

First Amendment

THIS AMENDMENT (this "Amendment") is made as of **July 8, 2013**, in San Francisco, California, by and between **Clean Harbors Environmental Services, Inc.** ("Contractor"), and the **City and County of San Francisco**, a municipal corporation ("City"), acting through the Airport Commission (the "Commission") of the San Francisco International Airport, under and by virtue of the Charter and Administrative Code of the City and County of San Francisco.

RECITALS

WHEREAS, City and Contractor have entered into the Emergency Response Agreement (hereinafter "Agreement") dated July 8, 2013 and assigned **Contract No. 9394**; and

WHEREAS, City and Contractor desire to modify the Agreement by the terms and conditions set forth herein, effective as of the date of the Agreement, in order to validate the Agreement and bring it into compliance with applicable laws.

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

I. DEFINITIONS. Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

II. CONTRACT TIME. The Services shall be substantially complete within ninety (90) consecutive calendar days, beginning with and including the official date of the authorization to proceed with the Services from the Commission to the Contractor. The Agreement shall reach Final Completion within thirty (30) consecutive calendar days after the date the City issues a Notice of Substantial Completion.

When Contractor considers all Services under this Agreement complete, including all items of work on any Punch List, Contractor shall notify the City in writing and request that the City issue a certificate of acceptance.

Within five (5) working days of receipt of Contractor's written notice, the City will verify that the Project has reached Final Completion. If the City finds that the Services are not complete, the City will notify Contractor in writing of the items that need to be completed. Contractor shall promptly take actions necessary to complete such Punch List/Final Completion items.

After Contractor has completed to the satisfaction of the City all Punch List/Final Completion items in accordance with this Agreement, the City will issue a written certificate of acceptance as required by section 6.22(K) of the San Francisco Administrative Code stating that the Services are acceptable, and Contractor may submit the final application for payment.

III. MODIFICATIONS TO THE AGREEMENT. The Standard Terms and Conditions of the Agreement are hereby modified as follows:

1. Article 3 is hereby stricken in its entirety and replaced with the following:

Commission shall provide full and complete information regarding its requirements for the Services to be completed under this Agreement. Commission shall designate a representative who shall be

fully acquainted with the Services to be provided hereunder and who will be authorized to approve changes in the Services; render decisions promptly; and approve Contractor's daily worksheet.

City represents and warrants that it shall provide payment to Contractor for the services provide by Contractor as set forth in Article 5.

Commission shall communicate to Contractor all special hazards or risks known to the Commission which are related to the performance of the Services pursuant to this Agreement.

2. Article 4 is hereby stricken in its entirety and replaced with the following:

CUSTOMER agrees to pay Contractor in accordance with Contractor's published Rate Schedule for Emergency Response (rates) for response or standby activities, including mobilization/demobilization of resources.

Contractor will present its first invoices to the Commission as soon as possible following commencement of the Services provided hereunder, and subsequent invoices every five (5) days thereafter. The Commission shall pay the invoices within thirty (30) days of the date of receipt of said approved invoice by the Commission.

4A. Contract Sum. Contractor and the City agree that, upon performance and fulfillment of the mutual covenants set forth herein, the City will, in the manner provided by law and as set forth in this Agreement, pay or cause to be paid to Contractor for time and materials for a total not-to-exceed amount of **One Million Dollars (\$1,000,000)**.

Contractor understands and agrees that the Contractor shall be solely responsible for providing all resources that may be necessary to provide the Services, and that the City shall have no obligation whatsoever to finance any part of such costs except with respect to those amounts which become due under the terms and conditions of this Agreement.

3. Article 5 is hereby stricken in its entirety and replaced with the following:

If Contractor responds to any emergency condition which threatens safety of persons or property at the San Francisco International Airport during the performance of the Services under this Agreement, Customer agrees to pay Contractor at the agreed upon rates for any costs incurred delays resulting from Contractor's response. If any change occurs during the term of this Agreement with respect to any laws, rules, regulations or conditions which affects the rights or obligations of City and Contractor under this Agreement, or the applicability of any taxes or fees, or the cost of handling waste materials, Commission and Contractor shall negotiate in good faith to bring this Agreement into conformance with such change or changes. In the event that such agreement cannot be reached, Commission and Contractor shall have the right to terminate this Agreement immediately upon written notice to the other party.

