

**METROPOLITAN OAKLAND INTERNATIONAL AIRPORT**

**AGREEMENT**

**FOR**

**AIRPORT CONTRACT SECURITY SERVICES**

**BETWEEN**

**CITY OF OAKLAND,  
A MUNICIPAL CORPORATION,  
ACTING BY AND THROUGH ITS BOARD OF PORT COMMISSIONERS**

**AND**

**HSS, INC.**

**DATED**

**JULY 1, 2015**

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## AIRPORT CONTRACT SECURITY SERVICES AGREEMENT

**THIS AIRPORT CONTRACT SECURITY SERVICES AGREEMENT**, dated this 1<sup>st</sup> day of July 2015 ("Agreement"), is entered into by and between the CITY OF OAKLAND, a municipal corporation ("City"), acting by and through its Board of Port Commissioners (hereinafter referred to as the "Port"), and HSS, INC., as the operator (hereinafter referred to as the "Operator").

### WITNESSETH

**WHEREAS**, the Port desires to obtain professional and expert management and operation of Contract Security Services (as hereafter defined) at Oakland International Airport (the "Airport"), and has solicited proposals from firms with experience and expertise in the management and operation of similar contract security services; and

**WHEREAS**, in response to such solicitation by the Port through the Port's Request for Proposals for Airport Contract Security Guard Services (the "RFP"), the Operator has submitted a proposal (the "Proposal"); and

**WHEREAS**, Operator has the requisite experience and expertise to provide the Contract Security Services; and

**WHEREAS**, the Port desires to accept the Proposal in order to retain Operator as an independent contractor to manage and operate the Contract Security Services in accordance with this Agreement;

**NOW, THEREFORE**, in consideration of the terms, covenants and conditions contained herein to be kept and performed by the respective parties hereto,

IT IS MUTUALLY AGREED AS FOLLOWS:

1. RETENTION OF OPERATOR.

The Port hereby retains Operator, and Operator agrees with the Port, to manage, operate and provide, as an independent contractor, the Contract Security Services described in this Agreement (hereafter the "Contract Security Services" or the "Services"). The Operator agrees to provide the Contract Security Services at locations at the Airport as directed from time to time by the Port's Director of Aviation (hereinafter the "Director") or the Director's designees, including the Port's Assistant Director of Aviation, the Port's Aviation Security Manager, or any individual authorized in writing as a designee by the Director (any of the aforementioned individuals is hereinafter referred as the "Designee"). The Operator shall be responsible for all functions related to staffing, supervision and overall professional management of the Contract Security Services hereunder, including hiring, training, scheduling, evaluating services and coordinating with Port staff.

2. TERM OF AGREEMENT.

2.1 Term. This Agreement shall have an initial term of Three (3) years commencing July 1, 2015 ("Commencement Date"), and terminating at 11:59 P.M. on June 30, 2018; provided, however, that this Agreement shall automatically be renewed for up to two (2) extension periods of one (1) year each (each referred to as an "Extension Term") unless the Port at its discretion provides Operator with written notice of non-renewal not less than sixty (60) days before the last day of the

initial term or applicable Extension Term. The term "Operating Term" shall mean the initial term of this Agreement and any Extension Term resulting from the automatic renewal of this Agreement under this Section 2.1. Notwithstanding any provision of this Agreement to the contrary, the Port's Executive Director or the Director may terminate this Agreement with or without cause at any time as provided in Section 21.1 below.

2.2 Transition Period. For a period of sixty days prior to the Commencement Date (the "Transition Period"), Operator shall have access to the Airport to prepare for Operator's commencement of the Services on the Commencement Date. Prior to the commencement of the Transition Period, Operator shall furnish the certificates of insurance to the Port of Oakland Risk Management Department evidencing the insurance requirements under the Agreement are met. The indemnity provisions of Section 16 shall apply to Operator's acts or omissions or the acts or omissions of Operator's officers, agents, employees, contractors, subcontractors, invitees, vendors, suppliers or licensees during the Transition Period to the same extent such provisions apply during the Operating Term.

### 3. SCOPE OF SERVICES: WORKFORCE REQUIREMENTS.

3.1 Services. The Operator agrees to provide the Services, as directed from time to time by the Director or the Designee. Operator agrees to provide the Services at such locations and during the hours specified in attached Exhibit "A", unless and until other locations or hours for the Services are established by the Director or the Designee, in which case Operator shall provide the Services from those locations and during those hours. The Port shall have the right in its sole discretion to increase or decrease Service hours. Operator shall provide replacement security guards to cover vacancies within four (4) hours of a request by the Director or the Designee. Operator shall provide up to four (4) security guards for emergency assignments within four (4) hours' notice from the Director or the Designee. In addition, Operator shall provide up to fifteen (15) security guards for special assignments within twenty-four (24) hours' notice from the Director or Designee, and such guards shall be available to continue working on such assignments for an extended period as indicated by the Director or Designee. All security guards working under this Agreement are required to work a minimum of eight hours every two weeks.

#### 3.2 Workforce Requirements.

a) Operator must provide a reliable and consistent work force, qualified to perform the Services under this Agreement, with a low turnover rate. Throughout the Operating Term of this Agreement, all employees assigned to perform work under this Agreement shall possess a valid security guard license issued by the California Department of Consumer Affairs Bureau of Security and Investigative Services in the appropriate discipline for the type of work performed, and shall obtain and maintain all other licenses required to provide any of the Services under applicable California, City of Oakland and Federal law. In addition, Operator and its employees providing any of the Services must comply with the following:

(i) no security guard performing any of the Services will possess any weapon while on Airport property, including without limitation, firearms, stun guns, knives, pepper spray, mace or batons;

(ii) all work sites served by Operator will be non-smoking and Operator's employees shall comply with all applicable smoking restrictions; and

(iii) the Port will issue an initial set of keys to Operator at no charge. However, in the sole discretion of the Port, in the event the locks need to be changed

to maintain security as the result of Operator's employees' loss or misuse of keys, Operator will be responsible for the cost of changing the affected locks;

b) All security guards providing any of the Services under this Agreement must, in addition to all other requirements contained in Section 3.2(a) above or under "GUARD PERSONNEL QUALIFICATIONS" on attached Exhibit "G":

- (i) be able to distinguish all colors, and have vision correctable to 20/20;
- (ii) be able to climb inside and bend under vehicles for vehicle inspections (example, construction dump trucks, etc.);
- (iii) be able to access construction sites or rooftops using ladders;
- (iv) work while exposed to outdoor elements such as, but not limited to, wind, rain, snow, and aircraft noise;
- (v) read and write in English, and comprehend sensitive security information and Port rules, regulations, and other communications and to communicate effectively. Security guards acting as representatives of the Port shall conduct themselves in a courteous and professional manner while performing duties on behalf of the Port. The Port retains the right to have any guard removed for failure to meet Port standards for customer service and performance;
- (vi) hold a valid drivers license issued by the State of California; and
- (vii) qualify for an Airport security badge issued by the Port following a United States Transportation Security Administration-mandated and Port-administered fingerprint-based criminal history records check under 49 CFR § 1542 and Security Threat Assessment and Security Identification Display Areas training, as well as a Customs and Border Protection background check, which will be provided by the Port at its expense. The Operator shall pay the Port the Port's standard fee for applying for an Airport Security Badge for each employee of Operator engaged or to be engaged in providing the Services at the Airport. Operator shall not charge the Port for any time spent by Operator's employees to obtain Airport Security Badges, including any relating training required to be eligible for such badges. (Operator may charge Port under Section 4 below for extra training requested by the Director or the Designee or for emergency drills required for Operator to comply with its obligations under Section 23.1 below.)

c) Operator shall provide the Port with a copy of its current HSS Employee Handbook.

3.3 Resources. Operator shall dedicate sufficient staff, equipment and other resources exclusively to implement the Services as specified in this Agreement and shall not divert such dedicated staff, equipment or resources to any other security service or to any other business. Operator will assign a project manager for this Agreement. The initial project manager is set forth in Exhibit A. Operator agrees that it shall not change the project manager for this Agreement without the Port's approval. The initial project manager shall within three (3) months of the commencement of this Agreement, and any subsequent project manager shall within three (3) months of becoming the project manager hereunder, attain at least the American Association of Airport Executives (A.A.A.E.)-A.C.E. Certification.



#### 4. COMPENSATION.

4.1 Total Compensation. The Port shall pay Operator for satisfactorily completed Services at the hourly rate set forth in attached Exhibit "B". Operator shall include the Agreement number provided by the Port on all requests for payments and shall submit invoices no more frequently than monthly to the Port's Aviation Security Office, One Airport Drive, Oakland, California 94621. The Port will pay for all completed Services within thirty (30) calendar days after the Port's receipt of a properly completed invoice covering those Services, subject to the Port's set-off rights provided for in this Agreement. Invoices shall detail the number of hours worked in increments of fifteen (15) minutes and shall reflect the agreed hourly rates for guards and patrols regardless of the time of day, day of week, or holiday. Until the Port has been provided with invoices that have been properly completed in accordance with the requirements of this Section 4, and with such supporting documentation as the Director or the Designee shall reasonably request, which may include, without limitation, employee time sheets, time cards and payroll receipts, Port shall have no obligation to pay Operator any of the invoiced amounts.

Payment for all Services provided by all of Operator's off-Airport staff shall be included in the hourly rate set forth in attached Exhibit "B" and shall not be paid for as a separate position.

4.2 Hourly Work. For Services performed in accordance with the terms of this Agreement, each of Operator's invoices shall include, at a minimum, the name, title, labor rate (from the rate set forth on attached Exhibit "B", as such rate may be adjusted pursuant to Section 4.3 below), number of hours, and total charge for the Services performed by each individual being charged.

4.3 Pricing Escalation. Operator may request a rate adjustment no more frequently than annually for the ensuing Extension Term to reflect actual increases in Operator's cost to perform the Services that have been documented by Operator to the satisfaction of the Director or the Designee. In no event shall the rate adjustment be more than the change in the Consumer Price Index; provided, however, if Operator is paying Living Wage (as described in Section 18) and the change in Living Wage is greater than the Consumer Price Index, then the rate adjustment shall not be more than the change in the Living Wage rate. Any request for a rate adjustment shall be submitted to the Port in writing no less than ninety (90) calendar days prior to the end of the current year of the Operating Term, and adjustments approved by the Director shall be effective as of the beginning of the next Extension Term.

For the purposes of this Agreement a "change in the Consumer Price Index" shall mean the difference between the Consumer Price Index, Urban Wage Earners and Clerical Workers, (base year 1982 - 1984 = 100) for the San Francisco - Oakland - San Jose CMSA, published by the United States Department of Labor, Bureau of Labor Statistics ("Index") published most immediately preceding the most recent anniversary of the Commencement Date ("Extension Index") and the Index published most immediately preceding the commencement of the prior term ("Beginning Index").

#### 5. EXPENSE REIMBURSEMENTS; OVERBILLING.

5.1 Expense Reimbursement. Operator shall be responsible for all of its costs and expenses, and will not be reimbursed by the Port for any costs and expenses incurred by the Operator in performing the Contract Security Services at the Airport.

5.2 Overbilling and Overpayment. If in any given month, the Operator submits a report, invoice or bill which charges the Port for more than what should properly be charged to the Port

pursuant to Section 4 of this Agreement and the Port makes such payments to the Operator in reliance on such report, invoice or bill, Operator shall immediately:

a) Repay the Port for any such amount of overpayment together with interest equal to twenty-five one-thousandths of one percent (.025%) of such amount for each day from the day the Port made its payment to the Operator until the day the overpayment is refunded to the Port, but not to exceed the maximum rate of interest permitted by law;

b) If the amount of the overpayment is more than two percent (2%) of the sum which should properly have been paid to the Operator, the Operator shall, in addition to Section 5.2(a) above, pay a \$250.00 Administrative Fee for each invoice, report or bill which overcharges the Port, not to exceed \$500.00 per month, to compensate the Port for the administrative services and burdens in such overpayment recovery; and

c) If the amount of the overpayment is more than five percent (5%) of the sum which should properly have been reimbursed or paid to the Operator, the Port shall, in addition to remedies provided for in Sections 5.2(a) and 5.2(b) above, have the right to terminate this Agreement for cause.

In addition to remedies provided for in Sections 5.2(a) through 5.2(c) above, Operator shall pay the cost of any audit by the Port under Section 6.4 below (including salary, fringe benefits, other direct expenses of the audit and an additional 20% of those costs to cover administrative charges) if such audit reveals, uncovers or identifies an overpayment of more than two percent (2%) of the sum which properly should have been paid, less a credit for any Administrative Fee charged pursuant to Section 5.2(b) above.

As an example, but without limitation, submitting a duplicate bill, invoice or report resulting in a duplicate payment to the Operator shall be considered an overpayment by the Port for purposes of this Section 5.2.

The Port's payment of any amount pursuant to Section 4 above shall not waive any of the Port's rights under this Section 5.2 unless the amount of the overstatement or the amount of the excess charge was described as such in a written disclosure to the Director or the Designee and was approved in writing by the Director or the Designee after such written disclosure.

Any amount owed by Operator to Port pursuant to this Section 5.2 or any other provision of this Agreement may be set-off by Port against any amount otherwise payable by Port to Operator pursuant to this Agreement, including, without limitation, payments under Section 4.

## 6. BOOKS AND RECORDS; ACTIVITY REPORTS.

6.1 Maintenance and Production of Books and Records. Operator shall maintain complete and accurate books of account and supporting documentation (collectively "books and records") in a form consistent with generally accepted accounting principles, including such books and records as would normally be examined by an independent certified public accountant in performing an audit or examination of amounts billed by Operator pursuant to Sections 4 or 5 of this Agreement, including employee timesheets, timecards, payroll receipts, receipts for Reimbursable Expenses, and all records required to be kept pursuant to attached Exhibit "G".

6.2 Inspection of Books and Records. All such books and records shall, upon reasonable notice from Port, be made available either at the offices of the Port or at the offices of the Operator, for inspection and copying by the Port through its duly authorized representative. If such books and records are not kept and maintained by Operator within a radius of ten (10) miles from the offices of

the Port at 530 Water Street, Oakland, California, Operator shall, upon request of the Port, make such books and records available to the Port for inspection at a location within said ten (10) mile radius or Operator shall pay to the Port the reasonable and necessary costs incurred by the Port in inspecting Operator's books and records, including, but not limited to, travel, lodging and subsistence costs. Operator shall provide such assistance as may be reasonably requested by the Port in the course of such inspection. The Port further reserves the right to examine and reexamine and copy said books, records and data during the three (3) year period following the expiration or earlier termination of this Agreement, as evidenced in writing by the Port. The Operator shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any matter whatsoever for three (3) years after the Port makes the final or last payment under this Agreement; provided, however, that if prior to the expiration of such three (3) year period, any audit, review or investigation is commenced by the Port, or any claim is made or litigation is commenced relating to this Agreement by the Port or the Operator, such books and records shall continue to be maintained by Operator, and Port shall continue to have the right to inspect and copy such books and records in the manner stated above, until the audit, claim or litigation is finally resolved (including the determination of any and all appeals or the expiration of time for such appeal).

### 6.3 Intentionally Omitted.

6.4 Audit of Records. During the Operating Term of this Agreement, in addition to its rights under Section 6.2 above, the Port, using its own employees or by contracting with a third party, may audit any or all payments made by the Port to Operator under Section 4 above or for Reimbursable Expenses. In case of such audit, the Operator shall make available to the Port any and all ledgers, books of accounts, canceled checks, and other records or documents evidencing or relating to Reimbursable Expenses, payroll records, personnel files and staffing schedules of personnel assigned to the Services and such other evidence or information as the Port may require with regard to any payroll or other expenditure charged by the Operator. Such audit may also include a review of general, input, processing and output controls of information systems used to record financial transactions and other statistical reports. The Port shall notify the Operator of such audit and Operator shall provide such records in the manner, time and place as provided for in Section 6.2 above and in attached Exhibit "E". Operator's failure to comply shall be subject to administrative fees as specified in attached Exhibit "D" and shall also constitute a breach of Operator's obligations under this Agreement.

6.5 Deductions from Payments to Operator. The Port shall have the right to deduct from any amounts payable or reimbursable to the Operator, upon written notice, any unauthorized or disputed payments made by Port to Operator, any Administrative Fees imposed, overpayments pursuant to Section 4 or of Reimbursable Expenses by the Port and any other amounts owed by Operator to the Port. If the Port is required or elects to pay any sum, or if it incurs any obligations or expenses, because of the failure, inability, neglect or refusal of the Operator to perform or fulfill any of its obligations under this Agreement, then the Port shall have the right to deduct these sum(s) from any amounts payable or reimbursable to the Operator.

6.6 Activity Reports. Operator shall submit to the Aviation Security Manager daily, monthly and annual reports on report forms, which shall be provided by Operator or Port, at Port's election, which shall include, at a minimum, all of the information specified under "ACTIVITY REPORTS" on attached Exhibit "A".

Any specific incidents requiring guard actions are to be included in the reports. The Operator shall immediately report any personal injuries, property loss or damage, threats or potential threats against life or property or any incident or activities that present imminent danger to health and safety of the general public. Any emergency conditions requiring immediate attention are to be

reported by telephone immediately to the Airport's 24-hour line and to the Alameda County Sheriff's Office. A follow-up written report delineating the emergency condition and corresponding action taken shall be submitted to the Port within 24 hours. Failure to provide a written report within 24 hours shall result in the assessment of an Administrative Fee as specified in Exhibit "D". Any and all daily reports shall be submitted by noon of the next business day. Weekly reports shall be submitted by the Wednesday of the following week. Monthly reports shall be submitted within ten (10) calendar days of the end of the month, or part thereof, for which a report is due. Annual reports shall be submitted by February 1<sup>st</sup> of each year of the Operating Term of this Agreement. Operator shall supply Port with such other financial or statistical reports as the Executive Director may request from time to time during the term of this Agreement. In addition, Operator shall address each customer complaint regarding the Airport Security Services within five (5) working days of receipt by Operator of the notice of such complaint.

## 7. ADMINISTRATIVE FEES.

Exhibit "D", entitled ADMINISTRATIVE FEES, is attached to and made a part of the Agreement ("Administrative Fees").

