

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

Modification No. 6

THIS MODIFICATION (this “Modification”) is made as of March 1, 2020 in San Francisco, California, by and between **SFO Hotel Shuttle, Inc.** (“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

WHEREAS, on June 7, 2011, by Resolution No. 234-11 and on June 5, 2012, by Resolution No. 206-12, the Board of Supervisors approved the contracting out of shuttle bus services concurring with the Controller’s certification that the shuttle bus services can be performed by a contractor at a lower cost than by City employees at current salary and benefit levels; and

WHEREAS, on October 9, 2012, by Resolution Number 12-0220, the Commission awarded Contract No. 9254 to SFO Hotel Shuttle Bus Company for the period of December 1, 2012 through June 30, 2016 in an amount not-to-exceed \$39,000,000; and

WHEREAS, on November 20, 2012, by Resolution No. 421-12, the Board of Supervisors approved Contract No. 9254 under San Francisco Charter Section 9.118 for the period of December 1, 2012 through June 30, 2022, in an amount not-to-exceed \$105,000,000; and

WHEREAS, on June 3, 2014, by Resolution No. 182-14, the Board of Supervisors approved the continuing contracting out of shuttle bus services for FY 2014/15 & FY 2015/16, concurring with the Controller’s certification that the shuttle bus services can be performed by a contractor at a lower cost than by City employees at current salary and benefit levels; and

WHEREAS, on May 15, 2015, the Airport Director approved the Assignment and Assumption and First Modification, which assigned services from SFO Shuttle Bus Company to SFO Hotel Shuttle, Inc.; including the cost for bus cleaning services as a reimbursable expense and to retroactively pay for the bus cleaning service during the period of December 2012 through April 2015;

WHEREAS, on March 15, 2016, by Resolution Number 16-0077, the Commission approved Modification No. 2 to Contract No. 9254 with SFO Hotel Shuttle, Inc. to provide shuttle bus service at San Francisco International Airport, exercising the first of three (3) two-year options commencing July 1, 2016 through June 30, 2018, in an amount of \$23,871,617, for a new total contract amount not to exceed \$62,871,617;

WHEREAS, on July 19, 2016, by Resolution No. 307-16, the Board of Supervisors approved the continuing contracting out of shuttle bus services for FY 2016/17 & FY 2017/18, concurring with the Controller’s certification that the shuttle bus services can be performed by a contractor at a lower cost than by City employees at current salary and benefit levels; and

WHEREAS, on March 21, 2017, by Resolution Number 17-0063, the Commission approved Modification No. 3 to Contract No. 9254 with SFO Hotel Shuttle, Inc. to increase the contract amount by \$1,410,000, for a new not-to-exceed amount of \$64,281,617;

WHEREAS, on January 16, 2018, by Resolution No. 18-0002, the Commission approved Modification No. 4 to exercise the second of three (3) two-year options commencing July 1, 2018 through June 30, 2020, in an amount of \$28,300,000, for a new total contract amount not to exceed \$92,581,617;

WHEREAS, on May 22, 2018, by Resolution No. 167-18, the Board of Supervisors approved the continuing contracting out of shuttle bus services for FY 2018/19 & FY 2019/20, concurring with the Controller's certification that the shuttle bus services can be performed by a contractor at a lower cost than by City employees at current salary and benefit levels; and

WHEREAS, on December 18, 2018, by Resolution No. 18-0400, the Commission approved Modification No. 5 to authorize wage rate increases and additional reimbursable costs in an amount of \$2,700,000, for a new total contract amount not-to-exceed \$95,281,617; and

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to exercise the final of three (3) two-year options commencing July 1, 2020 through June 30, 2022, in an amount not to exceed \$27,900,000, for a new total contract amount not to exceed \$123,181,617 and update standard clauses; and

WHEREAS, on February 4, 2020 by Resolution No. 20-0016, the Commission approved this Modification to the Agreement to extend the term through June 30, 2022 and to increase the contract amount by \$27,900,000 for a new total contract amount not to exceed \$123,181,617; and

WHEREAS, on [insert date], by Resolution No. [insert resolution number], the Board of Supervisors approved the Agreement under San Francisco Charter Section 9.118; and

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

1. Definitions

a. Agreement has been revised. The definition "Agreement" shall mean the Agreement dated October 9, 2012 between Contractor and City, as amended by the:

Modification No. 1,	dated May 15, 2015 and
Modification No. 2,	dated July 1, 2016 and
Modification No. 3,	dated December 1, 2017 and
Modification No. 4,	dated July 1, 2018 and
Modification No. 5,	dated January 1, 2019.