4. Article 6 is hereby stricken in its entirety and replaced with the following:

Contractor shall keep in effect during the term of this Agreement the following insurance coverage:

COVERAGE	LIMITS
Worker's Compensation	\$1 million
Automobile Liability	\$1 million per occurrence \$1 million aggregate
Comprehensive General Liability	\$1 million per occurrence \$3 million aggregate
Environmental Pollution Liability and Environmental Impairment Liability	\$5 million per occurrence

For general liability, environmental pollution liability, environmental impairment liability and automobile liability insurance, Contractor shall include as additional insured, the City and County of San Francisco, its board members and commissions, and all authorized agents and representatives, and members, directors, officers, trustees, agents and employees of any of them. Other parties to be protected by Contractor's liability insurance shall be as follows:

1. City's consultants and/or subconsultants
2. Non-City Agencies

If, at any time during the life of this Agreement, Contractor fails to maintain any item of the required insurance in full force and effect, all Services of this Agreement may, at the City's sole option, be discontinued immediately, and all Agreement payments due of that become due will be withheld, until notice is received by the City from an insurance provider that the required insurance has been restored to full force and effect and the premiums therefor have been paid for a period satisfactory to the City.

Any failure to maintain any item of the required insurance may, at City's sole option, be sufficient cause for termination for cause of this Agreement.

7. Article 7 is hereby stricken in its entirety and replaced with the following:

To the fullest extent permitted by law, and consistent with California Civil Code section 2782, Contractor shall assume the defense of, indemnify and hold harmless City, its boards and commissions, other parties designated in Article 6 (Insurance Requirements), and all of their officers, agents, members, employees, authorized representatives, or any other persons deemed necessary by any of them acting within the scope of the duties entrusted to them, from all claims, suits, damages, actions, losses and liabilities of every kind, nature, and description, including but not limited to attorney's fees, to the extent caused by the negligence or willful misconduct of the Contractor. The liability of Contractor shall not be limited to the amount of insurance coverage required under this Agreement as amended. This indemnification shall not apply to the extent the loss is caused by the negligence, willful misconduct or intentional tort of any person indemnified herein.

Notwithstanding anything to the contrary herein, it is understood and agreed by the parties that nothing in this Agreement bars, limits, or in any way modified Contractor's right to assert any defense or immunity provided by law.

8. Article 11 is hereby stricken in its entirety and replaced with the following:

A. Waiver – Any waiver by either party of any provision or condition of this Agreement shall not be construed or deemed to be a waiver of any other provision or condition of this Agreement, nor a waiver of subsequent breach of the same provision or condition.

B. Severability – if any section, subsection, sentence or clause of this Agreement shall be deemed to be illegal, invalid, or unenforceable for any reason, such illegality, invalidity or unenforceability shall not affect the legality, validity or enforceability of this Agreement or other section of this Agreement.

C. Entire Agreement – This Agreement and Exhibits to this Agreement, as amended by this Amendment, represent the entire understanding and agreement between City and Contractor and supersedes any and all prior agreements, whether written or oral, that may exist between the parties regarding same. Modifications to this Agreement shall be effective only if in writing and signed by the Commission and Contractor. Additionally, conflicting or different terms on any Purchase Order or other preprinted document issued by Commission or Contractor shall be void and are hereby expressly rejected by the other party to this Agreement.

D. Survival – The provisions contained in Article 2, 3, 4, 7 and 11 shall survive and remain in effect following the termination of this Agreement.

E. Applicable Law – This Agreement shall be interpreted in accordance with the laws of the State of California and the provisions of the City's Charter and Administrative Code, including but not limited to Chapter 6 of the San Francisco Administrative Code, which is incorporated by this reference as if set forth herein in full.

F. Venue – All Claims, counter-claims, disputes and other matters in question between the City and Contractor arising out of or relating to this Agreement or its breach will be decided by a court of competent jurisdiction within the State of California.

IV. ADDITIONAL TERMS

12. Compliance with Laws

A. Contractor shall keep itself fully informed of and comply with the Charter, ordinances and regulations of the City and other local agencies having jurisdiction over the Services, and all federal and state laws and regulations in any manner affecting this Agreement as amended, the performance of the Services, or those persons engaged therein.