7.1 Reasonable Estimate of Port Expenses. The parties agree that certain aspects of the Operator's performance are extremely important to the Port and that the Operator's failure to perform these activities will result in administrative and monitoring expenses and burdens on the Port and its staff. Therefore, the parties agree that the Administrative Fees described in attached Exhibit "D" are reasonable estimates of such expenses and may be imposed on the Operator at the sole discretion of the Director.

7.2 Waiver. The Director may elect to waive an assessment of Administrative Fees for a particular violation; however, that waiver shall not apply to prior or subsequent violations and shall not be deemed to set a precedent for further waivers. If the Operator disputes the violation that resulted in the imposition of an Administrative Fee, it may submit to the Assistant Director of Aviation, within ten (10) days of its receipt of written notice of the Administrative Fee, a written request for a review of such Administrative Fee pursuant to Article 11.3 of Port Ordinance No. 4255 (or the comparable provisions of any successor thereto), in which event the hearing procedures set forth in said Article 11.3 shall be applicable to Port and Operator with respect to such Administrative Fee.

7.3 Assessment. Any Administrative Fees shall be assessed by the Director within sixty (60) days from actual notice to the Director of the occurrence of the performance failure that resulted in the assessment of such Administrative Fees. No Administrative Fees will be assessed if the performance failure is due to any event of Force Majeure, as defined in Section 36.9 below.

## 8. OPERATIONS.

8.1 Operations and Procedures Manual. Operator shall develop an Operations and Procedures Manual ("Operations Manual"), or modify the Port's existing Operations Manual based upon its best judgment and best industry standards, and shall provide a copy to the Director and the Designee, within thirty (30) days from the Commencement Date, for review and approval by the Director or the Designee. The Operator will confer with the Director or the Designee in its preparation of the Operations Manual and shall revise the Operations Manual from time to time as required by the Director or the Designee. Exhibit "F" attached to this Agreement provides information to assist in structuring the Operations Manual and shall be replaced by the Operator's Operations Manual once approved by the Director or the Designees.

The Operations Manual shall provide basic guidance on policies, practices, and procedures covering all aspects of the Services, including but not limited to standards of performance. The Operator shall keep the Operations Manual current and shall comply with its provisions throughout the Operating Term. Any revision shall be subject to the written approval of the Director or the Designee. Each revision to the Operations Manual shall have a revision number and date. The Operations Manual shall become an integral part of the Agreement, but in the event of any conflict between the Operations Manual and this Agreement, the terms of this Agreement shall prevail. The Operations Manual, including all revisions as approved by the Director or the Designee, is herein incorporated into and made a part of this Agreement. The failure of the Operator to comply with or satisfy the requirements as spelled out in the Operations Manual shall be an Event of Default hereunder, entitling the Port to all of the remedies set forth herein.

8.2 Report of Injuries or Loss. The Operator, using a form provided by the Port, shall immediately report any personal injuries, property loss or damage, threats or potential threats against life or property or any incident or activities that present imminent danger to health and safety of the general public. Any emergency conditions requiring immediate attention are to be reported by telephone immediately to the Airport's 24-hour line and to the Alameda County Sheriff's Office or as otherwise directed in writing by the Port. A follow-up written report, using a form provided by the Port, delineating the emergency condition and corresponding action taken shall be submitted to the Port within 24 hours. Failure to provide a written report within 24 hours may result in the assessment of an Administrative Fee as specified in Exhibit F.

## 9. PERSONNEL.

Exhibit "G", entitled PERSONNEL, is attached and made a part of this Agreement.

9.1 Training Manual. The Operator shall provide a Training Manual ("Training Manual") to the Director, within thirty (30) days from the Commencement Date, for review and approval by the Director or the Designee. The Operator shall devise, revise, comply with and maintain the Training Manual under the same terms and conditions as provided for in the Operations Manual submitted pursuant to Section 8.1. Exhibit "H" attached to this Agreement provides information to assist in structuring the Training Manual and shall be replaced by the Operator's Training Manual once approved by the Director or the Designee.

9.2 Removal of Employees. The Director or the Designee, at its sole discretion, reserves the right to require the Operator to remove, and to keep removed, from the Services and the Premises any employee of Operator, including without limitation the Supervisors, if said employee has failed to perform in accordance with any of the terms or conditions of the Agreement, or if said employee is alleged to have been involved in wrongdoing, while those allegations are under investigation. The Operator shall remove from the Services and the Premises any employee who operates a vehicle recklessly or in a manner that endangers the safety of Airport patrons, under the influence of alcohol or other prohibited substances or who no longer satisfies the requirements set forth in Section 3.2 or attached Exhibit "G". The Operator will comply with any request to remove any such employee as soon as written notice is received from the Director or the Designee. Operator's failure to comply within twenty-four (24) hours of receipt of such notice shall be considered an Event of Default hereunder, entitling the Port to all of the remedies contained in this Agreement. Operator shall remove any employee of the Operator on the spot from the Services and the Premises, if the Operator is advised that the Director or the Designee has determined in his or her sole discretion that the seriousness of the incident justifies such immediate removal.

9.3 Uniforms. Operator shall at its expense furnish all of its personnel engaged in providing any of the Services with uniforms of the type and in sufficient quantity to satisfy Operator's obligations under "EMPLOYEE UNIFORMS" on attached Exhibit "G", and Operator at its

expense shall maintain all such uniforms in good condition. All uniforms shall be approved by the Aviation Security Manager and obtained from a vendor selected by the Operator and approved by the Aviation Security Manager. Operator agrees that each employee shall only use such approved uniforms.

9.4 Industry Operating Standards. Operator shall operate the Services in compliance with the highest industry operating standards.

## 10. PREMISES.

For the purpose of performing all duties and obligations required by the Agreement and for no other purpose, the Port shall allow Operator, as a licensee, and at no charge to Operator, to use an approximately 1,350 square foot modular office space at the Airport (the "Premises"), in a location to be determined by the Director. The Port reserves the right to terminate the license at any time and to relocate, from time to time and at the Port's expense, the Operator to such other space or location at the Airport as determined by the Director. The license to use the Premises provided herein shall cease upon the expiration or earlier termination of this Agreement.

10.1 Maintenance. Operator shall provide, at its own expense, all custodial services, maintenance and repairs to the Premises and shall keep the Premises clean, attractive and in good repair and safe condition. The Port shall provide at its own expense all maintenance, repairs and replacement of the structural portion of the Premises, except with respect to damage resulting from negligence or willful misconduct of Operator, its officers, agents, employees, or contractors, in which case the cost of repair shall be borne by Operator. Operator shall have no obligation under this Agreement to make physical modifications to the Premises or other locations at the Airport where the Contract Security Services are to be performed to comply with applicable Laws (as defined in Section 24.1 below).

10.2 Safe and Sanitary Working Conditions. The Operator shall not permit any part of the Services to be performed under hazardous or dangerous conditions to its employees or the general public. Subject to the limitations in the last sentence of Section 10.1 above, the Operator shall comply with all Laws applicable to the Premises and all other locations from which any of the Services are performed. The Operator shall, at least once each day, inspect all locations at which the Services are being provided and the Premises to determine whether any hazardous or dangerous conditions exist or if any such location is in need of maintenance or repair. Operator shall immediately provide Port with telephonic notice, which shall later be confirmed by written notice, of any and all hazardous or dangerous conditions or any need for maintenance or repair at any location where the Services are being provided or at the Premises and of any injuries or damages resulting directly or indirectly therefrom, together with whatever information Operator has about the party responsible for creating any such condition. The Port shall have responsibility for correcting any hazardous or dangerous condition existing at any location where the Services are being provided or, to the extent provided in Section 11.1 above, the Premises, following notice to Port by Operator of the existence of such hazardous or dangerous condition. The Operator shall reimburse the Port promptly after its written demand for (a) any liability incurred by the Port (i) which arose out of any hazardous or dangerous conditions, and any injuries or damages resulting directly or indirectly therefrom, caused by the Operator, its officers, agents, employees, contractors or invitees, or (ii) which arose after Operator should have reported such conditions to Port pursuant to the provisions of this subsection, and (b) the costs incurred by the Port to correct any such hazardous or dangerous condition to the extent caused by Operator, its officers, agents, employees, contractors or invitees.

10.3 Utilities. The Port shall pay the cost of all water, electric utility, telephone and internet services to the Premises. The Port will install and pay for all telephone equipment on the

Premises. The Port shall determine the number of lines and phones to be provided to the Premises. Subject to the limitations in Section 30 below, the Port shall provide all maintenance and repairs of such telephone equipment to keep such equipment in good working condition, except for damage resulting from the negligence or willful misconduct of Operator, its officers, agents, employees, or contractors, in which case the cost of repair shall be borne by Operator. The Operator shall comply and shall cause all of its employees providing any of the Services to comply with the Port's Policies and Procedures for the Use of Telephones and on Electronic Communications as fully as if Operator and such employees were employees of the Port.

10.4 Area Access. Solely for the purpose of performing the Contract Security Services, the Port grants the Operator, without charge therefore, the right of ingress to and egress from the Premises and all other Airport locations from which any of the Contract Security Services are to be performed by the Operator, its officers, agents, employees, or contractors; provided that such right of ingress and egress shall at all times be exercised in compliance with all applicable Laws; and provided further that such right of ingress and egress shall not be construed to prohibit the Port from establishing and assessing a fee or charge for the privilege of entry upon the Airport when such fee or charge is levied upon all users of the Airport, nor be construed to prohibit the Port from assessing a fee or charge on persons conducting business on the Airport, other than for parking by Operator's employees providing the Services, as provided in attached Exhibit "G".

10.5 Improvement. Operator shall make no alterations or improvements, and shall post no signs, on the Premises or elsewhere at the Airport, except with the prior written approval of the Director or the Designee, which approval may be denied or conditioned as the Port may determine in its sole discretion. Operator may, at no cost to the Port, and subject to subsequent prompt removal, at Operator's expense, at the request of the Port at any time, provide such movable furniture and other trade fixtures, as Operator deems appropriate. Operator agrees that it will not depreciate for tax purposes any alterations or improvements made by it at the Airport.

10.6 Office Equipment and Property. The Port, at its expense, shall provide the Operator with the following office equipment for Operator's use in providing the Contract Security Services from the Premises during the Operating Term (the "Office Equipment"): one (1) work station and chair; one (1) desk top computer with internet access; one (1) computer printer; one (1) telephone; one (1) fax machine; and one (1) photocopier. If the Services are increased to a level that Port and Operator agree requires the Premises to be expanded, then Operator shall provide the Office Equipment in the expanded Premises. The Office Equipment shall remain the property of the Port. Any additional office equipment acquired by the Operator shall be at the sole expense and responsibility of the Operator, and Operator, at its expense, shall keep such additional office equipment in good repair. Operator shall provide all maintenance and repair of all Office Equipment provided by the Port to keep the Office Equipment in good repair. If the Office Equipment reaches the end of its useful life, then it will be replaced by the Operator, at its expense. Operator shall provide the Port at the end of each calendar quarter with a comprehensive inventory of all Office Equipment and other property of the Port in Operator's possession, and of all property of Operator used by it in providing the Services.

10.7 Surrender of the Premises. Upon expiration or earlier termination of this Agreement, the Operator shall vacate the Premises. Operator shall thereupon deliver to the Port the Premises, all Office Equipment, and all other office facilities and equipment belonging to Port, and, to the extent of Operator's obligations, as set forth in this Section 10, assure that they are in good working condition in all respects, reasonable wear and tear excepted, or Operator shall pay to the Port such sums as necessary for the repair of the Office Equipment and any such office facilities and equipment, and to restore the Premises to its original condition, normal wear and tear excepted. If, at the expiration or earlier termination of the Agreement, the Operator retains ownership of any

operating equipment, movable furniture and other trade fixtures used at the Premises and provided at Operator's expense (and not reimbursed by Port), the Operator shall remove any such property, subject to any valid lien which the Port may have thereon; provided that, upon removal of any such operating equipment, movable furniture and other trade fixtures, the Operator shall restore the Premises to the original condition, normal wear and tear excepted. The Operator shall be deemed to have abandoned to the Port any operating equipment, furniture and other trade fixtures which it has failed to remove within fifteen (15) calendar days after the expiration or earlier termination of this Agreement, unless the Director or the Designee shall grant additional time for this purpose in writing; provided, however, the Port, at its sole option, shall have the right to remove and store same after it is deemed abandoned and restore the area to satisfactory condition and hold the Operator liable for all costs incident to such removal, storage and restoration. In the event the Port removes such operating equipment, furniture and other trade fixture, the Port shall not sustain, be charged with, or incur any liability by reason of any damage to same or for such removal or custodial care.

10.8 Inspection. The Port and its Airport staff, including but not limited to administrative staff, facilities staff, custodial staff, Airport authorized persons, and the Port's agents, retain the right at the Port's sole discretion to enter the Premises for the examination and inspection of the area from time to time with reference to any emergency, or to the general maintenance of said area, or for the purposes of surveying or viewing the area for anticipated alterations or improvements, or any other purpose deemed necessary by the Port.

## 11. EQUIPMENT.

11.1 Operating And Maintenance of Equipment. Except as otherwise provided in Section 10.6 above, Operator shall maintain, at its own expense, all office equipment, motor vehicles, and other supplies and equipment required for Operator to perform its duties and obligations under the Agreement (the "Equipment"), whether owned by Operator or supplied by the Port. Upon the expiration or earlier termination of this Agreement, Operator shall return all Port provided Equipment to the Port, with any repairs that Operator is required to make pursuant to Section 10.7 above completed in a manner that is acceptable to Port.

a) Vehicles. Operator shall provide and maintain, at its expense and in good working condition, three service vehicles approved by the Port and equipped with a two-way radio and a roof-mount light bar to be operated by on-duty field supervisors, relief officers, and on-call officers for as-needed services. Vehicles should be equivalent to a pickup truck suitable for construction and off road environments. Final make and model will be subject to Port approval. These vehicles shall be, and at all times remain, the property of the Operator and shall be used solely for the Services. These vehicle shall not be removed from the Airport without the consent of the Director or the Designee, which consent may be granted or withheld in his or her sole discretion. Additionally, vehicles shall display Operator's name on passenger and operator's door. The name must be at least fifty (50) square inches in size. Vehicle must have the Operator's identification number and be equipped with Airport issued identification, so that it is readily identifiable as belonging to the Operator. All vehicles must meet all applicable California vehicle codes. All vehicles shall have no visible body damage at any time.

b) Two-Way Radios. Operator shall provide and maintain, at its expense and in good working condition to perform the Contract Security Services (1) two-way radio using UHF system (on Port radio frequency) for communication per guard on duty (all supervisors and each post), plus adequate spares in the event of equipment malfunction. Operator shall use such two-way radios to establish essential links between Operator's Supervisors, traffic



control and Port personnel and to minimize the time required to react to and correct any service interruption due to traffic, breakdowns, emergencies or any other reasons.

c) **Operator's Reporting Obligations.** Operator shall immediately report to Port any Equipment that Operator knows or reasonably should know is in need of service, repair or replacement, or any Port facility or dangerous condition that Operator knows or reasonably should know is in need of maintenance or repair, and such report shall be made to the Aviation Security Manager during business hours of 8:30 A.M. to 5:00 P.M. Mondays through Fridays (except on Port-observed holidays) and to the Port's Airport Operations 24-hour telephone number at times on Mondays through Fridays other than during the business hours described above and at any time on weekends or on Port-observed holidays.

11.2 **Local Procurement.** Operator agrees to procure vehicles, radios, uniforms, office equipment / supplies, and safety equipment / supplies from vendors located in the City of Oakland. If the items cannot be reasonably procured from a vendor located in the City of Oakland, the Operator shall attempt to purchase the item(s) within the Port's Local Impact Area (LIA) – cities of Oakland, San Leandro, Alameda, and Emeryville. If the Operator is not able to comply with this requirement, the Operator may request, in writing, an exception from the Director of Aviation or designee. The written request should include all relevant documentation on why the item cannot be procured within Oakland or Port's Local Impact Area and proposed action for approval.

## 12. LIMITATIONS ON OPERATOR ACTIVITIES.

12.1 **Limitations on Uses.** Operator shall and shall require Operator's Representatives (as defined in Section 12.2(a) below) to use the Premises and to enter and exit the Airport only to provide the Contract Security Services, to perform Operator's obligations under this Agreement, and to construct, install, use and maintain Operator's improvements in or on the Premises, subject to the Director's or the Designee's prior written approval of such construction or installation.

a) Operator shall not do or permit anything to be done by Operator's Representatives in, on or about the Premises, or any part of the Airport, nor bring or keep or permit any of Operator's Representatives to bring or keep thereon, anything which is prohibited by or will in any way conflict with any applicable Laws, or which is prohibited by a standard form of fire insurance policy or which will in any way increase or affect the then-existing rate of any fire or other insurance carried by the Port or required to be carried by the Operator under this Agreement, or which will cause a cancellation of any insurance policy covering the Airport or the Premises and any part thereof or any of their contents.

b) Operator shall not and shall not permit any of Operator's Representatives to commit, cause or maintain (except to the extent expressly authorized by Section 12.2(c) below), any Toxic Material (as defined in Section 12.2(a) below) upon the Premises or any part of the Airport, any public or private nuisance, or any other act or thing which may disturb the quiet enjoyment of any tenant, licensee, invitee or person using or occupying any portion of the Airport.

c) Operator shall not and shall not permit any of Operator's Representatives to install, maintain or operate in, on or about the Premises or any part of the Airport, any vending machine or device designed to dispense or sell foods, beverages, tobacco products or merchandise of any kind to the general public.

d) Operator shall not and shall not permit any of Operator's Representatives to install, erect, affix, paint or place any sign or lettering in, on, or about the Premises or any part of the Airport, except as otherwise provided herein.

e) Operator shall not and shall not permit any of Operator's Representatives to make any improvements or alterations to the Premises or any part of the Airport without the prior written consent of the Director or the Designee.

f) Operator agrees to conduct its operations upon the Premises or any part of the Airport so as to reduce to the minimum that is reasonably practicable, the emanation therefrom of fumes and odors.

g) Operator agrees to handle and dispose of its trash, garbage and refuse in a sanitary manner and not to store or maintain any boxes, cartons, barrels, trash, debris or refuse in or about the Premises or any part of the Airport where they will be an eyesore to the public, as reasonably determined by the Director or the Designee. If the Director or the Designee makes such determination, then at the request of the Director or the Designee, the Operator shall promptly remove such boxes, cartons, barrels, trash, debris or refuse from the Airport, or store same in a location approved by the Director or the Designee in the exercise of his or her sole discretion.

h) Operator shall not and shall not permit any of Operator's Representatives to engage in the sale of any product or service, the solicitation of such sale, or the distribution of any literature or goods of any type, at the Airport.

