

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

Modification No. 4

THIS MODIFICATION (this "Modification") is made as of November 7, 2017, 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, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to extend the contract term, increase the compensation amount, and update standard contractual clauses; 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

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.

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 for one year for a new ending date of February 28, 2019.

3. **Section 5. Compensation** is hereby amended to increase the total compensation payable by an amount not to exceed Fourteen Million Eight Hundred Fifty Four Thousand Two Hundred Twenty Eight Dollars (\$14,854,228) for a new total not to exceed amount of One Hundred Thirty Million Two Hundred Ninety Nine Thousand One Hundred Ninety Six Dollars (\$130,299,196).

4. **New Section 69. Airport Commission Rules and Regulations** is hereby added to the Agreement to read as follows:

69. Airport Commission Rules and Regulations. Contractor 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>.

5. **New Section 70. Federal Fair Labor Standards Act** is hereby added to the Agreement to read as follows:

70. Federal Fair Labor Standards Act. This Agreement incorporates by reference the provisions of 29 USC §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. Contractor has full responsibility to monitor compliance to the referenced statute or regulation. Contractor must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

6. **New Section 71. Occupational Safety and Health Act of 1970** is hereby added to the Agreement to read as follows:

71. Occupational Safety and Health Act of 1970. This Agreement incorporates by reference the requirements of 29 CFR §1910 with the same force and effect as if given in full text. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. Contractor 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 §1910). Contractor 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.

7. **New Section 72. Federal Nondiscrimination Requirements** is hereby added to the Agreement to read as follows:

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

72.1 Compliance with Regulations. Contractor (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.

72.2 Nondiscrimination. Contractor, 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. Contractor 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 §21.

72.3 Solicitations for Subcontracts. Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by Contractor 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 Contractor of Contractor's obligations under this Agreement and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.

72.4 Information and Reports. Contractor 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.

72.5 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.

72.6 Incorporation of Provisions. Contractor will include the provisions of paragraphs 72.1 through 72.6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. Contractor 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 Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, Contractor may request the Airport to enter into any litigation to protect the interests of the Airport. In addition, Contractor may request the United States to enter into the litigation to protect the interests of the United States.

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

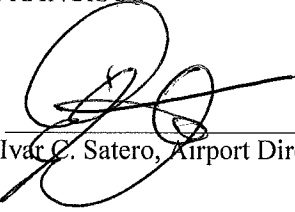
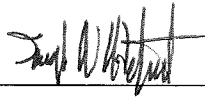
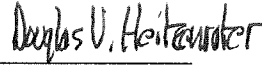
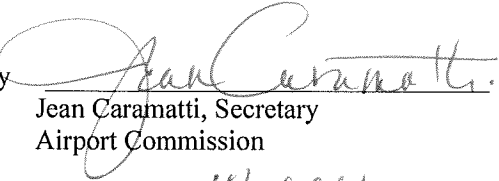

- a. Title VI of the Civil Rights Act of 1964 (42 USC §2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- b. 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- c. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC §4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- d. Section 504 of the Rehabilitation Act of 1973, (29 USC. §794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR §27;
- e. The Age Discrimination Act of 1975, as amended, (42 USC §6101 *et seq.*), (prohibits discrimination on the basis of age);
- f. 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);
- g. 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);
- h. 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 USC §12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR §37 and 38 and the Department of Justice regulations at 28 CFR, parts 35 and 36;

- i. The Federal Aviation Administration's Non-discrimination statute (49 USC §47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- j. 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;
- k. 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 CFR at 74087 to 74100);
- l. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC §1681 *et seq.*).

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

9. Legal Effect. Except as expressly modified 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 Amendment as of the date first referenced above.

CITY	CONTRACTOR
AIRPORT COMMISSION CITY AND COUNTY OF SAN FRANCISCO	
By:  Ivar C. Satero, Airport Director	Jennifer C. Callery  Authorized Signature JENNIFER CALLERY  Printed Name Vice President Civil/Mechanical Eng. Mgr. Title
Attest: By:  Jean Caramatti, Secretary Airport Commission	Bombardier Transportation (Holdings) USA Inc. Company Name 0000024151 City Supplier ID
Resolution No: <u>17-0280</u> Adopted on: <u>Nov. 7, 2017</u>	1501 Lebanon Church Road Address Pittsburgh, PA 15236 City, State, ZIP
Approved as to Form: Dennis J. Herrera City Attorney	(412) 655-5700 Telephone Number
By:  Sallie Gibson Deputy City Attorney	25-1579550 Federal Employer ID Number