B. All construction and materials provided under this Agreement as amended shall be in full accordance with the latest laws and requirements, or the same as may be amended, updated or supplemented from time to time, of the Americans with Disability Act Accessibility Guidelines, CAL-OSHA, Federal Aviation Administration (FAA), Caltrans, the State Division of Industrial Safety of the Department of Industrial Relations, the Division of the State Architect – Access Compliance, the Public Utilities Commission of the State of California, the State Fire Marshal, the National Fire Protection Association, the San Francisco Department of Public Health, state and federal laws and regulations, and of other bodies or officials having jurisdiction or authority over same, and they shall be observed and complied with by Contractor and any and all persons, firms and corporations employed by or under it.

C. Authorized persons may at any time enter upon any location for Services to ascertain whether such laws, ordinances, regulations or orders are being complied with.

D. No additional costs will be paid or extensions of time granted as a result of such compliance.

13. City's Remedies for False Claims and Other Violations.

Under San Francisco Administrative Code section 6.22M, Contractor or any Subcontractor or Supplier who fails to comply with the terms of this Agreement as amended, who violates any provision of Chapter 6 of the Administrative Code or rules and regulations adopted per that Chapter, who submits false claims, or who violates against any governmental entity a civil or criminal law relevant to its ability to perform under or comply with the terms and conditions of the Agreement as amended, may be subject to monetary penalties, investigation, and prosecution as set forth in Administrative Code section 6.80, et seq. Contractor shall include in each subcontract and purchase order for Services a clause incorporating this provision.

14. Proprietary or Confidential Information of City

Contractor understands and agrees that, in the performance of the Services under this Agreement as amended or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Contractor agrees that all information disclosed by City to Contractor shall be held in confidence and used only in performance of the Agreement as amended. Contractor shall exercise the same standard or care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

Contractor understands that some of the information that may be obtained by Contractor through the performance of the Services under this Agreement as amended or in contemplation thereof, may be restricted from public dissemination by the National Transportation Safety Board or other Federal Agency.

In the event that Contractor becomes legally compelled (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose any Confidential Information, to the extent it is permitted to do so, it shall provide the City with prompt prior written notice of such requirement so that the City may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Agreement. In the event that such protective order or other remedy is not obtained, or that the City waives compliance with the provisions hereof, Contractor agrees to furnish only that portion of the Confidential Information which is necessary to comply with the legal order and to exercise best efforts to obtain assurance that confidential treatment will be accorded such information.

IV. Effective Date. Each of the modifications set forth in Section 2 shall be effective on and after July 8, 2013.

V. **Legal Effect.** Contractor agrees that in the event of conflicting language between this Amendment and Contractor's printed form contract, the provision of this Amendment shall take precedence. This Amendment shall supersede any language in the Contractor's terms and conditions attempting to nullify City terms and conditions or to resolve language conflicts in favor of the Contractor's terms and conditions.

CHRIS HANBONS
Principal
BY: Scott Metzger
Senior Vice President
Title
Vendor Number: 75807

City:
Recommended: [Signature]
Ivan Satero, Deputy Airport Director

Approved as to form:
DENNIS J. HERRERA
City Attorney

BY: [Signature]
John E. Martin, Airport Director

BY: [Signature]
Heather Wolnick
Deputy City Attorney



San Francisco International Airport

July 11, 2013

Sunil Evans
Account Manager
Clean Harbors Environmental Services
1010 Commercial Street
San Jose, CA 95112

Dear Mr. Evans,

You are authorized to provide emergency on call services at San Francisco International Airport for the cleanup and repair at Runway 28L under Contract No. 9393. Please provide civil and environmental services including labor, materials, and equipment as requested.

You are to take direction only from me or my designated representative. Keep accurate records of all expended resources. Payment will be on a time and materials basis based upon the attached Clean Harbors Regional Rate Sheet dated July 11, 2013.

Sincerely,

A handwritten signature in black ink, appearing to read "Ivar Satero", is written over a circular stamp or seal.

Ivar Satero
Deputy Airport Director
Airport Development & Technology

AIRPORT COMMISSION CITY AND COUNTY OF SAN FRANCISCO

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MAYOR

LARRY MAZZOLA
PRESIDENT

LINDA S. CRAYTON
VICE PRESIDENT

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