## 12.2 Toxic Materials.

a) For the purpose of this Agreement, the following terms shall be defined as follows:

(1) "Clean-up" shall include investigation, feasibility studies, risk assessment, treatment, removal, disposal, handling, transport, containment, capping, mitigation, remediation and monitoring in accordance with all applicable Environmental Laws.

(2) "Environmental Laws" shall mean all Laws (as defined in Section 24 below), including, but not limited to, those so defined in or regulated under any of the following: 15 U.S. Code Section 2601, et seq. (the Toxic Substances Control Act); 33 U.S. Code Section 1251, et seq. (the Federal Water Pollution Control Act); 42 U.S. Code Section 6901, et seq. (the Resource Conservation and Recovery Act); 42 U.S. Code Section 7401, et seq. (the Clean Air Act); 42 U.S. Code Section 9601, et seq. (the Comprehensive Environmental Response, Compensation and Liability Act); 49 U.S. Code Section 1801, et seq. (the Hazardous Materials Transportation Act); 42 U.S. Code Section 4321, et seq. (NEPA); H&S Code Section 116270 et seq. (California State Drinking Water Act); H&S Code Section 25100, et seq. (Hazardous Waste Control); H&S Code Section 25300, et seq. (the Hazardous Substance Account Act); H&S Code Section 25404, et seq. (Unified Hazardous Waste and Hazardous Materials Management Regulatory Program); Government Code Sections 66600 et seq. (McAteer Petris Act); H&S Code Section 25531, et seq. (Hazardous Materials Management); H&S Code Section 18901, et seq. (California Building Standards); California Water Code Section 13000, et seq. (the Porter-Cologne Water Quality Control Act); H&S Code Section 25249.5, et seq. (the Safe Drinking Water and Toxic

Enforcement Act of 1986); Division 26, of the H&S Code (including H&S Code Section 39000 et seq. and 40200 et seq. among others, (authorizing regulation by CARB and the BAAQMD); Division 25.5 of the H&S Code (H&S Code section 38500 et seq. - the Global Warming Solutions Act); California Public Resources Code Section 21000, et seq. (CEQA); local fire codes; the regulations adopted and promulgated pursuant to such statutes, including any regulations adopted pursuant to such statutes after the Commencement Date, as well as any subsequently enacted federal, California, local and Port law, statute, ordinance, rule, regulation, program, plan, resolution, policy, program, permit, order, or other directive issued by any Governmental Authority as may be modified, amended or reissued, in any way relating to or regulating the Operator's operations with regard to:

(i) Human health, safety and industrial hygiene related to Toxic Materials;

(ii) The environment, including natural resources, pollution or contamination of the air, soil, sediment, soil gas, surface water, groundwater, structures, and subsurface structures including utility vaults, corridors or conduits, or noise or light pollution;

(iii) Toxic Materials, including, without limitation, the handling, use, storage, accumulation, transportation, generation, spillage, migration, discharge, release, treatment or disposal of any Toxic Materials, or Response Actions (as defined in Section 12.2(i)(ii) below) associated with same; or

(iv) Global warming or generation of green house gases.

(3) "Governmental Authority" shall mean any court, federal, State or local government, department, commission, board, bureau, agency or other regulatory, administrative, governmental or quasi-governmental authority, including the Port, of the United States of America, including any successor agency.

(4) "Indemnification Obligations" shall have the definition provided in Section 12.2(i)(i) below.

(5) "Indemnitees" shall mean, collectively, the Port and the Port's Commissioners, agents, employees, representatives, contractors, the Port-designated secondary users of the Premises, directors and officers.

(6) "Operator Release" shall have the definition provided in Section 12.2(e) below.

(7) "Operator's Representatives" shall mean, collectively, Operator's officers, agents, employees, contractors, subcontractors, licensees and invitees.

(8) "Response Action" shall mean the investigation, testing, feasibility study, risk assessment, treatment, removal, disposal, reuse, handling, transport, clean up, remediation, containment, capping, encapsulating, mitigation, or monitoring of Toxic Materials, including the demolition, reconstruction or construction of any subsurface or surface structures to implement the Response Action and the restoration of the Premises or other Port property after the completion

of the Response Action whether required by Environmental Laws or as a result of any future development or construction activities by the Port or a third party.

(9) "Toxic Materials" shall mean (i) substances that are toxic, corrosive, flammable or reactive; (ii) petroleum products, crude oil (or any fraction thereof) and their derivatives; (iii) explosives, asbestos, radioactive materials, hazardous wastes, sewage, infectious substances, toxic substances or related hazardous materials; (iv) air pollutants, noxious fumes, vapors, soot, smoke or other airborne contaminants; and (v) substances which now or in the future are defined by Environmental Laws as "hazardous substances," "hazardous materials," "hazardous wastes," "pollutants," "contaminants," "reproductive toxins," "carcinogens" or "toxic substances," or regulated under applicable Environmental Laws.

b) Operator shall comply with all Environmental Laws relating to the use of Toxic Materials on or about the Premises or any part of the Airport or other property of the Port.

c) Operator shall not contaminate the Premises or any part of the Airport or other property of the Port, or their subsurfaces, with any Toxic Materials. Operator shall not cause or permit any Toxic Materials to be brought upon, remain, kept or used in or about the Premises or any part of the Airport or other property of the Port, by Operator, its agents, employees, contractors or invitees other than those kinds of materials that are normally used in performing the Services, ordinary office and janitorial supplies, and other materials used in the ordinary course of Operator's providing Services so long as such supplies, substances and automobiles and standard contents therein are stored, used and disposed of in accordance with the Environmental Laws.

d) Disposal of any Toxic Materials at the Airport is strictly prohibited. Storage of such permissible Toxic Materials is allowed only in accordance with all applicable Environmental Laws. All safety and monitoring features of any storage facilities shall be subject to the approval of the Port's Executive Director or the Director.

e) If Operator, or any of Operator's Representatives, or any other persons as a result of any of the foregoing parties' conduct of Operator's business, cause contamination or deterioration of water, soil or any portion of the Premises or any part of the Airport or other property of the Port on account of Toxic Materials or any release, spill, discharge, disposal, leak, leaching, migration or dispersal of Toxic Materials, (whether onto the Airport, the Premises or other properties of the Port or any other party, or into the city of Oakland's or Alameda's sewerage or storm drainage systems) ("Operator Release"), then Operator shall promptly take any and all action necessary to Clean-up such contamination or remediate such deterioration as required by the Environmental Laws, and to the reasonable satisfaction of Port. Operator shall be solely and fully responsible and liable for any such Operator Release and any costs or expense of Clean-up. Operator shall take Clean-up actions on any portions of the properties of the Port only with the permission of the Port. In any case, Operator shall provide Port with written notification of all actions taken by Operator, its officers, agents, employees or contractors for the Clean-up.

f) In addition to all other rights and remedies of Port hereunder, if an Operator Release is not removed by Operator within 90 days after discovery by Operator, or within 90 days of written notice to Operator of its discovery by the Port or any other third party, or within such shorter period of time (including immediately) as Port may reasonably determine is necessary to prevent further damage or harm, Port may pay to have the same removed and

Operator shall reimburse Port for such costs within five days of Port's written demand for payment.

g) In addition to Operator's obligations to report spillage, discharge, release and disposal of Toxic Materials to local, state and federal agencies, Operator shall immediately provide Port with telephonic notice, which shall later be confirmed by written notice, of any and all spillage, discharge, release and disposal of Toxic Materials onto the Premises or by Operator or any of Operator's Representatives within the Airport or other property of the Port, and any injuries or damages resulting directly or indirectly therefrom. Further, Operator shall deliver to Port each and every notice or order received from any governmental agencies concerning such Toxic Materials and the possession, use and/or disposal thereof promptly upon receipt of each such notice or order.

h) Operator shall at all times maintain with the Port and post in an appropriate location a complete copy of the "Oil & Hazardous Substances Spill Notifications" forms, as said form may be amended from time-to-time by the Port. Operator shall comply with all notification and procedural requirements for Port tenants set forth in the "Port Spill Plan," and as said "Port Spill Plan" may be amended from time-to-time by the Port.

i) (i) Neither the Port nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by Operator or Operator's Representatives arising from or relating to Environmental Laws or Toxic Materials under this Agreement. It is understood and agreed that Operator shall be solely responsible for and shall fully indemnify, protect, defend (with counsel chosen by the Port) and hold harmless the Indemnitees from and against any and all claims, suits, actions, costs, expenses, penalties, fines, liabilities and losses of every name, kind and description, which arise during or after the Operating Term of this Agreement as a result of an Operator Release on the Airport during the term of this Agreement or the failure of Operator or Operator's Representatives to comply with Operator's obligations under this Section 12.2, or Operator's responsibilities, if any, for pre-existing contamination as described in subsection 12.2(j) below, including, without limitation: (i) diminution in value of the Premises and of any other Port property; (ii) damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises (including, without limitation, deed restrictions), or any other Port property; (iii) damages arising from any adverse impact on marketing of space in the Premises or other Port property; (iv) increased costs of maintenance, construction, repairs or major improvements to the Premises, or any other Port property; (v) stigma damages; (vi) costs of any Response Action; (vii) claims asserted by any governmental entity acting or purportedly acting under any Environmental Laws; (viii) all orders and directives issued by a Governmental Authority pursuant to Environmental Laws; (ix) all Governmental Authority or third party claims or suits for injury to persons or to the environment (including, without limitation, any such claims, suits or actions brought for or on account of damage to or loss of property or injury as identified in Government Code Section 810.8) or failure to comply with Environmental Laws; (x) claims involving lost opportunities, lost profits, lost revenues, business interruption, increased operating expenses and any related damages, including any consequential or exemplary damages arising from or attributable to the requirements of Environmental Laws; and (xi) sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees, damages, injuries, causes of action, judgments, taxes and expenses (collectively referred to as "Indemnification Obligations").

(ii) If the Port receives a notice of an event subject to the Indemnification Obligations hereunder, the Port shall, within a reasonable time, give notice to Operator, provided that the failure to do so shall not relieve Operator of any liability it may have to the

Port under this section. Upon receipt of such notice, Operator shall accept tender of defense of the Indemnification Obligations. The Port and Operator shall cooperate with each other in the defense of such Indemnification Obligations, including, without limitation, the tendering of claims to appropriate insurance carriers for defense and indemnity. Operator's Indemnification Obligations under this Section 12.2(i) shall commence no later than receipt by the Port or Operator or an Operator Representative of any notice of any claim whether by regulatory notice (which shall be deemed to include, without limitation, verbal or written notice by a governmental agency of an informational request, or to take any Response Action) or any other notice by a third party, threatened legal action, arbitration, mediation, administrative proceeding or lawsuit.

j) Operator shall, at its sole cost and expense, promptly undertake and complete any and all Response Action (i) within the Premises or other Port property resulting from an Operator Release (including migration through soil or groundwater) by Operator or Operator Representatives, (ii) within the Premises or any other Port property for all Toxic Materials present therein which are disturbed by Operator or Operator Representatives, to the extent the Response Action is required either by Environmental Laws, or by the specific needs of Operator's activities (such as, for example, where Environmental Laws might allow contaminated soils to remain on the Premises, but there is no available space within the Premises for that soil). Operator's acceptance of the Premises is in an "as-is, where-as" condition, with all faults, including preexisting contamination, if any, within the Premises and any other adjacent Port property for all Toxic Materials present therein which are disturbed by Operator or Operator Representatives in making any improvements to the Premises. Operator shall not be responsible for any Response Action with respect to any Toxic Material outside the Premises unless the Toxic Material was either disturbed or initially the result of an Operator Release by Operator or Operator Representatives. In addition, to the extent that any soils excavated, moved, stockpiled, or otherwise handled in the course of Operator's activities or construction on the Premises may be subject to Response Action, disposal or special handling restrictions under Environmental Laws due to contamination by Toxic Materials, Operator shall be responsible for such Response Action, handling and disposal of such soils in compliance with Environmental Laws. The cost of disposing of any Toxic Materials under this subsection, including, without limitation, any manifest costs (including the execution of hazardous waste manifests or other waste profile sheets as generator), taxes, landfill disposal fees, transportation taxes or fees, shall be paid by Operator. At Operator's sole cost and expense, Operator shall perform all Response Actions in compliance with all applicable Environmental Laws and to the satisfaction of the government agencies having jurisdiction over such Toxic Material or Response Action, but in all cases at least to standards appropriate for unrestricted commercial use; provided, however, that with respect to Operator Releases caused by Operator or Operator Representatives, in the event a future use of any Port property requires a Response Action to a higher standard, such as a unrestricted residential or public use, any such Response Action shall be at Operator's sole cost and expense. Operator shall take reasonable steps to obtain the approval of the Port, which approval shall not be unreasonably withheld, prior to undertaking any Response Actions; provided, however that Operator may perform Response Actions without Port approval (i) if so directed by a Governmental Authority with jurisdiction under any Environmental Laws or (ii) if Operator reasonably and in good faith believes that action is required by any Environmental Laws.

k) This Section 12.2 and the Operator's obligations thereunder shall survive the expiration or earlier termination of this Agreement.

12.3 Toxic Materials Reporting. Operator's obligation under this Agreement to immediately report to Port or to immediately provide Port with telephonic notice of any presence, spillage, discharge, release or disposal of Toxic Materials shall be made to the Port's Landside Operations Parking Coordinator during business hours of 8:30 A.M. to 5:00 P.M. Mondays through Fridays (except on Port-observed holidays) and to the Port's Airport Operations 24-hour telephone number at times on Mondays through Fridays other than during the business hours described above and at any time on weekends or on Port-observed holidays.

13. INSURANCE.

Operator shall comply with Exhibit "I", entitled INSURANCE REQUIREMENTS, which is attached to and made a part of the Agreement.

14. OPERATOR AN INDEPENDENT CONTRACTOR; WORKERS' COMPENSATION INSURANCE; PAYROLL TAXES.

Operator shall provide the Services hereunder as an independent contractor. Nothing contained herein is intended or shall be construed to make the Port and the Operator partners, joint venturers or joint employers, and employees of Operator shall not be considered agents or employees of the Port. Operator shall provide workers' compensation insurance as required by the laws of the State of California. Operator shall have the sole responsibility for paying the salaries, payroll taxes, contributions for unemployment insurance, and all other expenses relating to each employee of Operator.

15. PERFORMANCE BONDS.

15.1 Performance Bond. The Operator shall, prior to the Commencement Date, execute and deliver to the Port a Performance Bond, from a surety acceptable to the Port's Legal Department, substantially in the form attached to this Agreement as Exhibit "J", in the penal sum of Six Hundred Thousand Dollars (\$600,000), and shall maintain such Performance Bond in effect during the Operating Term of this Agreement and for six (6) calendar months after the expiration or earlier termination of the Operating Term of this Agreement. The Performance Bond is intended to guarantee full performance by Operator of all of the Services, and of all other obligations by Operator in accordance with all terms and conditions of this Agreement. The Performance Bonds shall be subject to forfeiture in whole or in part in the event of failure of the Operator to fully perform under the Agreement, and in the event that the Port sustains any claims, debts, loss of service, loss of revenues or other costs or expenses as a result of such failure of the Operator to fully perform under the Agreement. The Operator acknowledges that the Performance Bond includes a general obligation to pay all claims or debts the Port incurs in connection with the Operator's performance of the Services and its other obligations under this Agreement.

16. ASSUMPTION OF RISKS; INDEMNIFICATION.

Operator agrees to voluntarily assume any and all risk of loss, damage, or injury to the person or property of Operator, its officers, agents, employees, contractors and invitees, which may occur in, on or about the Premises or the Airport at any time and in any manner, except to the extent such loss, injury, or damage is caused solely by the gross negligence or willful misconduct of Port, its agents, operators, employees, and officers.

16.1 Indemnification. Operator agrees to indemnify, defend and hold completely harmless Port (including, without limitation, members of Port's Board of Commissioners, and Port's agents, employees, representatives, contractors, directors and officers), from and against all liabilities, suits, claims, demands, judgments, damages, fines, penalties, costs and expenses (including all costs for

investigation and defense thereof, including, but not limited to, court costs, expert fees and paralegal and attorneys' fees prior to institution of legal proceedings and at both trial and appellate levels, and in any mediation or arbitration agreed to by Port), which may be incurred by, charged to or recovered from any of the foregoing indemnified parties (i) by reason or on account of damage to or destruction of any property of Port (except as otherwise expressly provided by this Agreement), or any property of, injury to or death of any person resulting from or arising out of Operator's performance of the Services or its use, occupancy, maintenance or repair of the Premises or any improvements thereto, or Operator's operations anywhere on the Airport, or the acts or omissions of Operator's officers, agents, employees, contractors, subcontractors, invitees, vendors, suppliers or licensees, regardless of where the damage, destruction, injury or death occurred, unless such liability, suit, claim, demand, judgment, damage, fine, penalty, cost or expense was caused solely by Port's gross negligence or willful misconduct, or (ii) arising out of any allegation that Operator, or the Port in concert with Operator, has infringed on or violated any Federal, state, or common law patent, trademark, copyright, or trade secret rights, or violated any Federal or state labor laws, or any Federal or state laws governing consumer credit, credit cards, or the sale of abandoned property, or (iii) resulting from or arising out of the failure of Operator to keep, observe or perform any of the covenants or agreements in this Agreement to be kept, observed or performed by Operator. In carrying out its obligations hereunder, Operator shall use counsel acceptable to Port Attorney.

The foregoing provisions of this Section 16.1 are not intended and shall not be construed to limit in any manner whatsoever the protection or benefits to which Port otherwise would be entitled as an additional insured under any liability insurance maintained or required to be maintained by Operator under this Agreement.

The provisions of this Section 16.1 shall survive the expiration or earlier termination of the Operating Term with respect to any acts or omissions occurring during the Operating Term.

