \$250,000 annually for the subsequent three years of the Services Term.

3. **Article 8.19. Federal Non-Discrimination Provisions** is hereby removed from the original Agreement.

4. **Article 10. Requirements for Airport Contracts** is hereby added to the Agreement as follows:

ARTICLE 10 REQUIREMENTS FOR AIRPORT CONTRACTS

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

10.2 Airport Intellectual Property. Pursuant to Resolution No. 01-0118, adopted by the Airport Commission on April 18, 2001, the Airport Commission affirmed that it will not tolerate the unauthorized use of its intellectual property, including the SFO logo, CADD designs, and copyrighted publications. All proposers, bidders, contractors, tenants, permittees, and others doing business with or at the Airport (including subcontractors and subtenants) may not use the Airport intellectual property, or any intellectual property confusingly similar to the Airport intellectual property, without the Airport Director's prior consent.

10.3 Federal Fair Labor Standards Act. This Agreement incorporates by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers. ARDF has full responsibility to monitor compliance to the referenced statute or regulation. ARDF must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

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

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

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

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

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

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

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

- (a) Withholding payments to the contractor under the contract until the contractor complies; and/or
- (b) Cancelling, terminating, or suspending a contract, in whole or in part.

10.5.6 Incorporation of Provisions. ARDF will include the provisions of paragraphs 10.5.1 through 10.5.6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. ARDF will take action with respect to any subcontract or procurement as the Airport or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if ARDF becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, ARDF may request the Airport to enter into any litigation to protect the interests of the Airport. In addition, ARDF may request the United States to enter into the litigation to protect the interests of the United States.


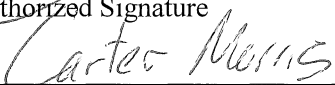


10.5.7 Title VI List of Pertinent Nondiscrimination Acts and Authorities. During the performance of this Agreement, ARDF, for itself, its assignees, and successors in interest (hereinafter referred to as the "ARDF") agrees to comply with the following non-discrimination statutes and authorities; including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

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

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

6. 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, ARDF 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 _____ Jean Caramatti, Secretary Airport Commission	 _____ Title
Resolution No: _____	<u>Airport Research and Development Foundation</u> Company Name
Adopted on: _____	96905 City Vendor Number
Approved as to Form:	601 Madison Street Address
Dennis J. Herrera City Attorney	<u>Alexandria, VA 22314</u> City, State, ZIP
By  Luke Bowman Deputy City Attorney	703-824-0504 Telephone Number
Approved:	52-1594261 Federal Employer ID Number
By _____ Jaci Fong, Director of the Office of Contract Administration and Purchaser	