2. New Definitions, are hereby added to the Agreement as follows:

The following definitions apply to this Agreement:

b. "City" or "the City" means the City and County of San Francisco, a municipal corporation, acting by and through both its Director of the Office of Contract Administration, referred to as "Purchasing," or the Director's designated agent, Airport Commission.

c. “City Data” or “Data” includes, but is not limited to, 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.

d. “CMD” means the Contract Monitoring Division of the City.

e. “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 San Francisco Administrative Code Chapter 12M (Chapter 12M).

f. “Contractor” or “Consultant” means SFO Hotel Shuttle, Inc., 54 Tanforan Avenue, South San Francisco, CA 94080.

g. “Deliverables” means Contractor's work product resulting from the Services that are provided by Contractor to City during the course of Contractor’s performance of the Agreement, including without limitation, the work product described in the “Scope of Services” attached as Appendix A.

h. “Effective Date” means the date upon which the City's Controller certifies the availability of funds for this Agreement as provided in Section 3.

i. “Mandatory City Requirements” means those City laws set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws that impose specific duties and obligations upon Contractor.

j. “Party” and “Parties” mean the City and Contractor either collectively or individually.

k. “Services” means the work performed by Contractor under this Agreement as specifically described in the “Scope of Services” attached as Appendix A, including all services, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

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

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

4. Section 5. Compensation, is hereby amended to increase the total compensation payable by an amount not to exceed \$27,900,000 for a new total not-to-exceed amount of \$123,181,617.

5. Section 20 Default; Remedies is hereby amended to include **Section 84 “Management of City Data and Confidential Information”** into the table.

6. **Section 22 Rights and Duties upon Termination or Expiration** is hereby amended to include **Section 84 “Management of City Data and Confidential Information”** into the table.

7. **Section 24 Proprietary or Confidential Information of City** is hereby deleted in its entirety and replaced to read as follows:

24. Confidential Information. In the performance of Services, Contractor may have access to City Data and /or City’s Confidential Information, the disclosure of which to third parties may damage City. If City discloses City Data or Confidential Information to Contractor, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own Confidential Information.

8. **Section 30 Assignment** is hereby deleted in its entirety and replaced to read as follows:

30. 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. **Section 42 Limitations on Contributions** is hereby deleted in its entirety and replaced to read as follows:

42. 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.

10. Section 43 Minimum Compensation Ordinance is hereby deleted in its entirety and replaced to read as follows:

43. Minimum Compensation Ordinance. If Administrative Code Chapter 12P applies to this contract, Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. Information about and the text of the Chapter 12P is available on the web at <http://sfgov.org/olse/mco> . Contractor is required to comply with all of the applicable provisions of 12P, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, Contractor certifies that it complies with Chapter 12P.

11. Section 44 Health Care Accountability Ordinance is hereby deleted in its entirety and replaced to read as follows:

44. Health Care Accountability Ordinance. If Administrative Code Chapter 12Q applies to this contract, Contractor shall comply with the requirements of Chapter 12Q. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission. Information about and the text of the Chapter 12Q, as well as the Health Commission’s minimum standards, is available on the web at <http://sfgov.org/olse/hcao> . Contractor is subject to the enforcement and penalty provisions in Chapter 12Q. Any Subcontract entered into by Contractor shall require any Subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.