16.2 Waiver By Port. The waiver by Port of any breach of any provision of this Agreement shall not be deemed for any purpose to be a waiver of any other provision hereof, nor of any continuing or any subsequent breach of the same or any other provision, nor shall any custom or practice which may arise between the parties in the administration of any of the provisions of this Agreement be construed to waive or to lessen the right of Port to insist upon the performance by Operator in strict accordance with the provisions of this Agreement.

16.3 Waiver By Operator. As a material part of the consideration to be received by Operator from Port under this Agreement, Operator waives any and all claims or causes of action against Port, the Port's Commissioners and the Port's agents, employees, representatives, contractors, directors and officers which Operator may now or hereafter have at any time for damage to Operator's personal property located in, on or about the Premises or the Airport, and for injury to or death of any person occurring in, on or about the Premises or the Airport from any cause arising at any time, except to the extent that such damage, injury or death is directly caused solely by the gross negligence or willful misconduct of the Port, its agents, operators, employees or officers.

17. RESERVED.

18. EQUAL OPPORTUNITY; NON-DISCRIMINATION.

During the Operating Term of this Agreement, the Operator, for itself, and its authorized assignees and successors in interest, agrees as follows:



(1) In furtherance of the Port's long-standing policy to insure that equal employment opportunity is achieved and nondiscrimination is guaranteed in all Port-related activities, it is expressly understood and agreed with respect to Operator's activities upon the Airport:

a) That Operator shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, actual or perceived sexual orientation, national origin, age, physical handicap disability as set forth in the Americans with Disabilities Act of 1990, or veteran's status. Operator shall take affirmative action to ensure that applicants and employees are treated fairly. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Operator agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Port's Equal Opportunity Officer setting forth the provisions of this paragraph.

b) That Operator shall, in all solicitations or advertisements for employees placed by or on behalf of Operator, state that all qualified applicants will receive consideration for employment without regard race, color, religion, sex, actual or perceived sexual orientation, national origin, age, physical handicap disability as set forth in the Americans with Disabilities Act of 1990, or veteran's status.

c) That Operator will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Port's Equal Opportunity Officer, advising the labor union or workers' representative of the Operator's commitments under this paragraph, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d) That Operator shall not discriminate by segregation or otherwise against any person or persons because of race, color, religion, sex, actual or perceived sexual orientation, age, national origin, physical handicap disability as set forth in the Americans with Disabilities Act of 1990, or veteran's status in furnishing, or by refusing to furnish, to such person or persons the use of any public facility upon the Airport, including any and all services, privileges, accommodations, and activities provided by Operator.

e) That Operator shall maintain work force records showing male, female and minority employees by job category and similar information with respect to new hires and shall permit the Port's Equal Employment Opportunity Officer to inspect such records at all reasonable times and not less than annually and shall submit a summary of such information annually on a form provided by the Port.

f) That if Operator has fifteen (15) or more employees, Operator shall within ninety (90) days of the effective date of this contract provide the Executive Director or his designee with a copy of affirmative action program, if any, as may be required by any appropriate federal or state agency, by the Port pursuant to any federal or state requirements, or as a result of a court ordered consent decree. Thereafter any change(s) in the Operator's affirmative action program shall be forwarded to the Port within thirty (30) days of its adoption. Such submissions shall be accorded the same level of confidentiality as provided for by the state or federal regulations or court order under which it was originally submitted.

g) That Operator's noncompliance with any of the provision of this Section 18(1) shall constitute a material breach of this Agreement. In the event of a breach of any of the

above-stated nondiscrimination and affirmative action covenants, the Port shall have the right to consider but not be limited to the following:

- (1) Terminate this Agreement and to re-enter and possess the Premises and the facilities thereon, and to hold the same as if this Agreement had never been made without liability therefore; or
- (2) Seek judicial enforcement of said covenants.

h) The Port shall assist Operator in preparing the required affirmative action program to secure equal employment opportunities, whenever such assistance would be beneficial and shall be available to advise and counsel Operator in the implementation of Operator's Affirmative Action Program.

(2) Living Wage Requirements

On March 5, 2002, the voters in the City of Oakland passed Measure I, adding to the City Charter Section 728 ("§728") entitled "Living Wage and Labor Standards at Port-assisted Businesses." §728 requires Port Aviation and Maritime businesses that meet specified minimum threshold requirements to pay all nonexempt employees a Living Wage rate established by City Ordinance and adjusted annually based on the Consumer Price Index for the San Francisco, Oakland and San Jose area. The current Living Wage rate as of July 1, 2014 is at least \$12.27 with credit given to the employer for the provision to covered employees of health benefits, and \$14.10 without credit for the provision of health benefits. Specifically, §728 applies to Port contractors and financial assistance recipients with the Aviation or Maritime divisions that have contracts worth more than \$50,000 and that employ more than 20 employees who spend more than 25% of their time on Port-related work. §728 also provides covered employers with incentives to provide health benefits to employees, establishes a worker retention policy, requires covered employers to submit quarterly payroll reports and requires covered employers to allow Port representatives access to payroll records in order to monitor compliance and labor organization representatives access to workforces during non-work time and on non-work sites. Covered employers are responsible for complying with the provisions of §728 from the date the covered contract is entered into. When a contract is awarded, the contractor will be required to fill out an Employer Self Evaluation Form and Certificate of Compliance that may be obtained from the Port's website at <http://www.portofoakland.com/responsibility/> and return them to the Port's Social Responsibility Division.

(3) Compliance with Regulations.

a) The Operator shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the United States Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Agreement.

b) Nondiscrimination. The Operator, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, sex, creed, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Operator shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix A of the Regulations.

c) Solicitations for Subcontracts, Including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the Operator for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Operator of the Operator's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

d) Information and Reports. The Operator shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Port or the Federal Aviation Administration ("FAA") to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a Operator is in the exclusive possession of another who fails or refuses to furnish this information, the Operator shall so certify to the Port or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.

(4) The Operator for itself, its successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the Premises for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, the Operator shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to the Regulations.

(5) The Operator for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (i) no person on the grounds of any basis prohibited by state or federal law shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (ii) that in the construction of any improvements on, over, or under such Premises and the furnishing of services thereon, no person on the grounds of any basis prohibited by state or federal law shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (iii) that the Operator shall use the Premises in compliance with all other requirements imposed by or pursuant to the Regulations.

(6) The Operator assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of any basis prohibited by state or federal law be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision binds the Operator during the Operating Term of this Agreement.

(7) Should the Operator authorize another person, with Port's prior written consent, to provide services or benefits from the Premises or at the Airport, Operator shall obtain from such person a written agreement pursuant to which such person shall, with respect to the services or benefits which it is authorized to provide, undertake for itself the obligations contained in this Section 18. Operator shall furnish the original or a true copy of such agreement to Port. Port may from time to time be required by the United States Government, or one or more of its agencies, to adopt additional or amended provisions, including non-discrimination provisions, concerning the use and operation of the Airport, and Operator agrees that it will adopt any such requirement as a part of this Agreement.

(8) If Operator shall furnish any services to the public at the Airport, it shall furnish said services on a fair, equal and not unjustly discriminatory basis to all users thereof and shall charge fair, reasonable and not unjustly discriminatory prices for each unit of service, provided that

Operator shall be allowed to make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume purchasers, if any.

19. NON-DISCRIMINATION

Operator acknowledges that it has received and reviewed a copy of the most current version of the Port of Oakland's Unlawful Harassment Policy and Procedures. The purpose of these procedures is to provide an effective and expedited system of resolving allegations of employment discrimination and prevention of unlawful harassment in the workplace. Operator shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry age (over 40), physical or mental disability, cancer-related medical condition, a known genetic pre-disposition to a disease or disorder, veteran status, marital status, or sexual orientation. Operator shall take affirmative action to ensure that applicants and employees are treated fairly. Such action shall include, but not be limited to the following: hiring, upgrading, recruitment, advertising, selection for training, including apprenticeship, demotion, transfer, compensation, lay-off or termination, or any other term or condition of employment.

20. REPRESENTATIONS, WARRANTIES AND COVENANTS.

Operator represents, warrants and covenants with respect to this Agreement and any amendment hereto (which representations and warranties shall be continuing during the Operating Term):

a) That all information submitted by Operator, its officers, agents, employees and contractors (the "Aforementioned Parties") during the Port's RFP process, or thereafter, upon request of Port, whether or not submitted by any of the Aforementioned Parties under a continuing obligation by the terms of this Agreement to do so, was true and correct at the time such information was submitted or made available to Port;

b) That none of the Aforementioned Parties has colluded, conspired, or agreed, directly or indirectly, with any person in regard to the terms and conditions of Operator's response to the and Port's RFP;

c) That Operator has the power and authority to enter into this Agreement with the Port and that the individual executing this Agreement is duly authorized to do so;

d) That none of the Aforementioned Parties has made an attempt to exert undue influence with the evaluation committee of the Port to award the Agreement for the Services to the Operator;

e) That there are no unresolved claims or disputes between Operator and Port;  
and

f) That Operator has furnished (and will furnish) true and accurate financial statements, records, reports, resolutions, certifications, and other information as may be requested of Operator by Port from time to time during the term of this Agreement.

21. TERMINATION.

21.1 Termination by Port. The Port may terminate this Agreement with or without cause at any time upon giving thirty (30) day's prior written notice to Operator. Port may terminate this

Agreement immediately upon notice upon the happening of an Event of Default (as defined in Section 22.1), and such a termination shall be deemed a termination "for cause."

21.2 Termination by Operator. Operator may terminate this Agreement without cause by giving to the Port at least one hundred eighty (180) day's prior written notice of termination, which notice may not be given earlier than the first anniversary of the Commencement Date.

21.3 Effect of Termination. At the termination date, the Operator shall immediately quit the assigned Premises and return the Office Equipment, any other Equipment provided by the Port, and any equipment purchased with Port funds or for which Operator has been reimbursed under this Agreement, to the Port in the condition required by this Agreement. If the Port elects to terminate this Agreement for cause, everything contained in this Agreement on the part of the Port to be done and performed shall cease without prejudice, subject, however, to the right of the Port to recover from the Operator all monetary damages or other relief that may be available to the Port arising out of any breach of this Agreement by Operator. Within sixty (60) days after the termination of this Agreement, the Port shall be obligated, subject to its set-off rights provided for in this Agreement, to pay all amounts owed to Operator under this Agreement to the termination date; provided, however, that the Port shall not be obligated to reimburse the Operator for Reimbursable Expenses if receipts for such expenses, in the form required by this Agreement, have not been received by Port within sixty (60) days after the termination date. If either party elects to terminate this Agreement as provided for herein based on the other party's material breach of this Agreement, the non-breaching party shall be entitled to damages as permitted by law or under this Agreement.

21.4 Removal from Premises. Upon expiration or termination of this Agreement, the Port may immediately or any time thereafter, re-enter the Premises and remove the Operator, Operator's employees, agents, subcontractors, invitees and property from the Premises. The Port shall be entitled to the benefits of all provisions of law respecting speedy recovery of the Premises held over by the Operator. Any other notice to quit or other notice to permit Port to re-enter the Premises is hereby expressly waived by the Operator. The Port shall not be liable in any way in connection with any action it takes pursuant to this subsection. The Operator's liability shall survive the Port's re-entry, the institution of summary proceedings, and the issuance of any warrants with respect thereto.

## 22. DEFAULT, AND REMEDIES.

22.1 Events of Default. The occurrence of any of the following shall constitute an "Event of Default" or "Default" by Operator:

a) The failure to provide, voluntary abandonment, discontinuation, cessation or material deterioration of the Services during the Operating Term which, in the opinion of the Director or the Designee, results in the failure to provide Services of the duration, quality or standards required to be performed by the Operator under this Agreement, which failure is not cured within five (5) days after Port's written demand; provided, however, that if Operator has received three (3) notices under this subparagraph within a period of 180 days, commencing on the date of Operator's receipt of the first such notice, then Operator shall have no right to correct a failure described in any subsequent notice given by Port to Operator under this subparagraph within such 180 day period, even if all of the prior failures were corrected by Operator within the five (5) day cure period.

b) The filing by the Operator of a voluntary petition in bankruptcy, or failure by the Operator to lift any execution, garnishment or attachment, or to obtain the dismissal of a bankruptcy proceeding commenced involuntarily against the Operator within thirty (30) days

after filing thereof or assignment by the Operator for the benefit of creditors, or the entry by the Operator into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the Operator in any proceeding instituted under the provisions of the Federal Bankruptcy Act, as amended, or under any similar acts which may hereafter be enacted.

c) The occurrence of any act which results in the suspension or revocation of the rights, powers, licenses, permits and authorities necessary for Operator to conduct and operate the Services.

d) Receipt of more than ten (10) complaints within any twelve (12) month period concerning major service deficiencies in the Services, with the determination of a complaint being deemed a "major service deficiency" being in the sole discretion of the Port. Operator shall have the right to contest any complaint by providing to Port within five (5) days after being notified of the complaint such evidence as Operator may have to demonstrate that the complaint was not justified. The determination of whether a complaint was justified shall be in the sole discretion of the Port.

e) The filing of any lien or sequestration or attachment of or execution or other levy on Operator's interest in this Agreement, the Premises or on Operator's equipment, if any, located on the Airport and Operator fails to obtain a release of such interest or property within thirty (30) days after the filing or attachment, or prior to sale pursuant to such levy, whichever first occurs.

f) The Director's or the Designee's determination that there is a reasonable probability that Operator's financial condition is impaired and Operator cannot provide adequate assurances that any conditions giving rise to the impairment of financial condition can be removed within thirty (30) days of receipt of Port's demand for same.

g) Failure to obtain and maintain in effect any of the insurance referenced in Sections 13 or 14 or the bond required under Section 15.

h) If any of the representations or warranties contained in Section 20 are untrue in any material respect, or if Operator breaches any of its covenants contained in Section 21.

i) Any transfer or assignment of this Agreement or subcontracting of any of the Services other than in compliance with Section 24.

j) Breach of or failure to comply with Operator's obligations contained in Section 23.1, Section 28 or Section 32.

k) Any breach or failure described as an Event of Default or Default by any provision of this Agreement other than this Section 22.1.

l) Failure by the Operator to observe or perform any covenant, condition or agreement on its part to be observed or performed under this Agreement, other than those specifically referred to above in this subsection 23.1, for a period of fifteen (15) calendar days after written notice specifying such failure and requesting that it be remedied has been given to the Operator by the Port; provided, however, such failure shall not constitute an Event of Default hereunder if such failure stated in the notice can be corrected, but not within the applicable period, and corrective action is instituted by the Operator within the applicable period and diligently pursued until such failure is corrected, provided that if the cure period

is longer than thirty (30) calendar days after the date of such written notice, the Operator shall obtain the prior written consent of the Port.

22.2 Remedies For Default. Upon the occurrence of an Event of Default, Port shall have the following rights and remedies, in addition to all other rights and remedies provided in this Agreement or by law, to which Port may resort cumulatively or in the alternative, and Port may assert them against the Operator and/or any general partner or joint venture partner, jointly and severally:

a) The Port may enter into a new agreement with another operator that will occupy the Premises for all or any part of the unexpired portion of the Operating Term of this Agreement in which event Operator shall be liable in addition to accrued liability hereunder, for the difference between the payments the Port is obligated to pay the new operator and the payments the Port would have been obligated to pay the Operator under this Agreement for the unexpired portion of the Operating Term (not to exceed the notice period required for the Operator to terminate this Agreement without cause pursuant to Section 22.2 above). The Port has the sole and absolute discretion with respect to the selection of a new operator and the use of the Premises.

b) In the Event of Default under this Agreement, the Port may, after providing written notice to the Operator of the Event of Default, cure the default at any time through any action deemed appropriate by the Port for the account and at the expense of the Operator. The Operator shall reimburse the Port for any amounts expended by the Port in connection with the cure, together with interest thereon for each day from the date of advance by Port until paid by Operator at the rate of five one hundredths percent (.05%), but not to exceed the maximum rate of interest permitted by law, and any penalties thereon as may be established by Port ordinance. Such cure shall not constitute a waiver of the Port's rights with respect to that or any other Event of Default, unless otherwise expressly stated in writing by the Port.

c) The Operator shall pay the Port such sums as the court which has jurisdiction thereover may adjudge as reasonable attorney's fees with respect to any lawsuit or action instituted by the Port to enforce the provisions of the Agreement in which the Port is the substantially prevailing party.

The Port shall not be liable for any damage, including, but not limited to, loss of profit and the Operator shall not make a claim of any kind whatsoever against the Port, its agents or representatives, by reason of any action taken pursuant to this Section 22.

At Port's election, Port may keep this Agreement in effect and enforce all of its right and remedies under this Agreement, including the right to withhold compensation and other fees as they become due, and at Port's option, but without any obligation to do so (implied from any of its obligation under this Agreement), Port may, after first giving Operator written notice as provided in Section 22.2(b) above, make such payment or perform such other act to the extent Port may deem appropriate. All sums so paid by Port and all costs in connection therewith shall be due and payable by Operator to Port (except where otherwise expressly provided in this Agreement) within ten (10) days of Port's written demand for payment of same, together with interest and penalties thereon from date of advance by Port at the rate provided in Section 22.2(b) above, plus costs as may be awarded by a court of competent jurisdiction.

Port shall not be liable to Operator for any damage to, or for any diminution or deprivation of Operator's rights hereunder on account of the exercise of any authority granted to Port in this

Agreement. Operator shall be liable to the Port for the Port's expense for re-entering or repossessing the Premises, and making any necessary repairs to the Premises, for all of the expenses to obtain a new operator and for the costs of operating or engaging a third party to operate the Services for the unexpired portion of the Operating Term (not to exceed the notice period required for the Operator to terminate this Agreement without cause pursuant to Section 21.2 above) to the extent such costs exceed the expenses that would have been paid had the Operator not defaulted.

22.3 Act of Termination. In the event Operator ceases to provide the Services at the Airport, this Agreement shall not terminate, unless Port gives Operator written notice of its election to terminate this Agreement. No act by or on behalf of Port intended to mitigate the adverse effect of such breach shall constitute a termination of Operator's obligation to render Services hereunder and use the Premises, unless Port gives Operator written notice of termination.

## 23. COMPLIANCE WITH LAWS, RULES, POLICIES AND REGULATIONS.

23.1 Agreement to Comply. Operator covenants and agrees to observe and comply with (and to cause any assignee or subcontractor authorized under Section 24 below to comply with) all present and future Laws (as hereafter defined), subject to the limitations in the last sentence of Section 10.1 above, and all rules, regulations and policies of Port, including without limitation, all safety, security and operations directives of the Director or the Designee, which now exist or may hereafter be promulgated from time to time governing conduct on and operations at the Airport or the use of facilities at the Airport (hereafter collectively the "Airport Rules, Policies and Regulations"). The Port shall not have any duty or obligation to Operator to enforce the Airport Rules, Policies and Regulations or the terms and conditions in any permit, lease or other agreement against any third party, and the Port shall not be liable to Operator for violations of same by third parties, their employees, contractors, agents, invitees or licensees. Operator further covenants and agrees to observe and comply with (and to cause all of its assignees or subcontractors authorized under Section 24 below to comply with) any and all valid and applicable requirements of all duly-constituted public authorities (including, without limitation, the Department of Transportation, the Department of Homeland Security, the Federal Aviation Administration, and the Transportation Security Administration). Operator agrees to pay or reimburse Port for any civil penalties or fines which may be assessed against Port as a result of the violation by Operator or any such assignee or subcontractor of any of the foregoing requirements, which payment shall be made by Operator within fifteen (15) days from receipt of Port's invoice for such amount and documentation showing that payment of such penalty or fine is Operator's responsibility hereunder. Operator shall not be obligated to make a payment to Port under this Section 23.1 if such payment would duplicate a payment for the same violation that has already been made by Operator to the Port under Section 32.1(a) below.

As used in this Agreement, "Laws" shall mean all present and future federal, state and local statutes, ordinances and regulations and Port ordinances and regulations applicable to Operator, the Premises, the Services or the Airport and judicial interpretations thereof, including but not limited to, the security mandates, rules, regulations and badging requirements referenced in Section 32.1 below, the Americans with Disabilities Act of 1990, all acts and regulations relating in any way to worker's compensation, sales and use tax, social security, unemployment insurance, hours of labor and overtime, wages, working conditions, the Immigration Reform and Control Act of 1986, Section 7583 of the California Business and Professional Code, the Charter of the City (including without limitation Section 728 entitled "Living Wage and Labor Standards at Port-Assisted Businesses"), the Oakland Municipal Code (including without limitation Section 5.52 thereof), all Environmental Laws (as defined in Section 12.2(a)(2) above, and the Airport Rules, Policies and Regulations (as defined in this Section 23.1).



If Operator fails to comply with any applicable Laws, the Port may suspend this Agreement until compliance is attained or may perform the Services, including without limitation, the functions of the Supervisor, with its own forces or with hired personnel, and may deduct the cost of these Services from monies otherwise due Operator under the terms of this Agreement. The Port will determine in its reasonable discretion whether Operator has complied with its obligations under this Section 23 and under Section 32 below, and whether the Port will provide Services in lieu of Operator. Operator shall also be subject to any Administrative Fees levied against the Port as a result of Operator's failure to comply with its obligations under this Section 24 or under Section 33 below.

#### 23.2 Private Patrol License

Throughout the Operating Term, Operator must possess a current Private Patrol Operations License (PPO) issued by the State of California through the Department of Consumer Affairs, Bureau of Security and Investigative Services. Upon request by the Port, Operator will submit a copy of such license to the Port.

#### 24. TRANSFER AND ASSIGNMENT.

24.1 Assignment or Subcontracting. Operator shall not sell, assign or transfer this Agreement or any of its rights and obligations hereunder or permit any such sale, assignment or transfer to occur by operation of law, or subcontract for the performance of any of the Services to be provided by it hereunder, without the Port's prior written approval, which approval must be evidenced by resolution adopted by the Board of Port Commissioners and may be granted or withheld by Port in the exercise of its sole discretion and subject to payment by Operator of all administrative expenses incurred by the Port for the processing of such assignment or transfer.

24.2 Transfer of Control. For purposes of Section 24.1 above, an assignment shall include a Change in Control. A Change in Control means whether accomplished through a single transaction or a series of related or unrelated transactions and whether accomplished directly or indirectly, either (a) a change in ownership, as compared to the ownership as of the date of the Agreement, so that 50% or more of the direct or indirect voting or economic interests of the Operator is transferred to another person or group of persons, (b) the power directly or indirectly to direct or cause the direction of management, operations, controls and policy of the Operator, whether through ownership of voting securities, by contract, management agreement or common directors, officers or trustees or otherwise, is transferred to another person or group of persons, or (c) the merger, consolidation, amalgamation, business combination or sale of substantially all of the assets of the Operator.

#### 25. JOINT AND SEVERAL LIABILITY.

The obligations and liabilities of the Operator and its general partners or joint venture partners under or arising under this Agreement are joint and several.

#### 26. GOVERNING LAW.

The Port and the Operator agree that the law governing this Agreement shall be that of the State of California.

#### 27. FEES AND TAXES.

Operator agrees timely to pay all applicable fees, taxes, and other charges levied by any governmental entity upon any right or interest granted to Operator by this Agreement or upon the

exercise of any such right or interest, including the City of Oakland business licensing fees and taxes, if applicable. In the event that any provision of this Agreement causes the imposition of a possessory interest tax, Operator shall immediately notify the Director and provide a copy of all documents received by the Operator relative to such impositions. The Port agrees to pay on behalf of Operator whatever possessory interest tax may be imposed, provided, however, that the Port reserves the right to challenge the imposition of such a possessory interest tax. Operator agrees to reasonably cooperate with the Port in making necessary investigations and in preparing and presenting necessary documentary and oral evidence in connection with whatever challenge to such tax imposition the Port may deem appropriate.

28. COVENANT AGAINST CONTINGENT FEES; IMPROPER INFLUENCE.

Operator warrants that no person or agent has been employed or retained to solicit or obtain the Agreement upon an agreement or understanding for a contingent fee, except a bona fide employee or agency of Operator. For breach or violation of this warranty, the Port, as its option, may deduct from the Management Fee or payment of Reimbursable Expenses or otherwise recover from Operator, the full amount of the contingent fee, or may exercise any other legal or equitable remedy available to it.

Operator warrants that neither Operator nor any person nor agent acting on Operator's behalf shall exert improper influence to solicit or obtain Port contracts. In addition Operator warrants that neither Operator nor any person nor agent acting on Operator's behalf shall exert improper influence to extend or prevent termination of this Agreement. "Improper influence", as used in this Section, means any influence that induces or tends to induce a Port Commissioner, employee or officer to give consideration or to act as an agent regarding a Port contract, including this Agreement, on any basis other than the merits of the matter.

Operator's breach of any of its obligations under this Section 28 shall constitute an Event of Default and may result in any or all of the following:

- (i) Port's immediate termination of this Agreement, and
- (ii) an assessment of an Administrative Fee as specified in Exhibit "D".

"Bona fide agency," as used in this Section means an established commercial or selling agency, retained by Operator for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Port contracts nor holds itself out as being able to obtain any Port contract or contracts through improper influence.

"Bona fide employee," as used in this Section, means a person, employed by Operator and subject to Operator's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Port contracts nor holds himself or herself out as being able to obtain any Port contract or contracts through improper influence.

"Contingent fee," as used in this Section, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Port contract.

"Improper influence," as used in this Section, means any influence that induces or tends to induce a Port Commissioner, employee or officer to give consideration or to act as an agent regarding a Port contract on any basis other than the merits of the matter.

29. CONSENTS AND APPROVALS; NOTICES.

All consents or approvals provided for in this Agreement must be contained in writing signed by the party giving such consent or approval.

Written notices to the Port hereunder shall be given by personal delivery, or by registered or certified mail or overnight courier service, with all postage or freight charges prepaid, and addressed to Director of Aviation, Port of Oakland, 530 Water Street, 6<sup>th</sup> Floor, Oakland, CA 94607, with copies to Port Attorney, Port Attorneys Office, 530 Water Street, 4<sup>th</sup> Floor, Oakland, CA 94607 and to Airport Security Manager, Port of Oakland, One Airport Drive, Box 45, Oakland, California 94621, or to such other address or addresses as the Port may designate by written notice to Operator.

Written notices to Operator hereunder shall be given by personal delivery, or by registered or certified mail or overnight courier service, with all postage or freight charges prepaid, and addressed to:

HSS, INC.  
900 S. Broadway, Suite 100  
Denver, CO 80209  
Brad Dalton, Vice President  
Phone: 303-603-3124

or to such other address as Operator may designate by written notice to the Port.

The giving of any such notice by the Director or the Designee shall be effective upon receipt, and Operator shall not question the authority of the Director or the Designee to give any such notice.

30. WAIVER OF DAMAGE

Operator hereby expressly waives and releases any cause of action or right of recovery for compensation for any and all loss or damage sustained by reason of any fire, defect, deficiency or impairments of any of the services in or to the Premises or the Airport, including, but not limited to, electrical power, gas, telephone service, steam, heating, air conditioning, water supply, plumbing, drainage or sewage systems, or from wires leading to or inside of any space or structure, or by reason of any loss resulting from the failure of any such system or facility unless such loss or damage is due solely to the willful misconduct of Port or its officers, agents or employees. It is understood that Operator shall take such steps as Operator may consider necessary to protect Operator's trade equipment and other personal property from any damage that may be caused to same in the event of any failure or interruption of such utility service. Whenever the Port shall find it necessary for the purpose of making repairs or improvements to any utility supply system it shall maintain, it shall have the right to suspend temporarily the delivery of gas, electricity, water or other utility service, or any thereof, but in all such cases (except in the event of an emergency) reasonable notice of such suspension will be given to Operator.

The Port and its Board of Port Commissioners and its officers, employees and agents shall not be liable to Operator or to any third party claiming through Operator for any loss of business or any indirect, incidental, special or consequential damages or lost profits arising out of or relating to this Agreement or the operation of Operator at the Airport or for any other cause.

31. NO ADVERTISING

Operator shall not display any advertising on the Premises or the Airport.

32. SECURITY MANDATES AND BADGING REQUIREMENTS.

32.1 Security Mandates. Operator recognizes that the Port is required to comply with the Port's Airport Security Plan approved from time to time by the Transportation Security Administration ("TSA"), the regulations, security directives and other requirements relating to security promulgated by the Federal Aviation Administration ("FAA"), the Department of Transportation, the TSA, the Department of Homeland Security, and with other governmental and administrative rules and regulations relating to airports. The procedures determined by the Port to be necessary to comply with such security mandates and other governmental or administrative requirements will be delivered in writing by the Director or the Designee to one of Operator's Supervisors, with a copy of such procedures delivered to Operator pursuant to Section 29 above. The Operator shall acknowledge receipt of such procedures in writing, but Operator's failure to do so shall not release Operator from its obligations under this Section 32.1. The Operator and the Operator's agents, employees, representatives and subcontractors shall be responsible for full compliance with all procedures so delivered and the current procedures shall constitute a part of this Agreement. Such procedures are subject to change without notice other than the delivery thereof to one of Operator's Supervisors in accordance with the provisions of this Section 32.1, and Operator shall immediately comply with such procedures.

a) Operator shall reimburse the Port within fifteen (15) days from receipt of Port's invoice for the amount of any civil penalty or fine that may be assessed against the Port by any governmental agency for a violation that arises out of Operator's failure to comply with its obligations under this Section 32.1. Operator shall not be obligated to make a payment to Port under this Section 32.1(a) if such payment would duplicate a payment for the same violation that has already been made by Operator to the Port under Section 24.1 above.

b) Failure of Operator to fully perform in accordance with this Section 32.1 shall constitute breach of this Agreement, in which event the Port may, at its sole option, immediately terminate the Agreement for cause.

32.2 Badging Requirements

a) Operator shall comply with all Port, FAA, TSA, and CBP regulations governing airport security, including but not limited to special badging requirements and background checks, and acknowledges that the Port is prohibited by federal law from issuing an Airport Security Badge to an individual who has a disqualifying criminal offense described in 49 CFR 1542.209(d);

b) Airport Security Badges will be issued only after the badge applicant's STA has been approved by TSA. The Airport Security Badge applicant's identity and employment eligibility will be determined by the TSA, based upon documentation in the form specified by the TSA;

c) Operator shall ensure that its employees, agents, subcontractors, suppliers or other invitees obtain the appropriate Airport Security Badge and wear it at all times when they are engaged in work at the Airport. The Airport Security Badge shall be worn above the waist and in plain view of those interacting with the employee. Operator

shall ensure that any Airport Security Badge provided by the Port is returned promptly when the person to whom the Airport Security Badge was provided leaves Operator's employment or no longer engages in work under this Agreement at the Airport for Operator. Operator shall be responsible for any charge or fine imposed by the Port or any government authority if the Airport Security Badge is not promptly returned;

d) Operator shall obtain and thoroughly review all Airport Security Badging requirements and the Airport Rules, Policies and Regulations pertaining to security badging and airport security before commencing any work under this Agreement. Copies of security and badging information and the Airport Rules, Policies and Regulations are available from the Port upon request. Operator shall warrant and ensure that any person that receives an Airport Security Badge complies with all of the requirements for having an Airport Security Badge;

e) Operator shall return all Airport Security Badges to the Airport Badging Office and obtain a receipt for their return once an employee is no longer employed by Operator. At the request of the Airport Security Manager, Operator shall also submit a copy of the receipt to the Airport Security Manager; and

f) Upon expiration or earlier termination of this Agreement, Five Hundred Dollars (\$500.00) will be deducted from the Port's final payment to Operator for each Airport Security Badge not returned to the Airport's Badging Office.

33. NON-DISCRIMINATION PLAN FOR EMPLOYMENT.

Operator shall comply with Exhibit "K", entitled NON-DISCRIMINATION PLAN FOR EMPLOYMENT, which is attached to and made a part of this Agreement.

34. SAFETY ACT CERTIFICATION

Operator has submitted a copy of its Safety Act Certificate in connection with its proposal in the RFP. Throughout the Operating Term, Operator must continue to possess the Safety Act Certification through the Department of Homeland Security (DHS). Upon request by the Port, Operator will provide a copy of its Safety Act Certificate to the Port.

35. MISCELLANEOUS.

35.1 Lost And Found Articles. All articles found by the Operator, its agents or employees, or which are found by patrons and given to the Operator, shall be turned over to the Airport Lost and Found Department as lost and found items. The Operator, its agents and employees shall have no right to reclaim said articles. Lost and found articles while in possession of the Operator, its agents and employees, that cannot be accounted for, will be reimbursed by Operator to the Port at the fair market value of the articles, as reasonably determined by the Port, or replaced at the Operator's sole expense.

35.2 Entire Agreement; Amendments; Conflict with Exhibits. This Agreement, together with the exhibits and attachments hereto, which are hereby incorporated into this Agreement by this reference, constitutes the entire agreement between the parties with respect to the subject matter hereof, and any prior agreements, representations or statements made with respect to such subject matter, whether oral or written, and any contemporaneous oral agreements, representations or statements made with respect to such subject matter are merged herein. Except as otherwise specifically provided in this Agreement, this Agreement may be altered or amended only by written

instrument executed by all of the parties hereto. In the event of an express conflict between an Exhibit to this Agreement and this Agreement, the provisions of this Agreement shall prevail.

35.3 **Waiver and Severability.** The failure of either party to require performance by the other party of any provision hereof shall not affect the full right to require such performance at any time thereafter; nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself. In the event that any provision of this Agreement shall be unenforceable or invalid under any applicable law or be so held by applicable court decision, such enforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole, and in such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such provisions within the limits of applicable law or applicable court decisions.

35.4 **Jurisdiction and Venue.**

a) Operator hereby consents to the jurisdiction of the State of California Superior Court of the County of Alameda and of the Federal District Court for the Northern District of California with respect to any action instituted by Port and arising against Operator under this Agreement, and waives any objection which it may have at any time to the laying of venue of any such action brought in any such court, waives any claim that such action has been brought in an inconvenient forum and further waives the right to object, with respect to such action, that such court does not have any jurisdiction over Operator. Operator further irrevocably consents to the service of process by certified or registered mail (airmail if overseas) or the equivalent (return receipt requested), or the service of process in any other manner permitted by law, in any action instituted by Port and arising against Operator under this Agreement. Port agrees to serve such process on Operator's registered agent under California law if the name and address of Operator's current registered agent in California has been provided to Port in advance and in writing.

b) In addition to the foregoing, pursuant to California Code of Civil Procedure, Section 416.10, Operator hereby designates the following person as its agent for service of process:

35.5 **Headings.** The article and section headings herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of any provision of this Agreement.

35.6 **Time of Essence.** Time is expressed to be of the essence of this Agreement.

35.7 **Successors and Assigns.** The Agreement will inure to the benefit of and shall be binding upon the parties hereto and their authorized successors and assigns.

35.8 **Consents.** Except as otherwise expressly provided herein, if certain action may be taken only with the consent or approval of the Port, or if a determination or judgment is to be made by the Port, such consent or approval may be granted or withheld, or such determination or judgment shall be made, in the sole discretion of the Director or the Designee.

35.9 **Force Majeure.** Neither party shall be liable by reason of any failure or delay in the performance of its obligations hereunder on account of strikes, except for strikes by its own employees, riots, insurrections, fires, floods, storms, explosions, earthquakes, acts of God, war, terrorist attacks, governmental action (unless arising out of a party's breach of applicable Laws), or any other similar cause that is beyond the reasonable control of such party, or if such failure or delay

was caused by the other party's failure to fulfill its obligations under this Agreement ("Force Majeure"). If any event of Force Majeure occurs, the party delayed or unable to perform shall give immediate notice to the other party and shall re-commence performance at the earliest possible time.

35.10 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any counterpart of this Agreement shall be validly and effectively delivered if delivered by telefacsimile transmission.

35.11 No Recourse. No recourse under or upon any obligation, covenant or agreement contained in this Agreement, or any other agreement or document pertaining to the operations of Operator hereunder, as such may from time to time be altered or amended in accordance with the provisions hereof, or under any judgment obtained against Port, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any statute or otherwise, under or independent of this Agreement, shall be had against any member (including, without limitation, members of Port's Board and its citizens advisory committees), director, officer, employee, representative, contractor, or agent, as such, past, present and future, of Port, either directly or through Port or otherwise, for any claim arising out of this Agreement or the operations conducted pursuant to it, or for any sum that may be due and unpaid by Port. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any Port member, director, officer, employee, representative, contractor, or agent, as such, to respond by reason of any act or omission on his or her part or otherwise for any claim arising out of this Agreement or the operations conducted pursuant to it, or for the payment for or to Port, or any receiver therefor or otherwise, of any sum that may remain due and unpaid by Port, is hereby expressly waived and released as a condition of and as consideration for the execution of this Agreement.