12. Section 57 Protection of Private Information is hereby deleted in its entirety and replaced to read as follows:

57. Protection of Private Information. If this Agreement requires City to disclose “Private Information” to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services. Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

13. Section 58 Sugar-Sweetened Beverage Prohibition is hereby deleted in its entirety and replaced to read as follows:

58. Distribution of Beverages and Water.

58.1 Sugar-Sweetened Beverage Prohibition. Contractor agrees that it shall not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Agreement.

58.2 Packaged Water Prohibition. Contractor agrees that it shall not sell, provide, or otherwise distribute Packaged Water, as defined by San Francisco Environment Code Chapter 24, as part of its performance of this Agreement.

14. New Section 80 Withholding is hereby added to the Agreement to read as follow:

80. 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.

15. New Section 81 Consideration of Salary History is hereby added to the Agreement to read as follow:

81. Consideration of Salary History. Contractor shall comply with San Francisco Administrative Code 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.

16. New Section 82 Notification of Legal Requests is hereby added to the Agreement to read as follows:

82. 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. New Section 83 Incorporation of Recitals is hereby added to the Agreement to read as follows:

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

18. New Section 84 Management of City Data and Confidential Information is hereby added to the Agreement to read as follows:

84. Management of City Data and Confidential Information

Access to City Data. City shall at all times have access to and control of all data given to Contractor by City in the performance of this Agreement ("City Data" or "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.

84.2 Use of City Data and Confidential Information. Contractor agrees to hold City's Confidential Information received from or created on behalf of the City in strictest confidence. Contractor shall not use or disclose City's Data or Confidential Information except as permitted or required by the Agreement or as otherwise authorized in writing by the City. Any work using, or sharing or storage of, City's Confidential Information outside the United States is subject to prior written authorization by the City. Access to City's 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 security or service delivery analysis that is not explicitly authorized.

84.3 Disposition of Confidential Information. Upon termination of Agreement or request of City, Contractor shall within forty-eight (48) hours return all Confidential Information which includes all original media. Once Contractor has received written confirmation from City that Confidential Information has been successfully transferred to City, Contractor shall within ten (10) business days purge all 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.

19. Appendix B Calculation of Charges. Appendix B Calculation of Charges is hereby amended to include the following rates for the last option years as follows:

The City shall reimburse Contractor for wage increases at the rates set forth in the table below. No further wage increases or new classifications will be approved except through a contract modification.

Wage Rates and Reimbursements		
Effective January 2020		
Classification	Rate Paid by Contractor	Billed Rate to SFO*
Shuttle Bus Drivers	\$30.10	\$29.30
Supervisors	\$30.99	\$28.39
Spotters	\$20.35	\$18.93
Effective July 2020		
Bus Mechanics (Journeymen)	\$40.20	\$37.43
Bus Mechanics (Foreman)	\$44.22	\$41.16
Effective January 2021		
Shuttle Bus Drivers	\$31.25	\$29.88
Supervisors	\$32.14	\$28.97
Spotters	\$21.35	\$19.43
Effective July 2021		

Bus Mechanics (Journeyman)	\$41.80	\$38.23
Bus Mechanics (Foreman)	\$45.98	\$42.04
Effective January 2022		
Shuttle Bus Drivers	\$32.50	\$30.51
Supervisors	\$22.35	\$29.60
Spotters	\$33.39	\$19.93
Effective July 2022		
Bus Mechanics (Journeyman)	\$43.30	\$38.98
Bus Mechanics (Foreman)	\$47.63	\$42.87

**Billed rate (Previous billed rate + 50% current of increase)*

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 AIRPORT COMMISSION CITY AND COUNTY OF SAN FRANCISCO	CONTRACTOR
By: _____ Ivar C. Satero, Airport Director	_____ Authorized Signature
Attest:	_____ Printed Name
By _____ C. Corina Monzón, Secretary Airport Commission	_____ Title
Resolution No: _____	_____ Company Name
Adopted on: _____	_____ City Supplier ID
Approved as to Form:	_____ Address
Dennis J. Herrera City Attorney	_____ City, State, ZIP
By _____	_____ Telephone Number
Stacey A. Lucas Deputy City Attorney	_____ Federal Employer ID Number