35.12 Guaranty. If a third party or third parties joined in the Operator's proposal as a guarantor, then such third party or third parties, as applicable, shall execute and deliver to the Port the Guaranty in the form attached hereto as Exhibit "M" at the same time that this Agreement is executed and delivered by Operator to the Port.

35.13 WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY LAW, OPERATOR AND PORT DO HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING RELATED TO, ARISING OUT OF OR IN CONNECTION WITH THE TERMS, CONDITIONS AND COVENANTS OF THIS AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement for Airport Contract Security Services to be executed the day and year first above written.

**CITY OF OAKLAND**, a municipal corporation, acting by and through its Board of Port Commissioners,

By   
**J. CHRISTOPHER LYTLE**  
Executive Director


Date: 5-11-2015

**HSS, INC.**, a privately held corporation,

By   
*Authorized Signature*  
**WAYNE V. SCHELL, President**  
Print Name and Title

(If Corporate: Chairman, President or Vice President)

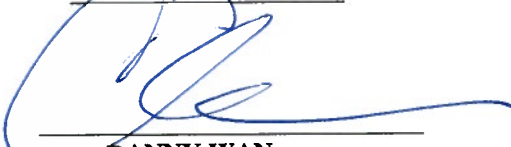
Date: 05-04-2015

Attest   
*Authorized Signature*  
**Michael P. Rathkiewicz Chief Financial officer**  
Print Name and Title

(If Corporate: Secretary, Assistant Secretary, Chief Financial Officer, or Assistant Treasurer)

Date: May 5, 2015

Approved as to form and  
legality this 12<sup>th</sup> day  
of May 2015.

  
**DANNY WAN**  
Port Attorney

**P. A. #:** 2015-157

**Port Resolution No.** 15-036

**THIS CONTRACT SHALL NOT BE  
VALID OR EFFECTIVE FOR ANY  
PURPOSE UNLESS AND UNTIL SIGNED BY  
THE PORT ATTORNEY.**



P.A.#: 2015 - 157

**PORT OF OAKLAND  
OAKLAND INTERNATIONAL AIRPORT  
AIRPORT CONTRACT SECURITY SERVICES  
EXHIBIT "A"**

**SERVICE REQUIREMENTS**

The Operator agrees to provide Contract Security Services at service locations directed from time to time by the Director or the Designee. The Port reserves the right from time to time to order changes in the service locations, the service hours and in the Services to be performed by the Operator. All such changes shall be incorporated in written change orders executed by the Director or the Designee which shall specify the changes ordered and the adjustment of compensation if any. No other claim for additional compensation will be recognized, except as permitted in the Agreement. Services may not be interrupted at any time. The specified staffing required to be providing the Services, as described herein, must be provided at all times as specified.

**SECURITY GUARD SERVICES**

Except as otherwise provided in this Exhibit "A", or as directed by the Director or the Designee, the Services shall be provided on a continuous basis without interruption, as follows:

Description of Post	Number of Guards Per Post	Hours/Day	Hours of Service (7 days a week)
Concession Screening #1	1	13.00	0345 to 1645
Concession Screening #2	1	13.00	0345 to 1645
Relief	1	13.00	0345 to 1645
Supervisor	1	16.00	0330 to 1930

**SPECIAL ASSIGNMENTS**

Guard Posting Services shall be provided twenty-four (24) hours per day, Monday through Sunday, when the Operator has been provided prior notice by the Director or the Designee as set forth in Section 3.1.

To assist the Port in verifying the provision of the Service, the Operator shall comply with electronic patrol monitoring system procedures to be promulgated by the Aviation Security Manager and to keep Time Clocks pursuant to Exhibit "G" hereto.

**ADMINISTRATIVE FEES**

Administrative Fees will be charged to the Operator for any violations of the provisions of this Agreement, as enumerated in Exhibit "D".

**ACTIVITY REPORTS**

Operator shall submit to the Aviation Security Manager daily, monthly and annual reports on report forms, which shall be provided by Operator or Port, at Port's election. These report forms may be modified at any time by the Aviation Security Manager. Such reports shall include, at a minimum:

1. employee daily shift reports;
2. Daily Concessions Inspection Reports

3. weekly work schedule and monthly employee rosters, including all new hires and termination;
4. daily activity logs;
5. monthly employee payroll reports;
6. monthly report of employees with active Guard Cards;
7. annual report of major incidents that occurred or were responded to by Operator since the Commencement Date or since the prior annual report, as applicable, a budget forecast for the next year of the Operating Term, and any staffing issues or any other matter that the Operator would like to bring to the Port's attention; and
8. such other statistical reports concerning management and operation of the Services as the Aviation Security Manager reasonably may require from time to time ("Additional Service Reports").

Daily reports shall be provided to the Port on a monthly basis or upon request of the Port. Weekly reports shall be submitted by the Wednesday of the following week. Monthly reports shall be submitted within ten (10) calendar days of the end of the month, or part thereof, for which a report is due. Annual reports shall be submitted by February 1<sup>st</sup>, of each year of the Operating Term of this Agreement. Operator shall supply Port with such other financial or statistical reports as the Aviation Security Manager may request from time to time during the Operating Term of this Agreement. In addition, Operator shall address each customer complaint regarding the Services within five (5) working days of receipt by Operator of the notice of such complaint.

## **MONTHLY PERFORMANCE INSPECTIONS**

In cooperation with the Port, Operator will design a monthly quality inspection program and report, which will be used to determine overall quality of contract performance, officer job knowledge, and training effectiveness. Additionally, the inspection will include observations of security officers to ensure office conduct and appearance meet expectations. A monthly performance evaluation meeting will be scheduled with the Port to discuss the inspection, as well as resulting changes or actions. Operator will provide the Aviation Security Manager with a complete inspection report during the monthly meeting.

Supervisors test the competency of every new security officer prior to standing post assignment to ensure retention of knowledge. Operator supervisors will conduct monthly competency testing and as impromptu testing as they make their daily site checks. Quarterly and random test are documented.

## **KEY PERFORMANCE INDICATORS**

Operator will, in cooperation with the Port, develop new key performance indicators (KPIs) to measure Operator's performance and ability to improve on the current standards. The KPI initiative has five categories of emphasis including: On-Site Manager Performance, Security Officer Performance, Training Status, Equipment Maintenance, Customer Service and Projects (special focus area) and Ideas to Improve Operations. Operator's KPIs are designed to not only motivate each individual employee to perform at the best of his/her ability but allows for each and every officer, no matter his/her position, the opportunity to receive a tangible reward for a job well done.

## **THIRD PARTY ANNUAL AUDIT**

Operator will perform an in-depth annual audit at no charge to the Port, conducted by a nationally recognized third party aviation security consultant. The audit will be comprised of the following areas: Administrative Processes, Contract Compliance, Equipment/Facilities, Post Orders, Communications, Safety/Health, and Operations (which includes Customer Service and Training/Qualifications). The

results of the audit will be shared with the Port. All action plans will be immediately put in place by the Operator.

## **NO SOLICITATION**

Operator and/or its employees shall not engage in the sale of any product or service, or the solicitation of such sale, at the Airport.

## **PROJECT MANAGER**

**Ann-Marie Wilson**

## **TECHNOLOGY**

Operator is currently implementing a pilot program for the use of state-of-the-art electronic personnel tracking and reporting systems along with mobile devices and tablets that allow Operator written, text, verbal and visual communications to be instantaneous with transparency to Operator's clients. If such program proves viable, Operator agrees to deploy such program at the Airport as soon as reasonable practicable.

## **LOCAL GUARD SERVICE COMPANY OUTREACH WORKSHOP**

Operator agrees to work collaboratively with the Port to host a workshop for local guard service companies that may be interested in providing services to airports in the future. Operator will (1) meet local guard service companies interested in providing airport-related guard services and (2) provide initial training on "getting into the business," including professional associations, training, security requirements, scheduling and post coverage methodologies specific to an airport environment. Operator will host the meeting in collaboration with the Port and submit a draft agenda for review / approval by the Port.

**PORT OF OAKLAND  
OAKLAND INTERNATIONAL AIRPORT  
AIRPORT CONTRACT SECURITY SERVICES**

**EXHIBIT "B"**

**COMPENSATION**

**1. Compensation to Operator:**

The maximum amount payable under this Agreement shall not exceed \$5,400,000 over a period of five (5) years.

**HOURLY RATE**

**\$26.95**

**PORT OF OAKLAND  
OAKLAND INTERNATIONAL AIRPORT  
AIRPORT CONTRACT SECURITY SERVICES**

**EXHIBIT "C"**

**RESERVED**

**PORT OF OAKLAND  
OAKLAND INTERNATIONAL AIRPORT  
AIRPORT CONTRACT SECURITY SERVICES**

**EXHIBIT "D"**

**ADMINISTRATIVE FEES**

The parties agree that certain aspects of the Operators performance are essential to the Port's operation and that the Operator's failure to perform these activities will result in administrative and monitoring expenses for the Port. Therefore, the parties agree that the listed Administrative Fees are reasonable estimates of such expenses to the Port and shall be charged to the Operator.

The Port shall assess Administrative Fees for each instance of the Operator's failure to perform pursuant to the Agreement. The Director at his/her sole discretion may elect to waive an assessment of Administrative Fees for a particular violation; however, that waiver shall not apply to prior or future violations. The Director shall provide Operator written notice of each violation and of the applicable Administrative Fee with reasonable promptness after receiving actual notice that a violation of the Agreement has occurred for which an Administrative Fee may be charged to the Operator.

The Administrative Fees specified in this Agreement, shall not be assessed if the Operator's failure is excused under Section 35.9 of the Agreement.

**STAFFING**

Any amounts payable by the Port to the Operator under this Agreement ("Amounts Payable") may, at the option of the Director, be reduced by two hundred and fifty dollars (\$250.00) each time one of the following performance violation occurs for each guard, per each shift;

- 1.1 Failing to maintain a neat personal appearance;
- 1.2 Failing to behave courteously;
- 1.3 Failing to possess proper photo ID at all times while at the Airport;
- 1.4 The use, possession or being under the influence of any alcoholic beverage or prohibited substance while on duty or at the Airport;
- 1.5 Use of profane or vulgar language directed to or at the public, airport personnel, or those designated by the Operator to supervise the Services;
- 1.6 Failure to perform functions of a security guard at the Airport as set forth in this Agreement;
- 1.7 Smoking, eating or littering while on duty or at the Airport;
- 1.8 Any "clocking" in or out using another employee's card or identification;
- 1.9 Providing services or working for another entity, including the Operator, other than the Services for the Port while on duty;
- 1.10 Supervisor not available at the Port's request;

1.11 Solicitation of passengers for sale of goods or services, or for tips or other unauthorized exchange of money;

1.12 Providing false information to passengers;

1.13 Failing to operate a vehicle in a safe manner;

1.14 Failing to comply with posted speed limits and traffic control signs;

1.15 Soliciting or accepting tips or gratuities in any form or manner;

1.16 Permitting or giving consent to Airport users to leave vehicles unattended or to load or unload at areas not designated by the Port for that purpose; and

1.17 Failure to follow other Airport Rules, Policies and Regulations.

## **CUSTOMER COMPLAINTS**

The Amounts Payable may, at the option of the Director, be reduced by three hundred dollars (\$300.00) for each customer complaint that is not addressed or resolved in a manner reasonably acceptable to the Port within five (5) working days of receipt by Operator of the notice of such complaint.

## **NON-STAFFING**

The Amounts Payable may, at the option of the Director, be reduced by three hundred dollars (\$300.00) for each fifteen (15) minutes or fraction thereof that a post is unattended at any of the following locations:

Concessions Security Check Points I and II;

Special Assignments.

## **FAILURE TO SUBMIT REPORTS IN A TIMELY MANNER**

Operator acknowledges that it is required to submit periodic reports required under the Agreement and others as required by the Aviation Security Manager. The Amounts Payable may, at the option of the Director, be reduced by One Hundred Dollars (\$100.00) per day, per report, for each day such report(s) are late, or for each time such reports are submitted with material information missing or with material inaccuracies. Required reports include, but are not limited to:

A. Activity Reports required by Section 6.6 or Exhibit "A".

B. Employee Training Program Reports (Exhibit "H");

C. Weekly Staffing Schedule and Monthly Employee Rosters (Exhibits "A" or "G");

D. Additional Service Reports (Exhibit "A");

E. Annual Evaluation of Supervisors (Exhibit "G").

## **FINANCIAL**



The Amounts Payable may, at the option of the Director, be reduced by two hundred and fifty dollars (\$250.00) for each of the following:

1. **OVERSTATEMENT OF ANY ITEM OF ACTUAL EXPENSE ON ANY BILL, STATEMENT OR REPORT WITH WHICH REIMBURSEMENT FROM THE PORT IS REQUESTED, WITH SUCH FINES NOT TO EXCEED \$500 PER MONTH; AND**

2. **ANY FAILURE TO PROVIDE VERIFICATION OR EVIDENCE THAT PAYMENTS HAVE BEEN MADE OF REIMBURSED EXPENSES TO THE PARTY NOTICED ON THE BILL, STATEMENT OR REPORT FOR SUCH REIMBURSEMENT.**

## **MISCELLANEOUS**

The Amounts Payable may, at the option of the Director, be reduced by the amount specified for each time one of the following performance failures occurs:

2.1 One Hundred Dollars (\$100.00) for each instance of failure to meet minimum performance standards;

2.2 Five Hundred Dollars (\$500.00) per day for failure to maintain minimum staffing schedule;

2.3 Three Hundred Dollars (\$300.00) for each failure to patrol Airport grounds as required by this Agreement to include, Concessions in T1 and T2, and Special Assignments;

2.4 Two Hundred Fifty Dollars (\$250.00) for each failure to prepare and submit a written incident report for incidents of injury or loss in an accurate manner within twenty-four (24) hours from the time of the incident;

2.5 Two Hundred Fifty Dollars (\$250.00) for each day the Operator fails to provide the Port with an Operations and Procedures Manual after 30 days from the Commencement Date of the Agreement;

2.6 Two Hundred Fifty Dollars (\$250.00) for each day the Operator fails to provide the Port with a Training Manual after 30 days from the Commencement Date of the Agreement;

2.7 Two Hundred Fifty Dollars (\$250.00) for each day the Operator fails to provide the Port with an Audit Manual after 30 days from the Commencement Date of the Agreement;

2.8 Five Hundred Dollars (\$500.00) for each occurrence of the suspension of any service or the non-receipt or repossession of any product due to Operator's failure to pay invoices or bills subsequent to any reimbursement by the Port for such services or products;

2.9 Five Hundred Dollars (\$500.00) for each occurrence of failure by Operator to maintain the Premises or Equipment as set forth in Sections 10 and 11, or for each failure to meet the training schedule specified in Exhibit "G";

2.10 Five Hundred Dollars (\$500.00) for each occurrence of the failure by Operator to provide immediate notification to the Port of a terminated employee who was engaged in providing any of the Services by calling the Port's 24-hour Airport Security number, or for each occurrence of the failure by Operator to return to the Port all Airport identification badges or keys for each such terminated employee within 48 hours of such termination;

2.11 Five Hundred Dollars (\$500.00) for each occurrence of the failure by Operator to return to the Port all Airport parking cards for each terminated employee within 24 hours of such termination;

2.12 Five Hundred Dollars (\$500.00) for each instance of improper influence, as specified in Section 28 of the Agreement;

2.13 Two Hundred Fifty Dollars (\$250.00) for each failure of an employee of the Operator while on duty to fail to wear a uniform approved by the Aviation Security Manager and be fully equipped with equipment approved by the Aviation Security Manager, or for each failure of an employee on a shift to wear similar type uniforms approved by the Aviation Security Manager;

2.14 Two Hundred Fifty Dollars (\$250.00) for having any unlicensed or untrained employee providing any of the Services;

2.15 Two Hundred Fifty Dollars (\$250.00) for each failure to remove an employee from the Services and the Premises pursuant to Section 9.2 of the Agreement; and

2.16 Two Hundred Fifty Dollars (\$250.00) for any breach of Operator's obligations under "DRUG AND SUBSTANCE ABUSE TESTING" on attached Exhibit "G".

2.17 Two Hundred Fifty Dollars (\$250.00) for any breach of the Agreement for which no other penalty is otherwise provided in this Exhibit "D".

**PORT OF OAKLAND  
OAKLAND INTERNATIONAL AIRPORT  
AIRPORT CONTRACT SECURITY SERVICES**

**EXHIBIT "E"**

**[INTENTIONALLY OMITTED]**

**PORT OF OAKLAND  
OAKLAND INTERNATIONAL AIRPORT  
AIRPORT CONTRACT SECURITY SERVICES**

**EXHIBIT "F"**

**OPERATIONS AND PROCEDURES MANUAL INFORMATION**

The Operator shall provide an Operations and Procedures Manual ("Manual") to the Port for the Port's review and approval. The Operator shall develop the Manual based upon its best judgment and provide to the Aviation Security Manager within thirty (30) days from the Commencement Date of the Agreement.

Additionally, the Manual will provide basic guidance on policies, practices, and procedures covering all aspects of the management and operation of the Services, including but not limited to the standards of performance. This Manual shall be kept current by the Operator throughout the Agreement, and shall be revised as approved by the Aviation Security Manager. The Manual, including all revisions as approved by the Aviation Security Manager, will be incorporated into and made a part of this Agreement, subject to the provisions of Section 8.1 of the Agreement.

The purpose of this Exhibit is to provide structured information to assist in the development of the Manual. However, this material is not all inclusive and shall not be construed to mean that the only topics included below need to be covered. The Manual shall provide all information needed or desired for employee education on their duties and responsibilities established or directed in writing by the Aviation Security Manager, including, but not limited to following items:

Company creed;

Operational overview;

Operational policies and procedures;

Organizational chart;

Staffing chart;

Position descriptions;

Personnel training and policies;

Primary operating procedures;

Two-way radio operations and communication etiquette

Quality Assurance (QA) and Quality Control (QC) plan

Administrative reports;

Financial, Auditing and accounting procedures (when applicable);

Home office information;

Facility location;

Emergency procedures;

Other operating procedures.

In addition, the Manual shall specify the manner in which the Operator shall maintain full and adequate records in accordance with Port requirements to show the actual costs incurred by the Operator in the performance of the Agreement, including employee timecards and payroll receipts.

## **REVISIONS TO THE MANUAL**

The provisions of the Manual may be modified and revised as necessary to reflect changes in the operating environment. All Manual revisions shall be subject to the approval of the Director or the Designee, prior to incorporation into the Manual.

The Director or the Designee may propose a revision to the Manual, and shall initiate an intended revision by sending such intended revision to the Operator. The Port and Operator shall review such intended revision as needed to accurately reflect the change(s) to the operating environment. All revisions to the Manual shall be reviewed and signed by both the Port and the Operator. Each revision to the Operations Manual shall have a revision number and date.

**PORT OF OAKLAND  
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AIRPORT CONTRACT SECURITY SERVICES**

**EXHIBIT "G"**

**PERSONNEL**

Operator shall control the conduct, demeanor, and appearance of its officers, agents, and employees. Such officers, agents and employees shall be trained by Operator to render effective security and a high degree of courteous and efficient service to the public, and it shall be the responsibility of Operator to maintain close supervision over such persons to assure the continuation of the highest standard of service. If, in the opinion of the Aviation Security Manager, any such officer, agent or employee of the Operator fails to conform to such standard of service, the Operator shall remove such officer, agent or employee from the Airport and shall not reassign that person to the Airport without the written consent of the Aviation Security Manager.

Operator shall verify the right of all its employees to work in the United States in compliance with the requirements of the Immigration Reform and Control Act of 1986. Port reserves the right to inspect the employment eligibility verification forms (Form 1-9 OBM No. 1115-0236, or any revised version) completed by Operator's employees who are employed at the Airport. A list of the names and duty hours, of each employee shall be maintained by Operator on a weekly basis, and supplied to the Aviation Security Manager upon request, and promptly updated when changes occur.

Operator will assign a full-time Project Manager dedicated to the Airport and this Agreement. The Operator shall have a Supervisor on duty any and all times a security guard is on duty. The Project Manager may act in the role of the Supervisor. Operator shall submit the qualifications and experiences of any Supervisors to the Aviation Security Manager for his or her approval.

**Project Manager/Supervisors**

A Project Manager/Supervisor shall be in complete charge of the Operator's operations at the Airport and shall be qualified, experienced and vested with full power and authority in respect to the conduct of the Operator's operation hereunder. A Project Manager/Supervisor shall be available during regular business hours (i.e., Monday through Sunday 0330-1930 hours). The Port shall not pay for any scheduled overlap in working hours of the Project Manager/Supervisor and any other Supervisor.

The Project Manager/Supervisor must be a highly qualified and experienced manager who is knowledgeable of current security enforcement laws, charged with responsibility and authority by Operator in respect to the method, manner, and conduct of the Services. The Project Manager/Supervisor must have at least five (5) years experience managing or supervising a security guard operation with eight (8) or more employees on a multi-shift operation.

The Project Manager/Supervisor shall maintain continuing liaison with the Aviation Security Manager to ensure complete understanding of the Airport's operational and security policies and assure the selection, training, and operation of an efficient and effective contract security force to implement and support such policies. The Project Manager/Supervisor's duties will include but not be limited to the following, consistent with the requirements of this Agreement:

1. Implement a staff training program and the development of training and operational manuals covering all related aspects of the Services. The Project Manager/Supervisor shall establish

performance criteria and job descriptions for all staff and make such available to the Port when requested to do so.

2. Develop, as necessary, all forms for use in all aspect of the Services subject to Port approval, for such items as daily incident reports, application, accident report forms, complaint report forms and other forms that are deemed necessary to facilitate efficient management of the Services.

3. Perform or designate assistant supervisory personnel to perform the following duties: a) fully supervise the Operator's employees; b) require all staff to be properly trained, follow rules of conduct and be properly dressed and otherwise prepared and suitable for their assigned duties; c) provide the Port with a weekly staff schedule by assignment in advance, a schedule of all other staff assigned to the Services and schedule of hours of operation.; d) monitor hours of staff to assure that time card and schedules are accurate and in accordance with approved schedules; e) daily inspection of all equipment used for operations; (f) report or correct any problems in accordance with the requirements of this Agreement; g) discipline or dismiss employees who fail to perform in compliance with the highest industry operating standards; h) by no later than ninety (90) days following the Commencement Date of this Agreement, develop a service quality survey to be administered to Airport tenants on routine basis to determine the acceptance and performance of Operator and its employees and provide results of survey information to the Port when requested; and i) perform other field supervision activities as required.

4. Provide an approved means of responding to emergencies and public needs on a twenty four (24) hour per day basis through the use of Supervisors, and/or other designated on-call staff personnel.

5. Ensure that the Aviation Security Manager is fully briefed on all breach of security matters and emergency incidents which have or will result from the operation of the security force or which come to the attention of any member of the security force and related to the Airport security operation.

6. Remain readily available or designate a Supervisor to remain on call so that all shifts and personnel will have the ability to receive personal direction, review, and inspection of the Director or the Designee during emergency situations.

## **GUARD PERSONNEL QUALIFICATIONS**

Security guard personnel shall be recruited, selected, and assigned to assure the most dependable and efficient security force capable of implementing all facets of the Oakland Airport Security Plan, a copy of which will be provided to Operator. Such guards shall be able to understand written and oral instructions in English, to communicate commands, directions and customer information in English, and to interact in a professional and courteous manner with Airport staff, customers and other users of the Airport. Guard candidates will receive preliminary screening at the Operator's office and selected personnel will then be directed to the Aviation Security Manager at the Airport to perform and carry out Operator's responsibilities under the Agreement.

Operator shall confirm a ten (10) year continuous history of employment, with no more than a two (2) month gap in such history on all guard candidates prior to final selection. In addition, Operator shall conduct and obtain a five (5) year verifiable background check on all guard candidates prior to final selection, in order to properly screen guard candidates and to qualify for issuance of an Airport ID Access badge as needed. Operator shall retain all such information for the duration of the Operating Term and shall submit all such supporting background information to the Aviation Security Manager upon termination of this Agreement. Such information on active duty guards will

also be made available upon request during the Operating Term. Operator shall conduct initial start-up and annual Department of Motor Vehicle (DMV) checks on all guard personnel having assignments which include driving responsibilities. Any guard assigned to driving responsibilities must possess and maintain a valid State of California driver's license for the duration of the driving assignment. The Operator shall provide to the Aviation Security Manager a copy of the complete DMV check on each guard providing any Services prior to start-up assignment and annually on that guard's start-up date. Alternatively, Operator has the option of enrolling into the DMV Employer Pull Notice Program. Operator shall confirm that each guard candidate possesses and maintains a valid security guard license issued by the California Department of Consumer Affairs Bureau of Security and Investigative Services and any other licenses required by Section 3.2(a) of the Agreement for the duration of the assignment. The Operator shall provide to the Aviation Security Manager a copy of such license(s) for each guard prior to assignment to render any of the Services under this Agreement.

Any guard assigned to traffic control at the Airport shall not also be employed at the Airport by any other concession, vendor, permittee or licensee of the Port operating at the Airport or by any Airline operating at the Airport, in order to prevent any conflict of interest in the guard's duty to provide the Services.

## TRAINING

Prior to the Commencement Date, Operator shall cause all of its guards and Supervisors who are to be involved in providing the Services to attend a training program, and all other guards, supervisors and/or managers subsequently employed by Operator during the Operating Term hereof to provide the Services shall also attend such a program. This program shall be for the purposes of guard training, orientation and trial operation of the Services. The program content shall satisfy the requirements of attached Exhibit "H" and shall be subject to review and approval by the Aviation Security Manager. System requirements, operating characteristics, customer service, work specifications and performance standard operating procedures and an employee disciplinary code shall be more specifically set forth in Operator's Operations and Procedural Manual which shall be reviewed and approved by the Director or the Designee pursuant to Section 8.1 of the Agreement. Operator shall provide on-going training on a semi-annual basis to its employees with respect to public relations, guard patrol procedures, safety, and other related operations. Operator shall ensure that each employee completes traffic enforcement training according to the training program that has been reviewed and approved by the Director or the Designee. Operator shall also provide training on vehicle born improvised explosive devices (VBIEDs) according to the training program that has been reviewed and approved by the Director or the Designee. Failure of the Operator to meet the training schedule, including the failure to ensure that all employees complete traffic enforcement training, shall result in the assessment of an Administrative Fee, as specified in Exhibit "D".



## **SUPERVISOR & SECURITY GUARD PERFORMANCE STANDARDS**

To assure quality service and a stable level of operations, the Supervisors and all guards providing any of the Services are expected to capably fulfill the responsibilities and duties described in this Agreement.

Operator shall provide to the Aviation Security Manager an annual evaluation of the Supervisors based on the following criteria:

1. Implementation of Operator's general operational policies and procedures.
2. Administration of applicable requirements of this Agreement.
3. Knowledgeable in Security procedures, patrolling, record keeping and traffic control (pedestrian and vehicular).
4. Ability to function under stressful conditions.
5. Ability to recognize unusual or abnormal conditions or behavior and respond appropriately.
6. Ability to be assertive and apply effective procedures to a variety of situations.
7. Resolution of any staff shortages prior to any impact on the provision of the Services by the Operator.
8. Ability to supply reporting, accounting and statistical data required by this Agreement.
9. Ability to prepare, review, revise and sign all schedules, reports and forms, or other required documents used in any and all aspects of the Airport Security Service operation.

## **STAFFING**

The Operator will hire and retain employees as may be necessary to manage and provide the Services in a cost effective, efficient manner providing quality customer service. This provision will apply at all times during the Operating Term. The Port retains the right to determine staffing levels and schedules based on operational needs. The Operator shall ensure that minimum staffing levels and schedules are met at all times. Operator will have the option at its expense to provide and pay for higher level staffing in lieu of failing to meet staffing requirements.

The weekly staffing schedule shall be provided to the Aviation Security Manager on Wednesday of each week. In addition, Operator shall provide a monthly employee roster. Failure to provide such reports shall result in the assessment of an Administrative Fee as specified in Exhibit "E".

The Port shall have a right to review all of Operator's employees assigned to provide the Services.

For holidays, special events and other situations, the Port may request and the Operator will provide and supervise additional staff as may be needed in addition to the staffing plan. The Operator will respond to Port's request as provided in Section 3.1.

## **EMPLOYEE REQUIREMENTS**

All employees, while on or about the Airport and acting within the course and scope of employment by Operator, shall be clean, neat in appearance, and uniformly attired, and shall behave courteously. No such personnel shall use improper language or act in a loud, offensive, or otherwise improper manner. Operator shall act to prevent the wrongful acts and omissions of its employees on or about the Airport. Operator shall act to ensure that minimum performance standards set forth in this Agreement and as directed by the Director or the Designee shall be met at all times. Operator shall control the conduct, demeanor, and appearance of its agents, employees, and officers at the Airport. Operator shall act to prevent its employees from violating any of the following:

1. Failing to maintain a neat personal appearance;
2. Failing to behave courteously;
3. Failing to display Airport badge or possess proper photo ID at all times while at the Airport;
4. The use, possession or being under the influence of any alcoholic beverage or prohibited substance while on duty or at the Airport;
5. Use of profane or vulgar language directed to or at the public, airport personnel, or those designated by the Operator to supervise the Services;
6. Failure to perform functions of a security guard at the Airport as set forth in this Agreement;
7. Smoking, eating or littering while on duty or at the Airport;
8. Any "clocking" in or out using another employee's card or identification;
9. Providing services or working for another entity, including the Operator, other than the Services for the Port while on duty;
10. Supervisor not available at the Port's request;
11. Solicitation of passengers for sale of goods or services, or for tips or other unauthorized exchange of money;
12. Providing false information to passengers;
13. Failing to operate a vehicle in a safe manner;
14. Failing to comply with posted speed limits and traffic control signs;
15. Soliciting or accepting tips or gratuities in any form or manner;
16. Permitting or giving consent to Airport users to leave vehicles unattended or to load or unload at areas not designated by the Port for that purpose; and
17. Failure to follow other Airport Rules, Policies and Regulations.

## **TIME CLOCKS AND BREAKS**

The Port shall install and maintain a computerized time clock or similar device ("Time Clock") to record the time each employee employed by the Operator to provide any of the Services reports to duty, takes breaks and leaves work, which record must be maintained by Operator. The Port will make the final decision regarding the Time Clock placement.

The Operator shall comply with electronic patrol monitoring system procedures to be promulgated by the Aviation Security Manager. The Operator shall cooperate with the Port in determining the placement of such monitoring system devices.

Operator shall comply with all laws regarding lunch and other breaks. The Port will not pay Operator for Guard lunch and other break times. During lunch periods and breaks Operator shall formally relieve that employee with another uniformed guard acceptable to the Director or the Designee. Operator shall ensure that continuous patrol activity as required by this Agreement is maintained during all lunch and break periods.

## **TERMINATION OF EMPLOYEE**

Upon termination of any employee, Operator shall be responsible for returning to Port any Airport identification badges and any Airport parking cards within 24 hours of such termination. Failure to return such items to the Port shall result in the assessment of an Administrative Fee as specified in Exhibit "E". In addition, the Operator shall be responsible for the cost of replacement for any lost Airport identification badges, keys or Airport parking cards.

## **DRUG AND SUBSTANCE ABUSE TESTING**

The Operator will maintain a drug-free workplace. The Operator, at its own expense, shall institute a mandatory, random drug and substance abuse testing program for all personnel assigned to provide the Services. The Operator shall retain the expert services of a local, certified and licensed testing facility. The program must be in place prior to the Commencement Date and maintained in force thereafter, throughout the entire Operating Term of the Agreement.

## **PERSONNEL RECORDS**

The Operator shall keep accurate and detailed records on personnel and staffing for examination by the Port upon two (2) days written request to the Operator. This shall include, but not limited to, name and address changes, date of hire, salary and benefits paid, training received and performance reviews. These records shall be maintained and made available upon request for the entire duration of this Agreement, and thereafter for three (3) additional years, or such longer period required by Section 6.2 of the Agreement.

## **EMPLOYEE UNIFORMS**

Employees (including Supervisors) must be uniformed and must wear name tags at all times while on duty. The Project Manager shall not be required to wear a uniform or name tag unless otherwise required by the Operator. Uniform and equipment standards shall be as specifically approved by the Aviation Security Manager. The Operator shall provide and maintain in good condition all uniforms at its own expense. The Operator shall furnish all uniforms to all guards in sufficient quantity to assure an official appearance for all personnel. Shirts and blouses shall all be the same color and style, and shall have a company identification patch sewn on. In addition, all of Operator's employees for any shift shall wear similar style uniforms for such shift. Operator shall also provide boots and safety equipment required by State of California standards, including without limitation, reflective traffic jackets, flash lights, rain gear and safety reflective vests. Each employee shall wear in plain view an employee identification number and/or name tag. In addition, Operator shall issue a company photo identification badge to each employee which shall be produced upon request at all times while on-duty. All uniforms shall be without tears and holes or excessive unsightly repairs. Any violations for employees' failure to wear approved uniform and equipment or for failure of all employees on a shift to wear similar style uniforms approved by the Aviation Security Manager, shall result in the assessment of an Administrative Fee as specified in Exhibit "D".

## **EMPLOYEE PARKING**

Operator is responsible for obtaining Airport parking for its employees providing Services hereunder the fees for which may be paid by Operator or passed down to its employees, at Operator's option. Parking for the Operator's employees providing the Services will be in an employee Parking Lot or other area designated by the Port. Employees are to park in this area only, unless other provisions are arranged by the Port.

## **NO SOLICITATION OF TIPS**

Guards shall neither solicit tips or gratuities nor accept tips or gratuities from anyone at the Airport.

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**EXHIBIT "H"**

**TRAINING MANUAL INFORMATION**

The Operator will ensure that all employees are fully trained for their duties. The Operator will establish a formal employee training program specific to the Services. The program content shall be subject to review and approval by the Aviation Security Manager. Operator will provide scheduled on-going training on a semi-annual basis to its employees in safety, on-the-job behavior requirements, conduct, operational rules, proper dress and employee attitude, public relations, driver safety and other operations and safety procedures.

**TRAINING MANUAL**

The Operator shall provide a Training Manual to the Port for the Port's review and approval ("Manual"). The Operator shall develop the Manual based upon its best judgment and provide the Manual to the Aviation Security Manager for Port review and approval within thirty (30) days from the Commencement Date.

**GENERAL TRAINING REQUIREMENTS**

The purpose of this Exhibit is to effectively and efficiently provide an outline of training areas to assist in the development of the Airport Security Service training program ("Training Program"). However, this material is not all inclusive and shall not be construed to mean that the only task included below need to be covered. It will be the Operator's responsibility to certify to the Port completion of each training area. A copy such certifications will be kept on file in the Airport Aviation Security Office. In addition, the Operator shall provide on a quarterly basis a report on the Training Program, including the status of each employee's training. Failure to provide such reports shall result in the assessment of an Administrative Fee, as specified in Exhibit "D".

Operator shall provide to the Aviation Security Manager evidence all guard personnel are properly registered with the State of California and have received all State of California required security training prior to assignment to the Airport in form and substance acceptable to the Aviation Security Manager.

The Training Program shall have its goal to train each security guard in the following general areas:

- (A) DUTIES AND FUNCTIONS OF A SECURITY GUARD,
- (B) PATROL PROCEDURES,
- (C) REPORT WRITING,
- (D) PUBLIC RELATIONS,
- (E) SEARCH AND SEIZURE PROCEDURES AND ARREST LAW,
- (F) AUTHORITY AND JURISDICTION OF LOCAL ENFORCEMENT AGENCIES,
- (G) TRAFFIC CONTROL,
- (H) CIVIL DISTURBANCE PROCEDURES,
- (I) SAFETY PROCEDURES,
- (J) TELEPHONE AND RADIO COMMUNICATIONS,
- (K) RESPONSE TO AND PRESERVATION OF CRIME SCENE.

## **SPECIFIC TRAINING AREAS**

**(A) HUMAN RESOURCES: OPERATOR SHALL ISSUE AND SHOW TO EACH OF ITS EMPLOYEES ASSIGNED TO THE AIRPORT THE FOLLOWING:**

- i. Employee Handbook,
- ii. Drug Free Work Place Policy,
- iii. Non Discrimination and Harassment Policy, and
- iv. Orientation Film.

**(B) CONDUCT AND CUSTOMER SERVICE**

- i. Personal Appearance and Dress Requirements,
- ii. Safety,
- iii. Customer Service,
- iv. Negotiation,
- v. Non-resistance,
- vi. Translations,
- vii. Personality Types,
- viii. Strategies,
- ix. Dealing with angry people,
- x. Empathy and sympathy
- xi. When Driver or Pedestrian do Not Understand
- xii. Organization and Customer Service Expectations
- xiii. Interpersonal Relations
- xiv. Awareness of Self and Others
- xv. Communication Process and Active Listening

**(C) AIRPORT FAMILIARIZATION**

- i. Ground Transportation
  - A. Outside traffic responsibilities.
  - B. Curb- taxi operations, scheduled operators, door to door shuttle operations and reservations, limousines, off airport and on-airport parking shuttles.
  - C. Ground transportation starter responsibilities.
  - D. Taxi starter responsibilities.
  - E. Lobby and tenant areas.
- ii. Baggage Claim
  - A. Outside curb and traffic responsibilities
  - B. Lobby area
  - C. Welcome center responsibilities
  - D. Baggage offices
  - E. Rest rooms
  - F. All airline's counter and baggage make-up areas;
- iii. Skycap's responsibilities
  - A. Security violation of open and unattended skycap's stand for personal use.
  - B. Security personal acting as skycap's.
- iv. Security Checkpoints
  - A. Walk through of concourses
  - B. Concessions areas, lockers, and Airport service
- v. Loading Docks deliveries, parking permits, and traffic responsibilities.

**(D) GEOGRAPHICAL ORIENTATION**

- i. Inside the Air Operations Area (A.O.A)
  - A. South Field.
  - B. North Filed.

- ii. Outside Air Operations Area
  - A. Terminal parking areas and employees parking lots.
  - B. FAA control tower, Flight Standards and Hanger lane tenants.

**(E) FIRST AID**

**(F) RADIO PROCEDURES**

- i. Protocol
- ii. Phonetic Alphabet
- iii. 10 Codes
- iv. Vocabulary
- v. Practical
- vi. Brevity Codes:
  - A. Brevity codes as follows should be used only when communication with other safety and security personnel. The brevity codes may not be used when communicating with FAA control tower.

**(G) TRAFFIC ENFORCEMENT AND CONTROL**

- i. Radio Transmissions
- ii. Suspicious Packages
- iii. Suspicious Bags
- iv. Suspicious Vehicles
- v. High Visibility Clothing
- vi. Assuming and maintaining a Traffic Direction and Control Position
- vii. Signals and Commands
  - A. To stop traffic
  - B. To start traffic
  - C. Right turns
  - D. Left turns
  - E. Emergency vehicles
- viii. Signaling Aids
  - A. The whistle
  - B. One long blast
  - C. Two short blasts
  - D. Several short blasts
- ix. Voice
- x. Flashlight
- xi. Temporary Traffic Control Devices

**(H) CONFLICT AND STRESS MANAGEMENT**

**ADMINISTRATIVE TRAINING**

Administrative and supervisory personnel shall be trained and receive materials addressing the following areas:

- (A) ORGANIZATION**
- (B) WRITTEN DIRECTIVES**
- (C) RECORDS**
- (D) CODE OF CONDUCT**
- (E) ETHICS**

- (F) DISCIPLINARY PROCEDURES**
- (G) GRIEVANCES**
- (H) APPEARANCE AND DEMEANOR**
- (I) ISSUED EQUIPMENT**
- (J) DEATH/NOTIFICATION**
- (K) OFF DUTY EMPLOYMENT**
- (L) ADDRESS AND TELEPHONE**



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**EXHIBIT "I"**

**INSURANCE REQUIREMENTS**

Operator at its expense shall procure and maintain during the Operating Term insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Operator, his agents, representatives, employee or subcontractors. Certificates of insurance, evidencing the types and amounts of insurance described below, must be submitted prior to the Commencement Date of the Agreement.

**MINIMUM SCOPE AND LIMITS OF INSURANCE**

Coverage be at least as broad as shall have limits of no less than as follows:

1. Commercial General Liability: Subject to a limit of Five Million Dollars (\$5,000,000) combined single limit per occurrence and annual aggregate, including coverage for bodily injury and property damage including contractual liability, products and completed operations, broad form property damage, personal injury, advertising injury and independent contractors; such coverage shall also include assault and battery coverage; care, custody and control liability for property to be guarded; coverage for use of firearms (if applicable), and security errors & omissions liability (alternatively, security errors & omissions Liability can be covered separately as described in Item 5 below – Professional Liability Insurance).
2. Business Automobile Liability for all owned, non-owned and hired vehicles: Subject to a limit of Five Million Dollars (\$5,000,000) combined single limit, each accident, for bodily injury and property damage for all owned, non-owned and hired vehicles (subject to ISO form number CA 0001 (Ed. 6/92) covering Automobile Liability, Code 1, "Any Auto);
3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the Labor Code of the State of California and Employers Liability limits of One Million Dollars (\$1,000,000) per accident for bodily injury or disease;
4. Fidelity/Crime Bond shall be obtained in an amount not less than Five Hundred Thousand Dollars (\$500,000), with a deductible not to exceed \$25,000 per loss, payment of which shall be the obligation of the Operator, and shall be a blanket bond covering all employees. The Fidelity/Crime Blanket Bond shall also include the Port as Loss Payee; and
5. Professional Liability Insurance. Such insurance shall provide limits of not less than One Million Dollars (\$1,000,000) per claim and annual aggregate covering Operator's liability, including liability for Operator's independent contractors, for Services performed under this Agreement. Such insurance shall be maintained for at least 2 year(s) after completion and acceptance of the Services covered by this Agreement.

**OTHER INSURANCE PROVISIONS**

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Business Automobile Liability coverages described above shall include provisions that:
  - a) the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, "Port of Oakland", its agents, employees, commissioners and officers are included as additional insured's, by endorsement, with respect to any liability arising out of activities performed by or on behalf of Operator, products and completed operations of Operator; premises owned, leased or used by Operator or other locations from which the Services are provided, or automobiles owned, leased, hired or borrowed or used by Operator; all without special limitations on the scope of protection afforded to Port, its agents, contractors, employees, commissioners and officers and that coverage includes a cross liability/separation of insureds provision;
  - b) the insurance is the primary insurance, without any obligation of any other insurance provided to the Port, its agents, employees, commissioners and officers or any insurance or self insurance maintained by Port, its agents, employees, commissioners and officers (including any self-insured retention or deductible) to contribute, share or split pro rata any liability covered by the Operator's insurance, which other insurance or self-insurance shall be excess insurance only;

#### ACCEPTABILITY OF INSURERS

Insurance shall be placed with insurers that are acceptable to the Risk Manager of the Port (such insurers shall have a rating from A.M. Best of at least A VII).

#### DEDUCTIBLES OR SELF-INSURED RETENTIONS

For all required insurance, deductibles or self-insured retentions may not exceed Twenty-Five Thousand Dollars (\$25,000), unless approved by the Port Risk Management Department. Operators may not charge the Port for any expense of any self-insurance retention program of the Operator.

#### RELEASE AND WAIVER

Operator waives all right of recovery and causes of action against, and releases, the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, "Port of Oakland", its agents, employees, commissioners and officers, to the extent any claim, loss, damage or expense is covered by any insurance or self insurance required by this Agreement, or which would have been covered had the insurance obligations in the Agreement been complied with. Further, the Operator shall obtain endorsements from its insurance carriers evidencing that the insurance carriers waive any right of subrogation or recovery that the insurer may have against the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, "Port of Oakland", its agents, employees, commissioners and officers. Operator shall require all of its Contractors, Subcontractors and Consultants to maintain similar waivers in favor of such parties.

#### CANCELLATION OR REDUCTION OF COVERAGE

The Operator or its agent shall provide at least thirty (30) days' prior written notice to Port (except ten (10) days prior written notice shall be allowed for non-payment of premium) in the event any of the above required insurance is suspended, voided, canceled, or reduced in coverage or in limits.

If Operator fails to provide the required insurance certificates and policies, the Port may without further notice and, at its option, (1) exercise the Port's rights under the terms of the Agreement or any other rights available to the Port; (2) procure such insurance coverage at Operator's expense and Operator shall promptly reimburse the Port for such expense and (3) interrupt or limit Operator's operations or occupancy.

#### PROOF OF COVERAGE

Prior to commencing the services under this Agreement and annually thereafter, Operator shall furnish a certificate of insurance, satisfactory to the Port of Oakland Risk Management Department, evidencing that the above insurance is in force in compliance with the terms of these insurance requirements, placed with insurance carriers financially acceptable to the Port, stating the name(s) of the insurance carriers, policy numbers, dates of expiration and limits of liability. In addition to the certificate of insurance, Operator shall provide the Port of Oakland with copies of the actual insurance policies if requested by the Port of Oakland at any time. The Port reserves the right to approve or disapprove of any deductible or self-insured retention under any insurance required by the Agreement.

Written binders may be acceptable as interim evidence of insurance. Send certificates to:

Port of Oakland  
Attn: Risk Management Department  
530 Water Street  
Oakland, CA 94607  
Fax #: 510-627-1626  
Email: [risktransfer@portoakland.com](mailto:risktransfer@portoakland.com)

#### REVIEW OF COVERAGE

Compliance with insurance requirements shall be subject to annual review by the Risk Manager of the Port. If the Risk Manager requires any change in coverage, Operator will be so advised in writing by Port and Operator shall comply with the conditions of change within 30 days of the date of receipt of such notice.

#### SUBCONTRACTORS

If any subcontractors are approved by the Port pursuant to Section 25.1 of the Agreement, then Operator shall include all such subcontractors as insured under its policies or shall obtain separate certificates endorsements for each such subcontractor evidencing the coverage described in this Exhibit I.

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**EXHIBIT "J"**

**FORM OF PERFORMANCE BOND**

\_\_\_\_\_, a [corporation, partnership or business] organized under the laws of \_\_\_\_\_ (hereinafter called the "Principal"), and \_\_\_\_\_ a corporation of the State of \_\_\_\_\_ which is licensed to do business in the State of California (hereinafter referred to as the "Surety"), are held and firmly bound unto the Port of Oakland acting by and through its Board of Port Commissioners (hereinafter called the "Port") in the full and just sum of Six Hundred Thousand Dollars (\$600,000) (the "Sum") covering the Operating Term of the Agreement for Airport Contract Security Services between the Principal and the Port dated \_\_\_\_\_, 2014 (the "Agreement"), to the payment of which Sum and truly to be made, the said Principal and Surety bind themselves, their heirs, administrators, successors and assigns, jointly and severally, firmly by these presents.

**WHEREAS**, under the terms of the Agreement, the Principal shall provide the Services (as defined in the Agreement) and perform all of its other obligations at the Metropolitan Oakland International Airport, as described in the Agreement, and the Agreement is hereby incorporated herein by reference and made a part hereof;

**NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH** that if the Principal shall well and truly keep, do and perform, each and every, all and singular, the matters and things in said Agreement relating to the Services or other obligations set forth and specified to be by the Principal kept, done and performed at the time and in the manner specified in said Agreement, and the Principal shall pay over, make good, and reimburse to the Port, all sums required by it to be paid, and all loss and damage (including reasonable attorneys' fees) which the Port may sustain by reason of any failure or default on the part of the Principal relating to the Services or Principal's other obligations, then this obligation shall be void; otherwise it shall remain in full force and effect.

In the event that the Principal shall default in any of the terms, covenants and conditions of the Agreement during the period in which this Performance Bond is in effect, the Surety shall remain liable to the Port beyond the date of the expiration hereof for all sums provided for in the Agreement relating to the Services or Principal's other obligations remaining unpaid as of the date of expiration of this Performance Bond and for all loss or damage (including reasonable attorneys' fees) resulting from such default up to the amount of the Sum.

In the event that Principal becomes a debtor under any chapter of the Federal bankruptcy laws, or becomes subject to any other statute providing for the recovery of transfers of payments or property, the obligations of the Surety hereunder shall include the obligation to reimburse the Port for any transfers or payments under the Agreement relating to the Services or Principal's other obligations made by Principal to the Port prior to the commencement of such proceedings to the extent that such transfers or payments are voided and recovered from the Port by Principal, or by a creditor of Principal, or by a trustee, receiver, custodian or similar official appointed for Principal or for substantially all of Principal's assets. Provided, however, that the obligations set forth in the preceding sentence shall be reduced pro tanto upon: (1) the entry of a final, non-appealable order of a court of competent jurisdiction permitting the Port to retain all or any portion of such transfers or payments; (2) the execution of an agreement and approval thereof (if in the reasonable exercise of

the Port's judgment such approval is necessary) by a final non-appealable order of a court of competent jurisdiction permitting the Port to retain all or any portion of such transfers or payments; or (3) the expiration of the applicable statute of limitations with respect to the avoidance and recovery of such transfers or payments without any claim therefore having been made against the Port.

In the event the Surety fails to fulfill its obligations under this Performance Bond, then the Surety shall also indemnify and save the Port harmless from any and all loss, damage, cost, and expense (including reasonable attorneys' fees) arising from or in connection with the enforcing of the Surety's obligations hereunder. This paragraph shall survive the expiration of this Performance Bond.

The Surety's obligations hereunder shall remain in full force and effect notwithstanding (i) amendments or modifications to the Agreement entered into by the Port and Principal without the Surety's knowledge or consent, (ii) waivers of compliance with, or of any default under, the Agreement granted by the Port to the Principal without the Surety's knowledge or consent, or (iii) the rejection of the Agreement and the discharge of Principal from its obligations under the Agreement as a result of any proceeding initiated under the Federal bankruptcy laws, and as the same may hereafter be amended, or under any similar state or federal law, or any limitation of the liability of Principal or its estate as a result of any such proceeding, or the assumption by Principal of the Agreement as a result of any such proceeding, notwithstanding the finding by a court of competent jurisdiction that Principal has provided the Port with adequate assurance of future performance under the Agreement.

This Bond has been negotiated and executed in and shall be governed by and construed in accordance with the laws of the State of California. The execution of this Performance Bond by Surety shall constitute Surety's consent in the event of any litigation arising under this Performance Bond to the personal jurisdiction of, venue in and, convenience of the forum of the Superior Courts of the State of California, County of Alameda and the U.S. District Court for the Northern District of California for such purposes.

ATTEST:

PRINCIPAL:

\_\_\_\_\_

Secretary

(Affix Official Seal)

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

Print Name and Title

ATTEST:

SURETY:

\_\_\_\_\_

Secretary

(Affix Official Seal)

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

Print Name and Title

**PORT OF OAKLAND  
OAKLAND INTERNATIONAL AIRPORT  
AIRPORT CONTRACT SECURITY SERVICES**

**EXHIBIT "K"**

**NON-DISCRIMINATION PLAN FOR EMPLOYMENT**

**I. NON-DISCRIMINATION POLICY**

Operator will issue a policy statement delineating the policy of the Operator regarding its commitment to equal employment opportunity and non-discrimination, and such policy will be fully implemented. A statement similar to the following is recommended:

**Equal Employment Opportunity Statement**

It is the policy of Operator, personally subscribed to and supported by its principals, that there shall be no unlawful discrimination against an employee or applicant for employment on the basis of race, color, religion, sex, national origin, ancestry, age (over 40), physical or mental disability, cancer-related medical condition, a known genetic pre-disposition to a disease or disorder, veteran status, marital status, or sexual orientation. This policy includes, but is not limited to, the following: hiring, upgrading, recruitment, recruitment advertising, selection, training, demotion, transfer, compensation, lay-off or termination, or any other term or condition of employment. To implement this policy, Operator has a nondiscrimination program which is supported by all of Operator's managers and supervisors, and which Operator shall fully implement as appropriate during the Operating Term. To assure that equal opportunity and non-discrimination efforts are properly carried out, Operator at all times shall have an Equal Employment Coordinator; provided, however, that the principals of Operator shall be responsible for proper implementation of the Non-Discrimination Plan. Notwithstanding any provisions of this Plan to the contrary, Sections II-V of this Plan shall not become applicable unless and until the Operator has 15 or more employees.

**II. RESPONSIBILITIES AND DUTIES OF EQUAL OPPORTUNITY COORDINATOR**

In addition to the Equal Employment Opportunity Coordinator's regular duties, it is the Coordinator's responsibility to: (1) develop equal opportunity and non-discrimination procedures and communication techniques; (2) assist supervisors and managers in identifying and solving problems relating to equal opportunity; (3) maintain an open-door policy to all employment problems which may be raised by employees or applicants for employment; (4) design and implement a system of periodic monitoring and reporting Operator's equal opportunity efforts, including monitoring of selection procedures and regular review and validation of any selection requirements and tests which are found to impact adversely on any person belonging to any of the protected classes; (5) keep informed, and keep senior management informed, on equal opportunity developments; (6) act as a liaison with equal opportunity agencies; (7) ensure that all managers and supervisors comply with this policy and implement Operator's non-discrimination program; (8) train employees, including supervisory and management personnel, to create a favorable climate for an effective equal opportunity program; (9) ensure that all of the Operator's facilities are desegregated; (10) conduct a periodic audit to ensure notices are properly displayed; (11) review the qualifications of all employees to ensure that all employees are given full opportunity for promotions or transfer; (12) encourage employees including to participate in all company-sponsored social and recreational events, educational and training programs; (13) communicate to supervisors that their performance is being evaluated on their equal employment opportunity and non-discrimination efforts and results as well

as other criteria; (14) ensure that supervisors take action to prevent discriminatory harassment of employees.

### **III. COMMUNICATION OF POLICY**

Operator is desirous of ensuring that all employees and other persons are fully informed of its commitment to equal opportunity. Accordingly, Operator will undertake the following steps to disseminate the policy both internally and externally:

#### **Internal Dissemination**

- A. Operator's Equal Employment Opportunity/ Non-Discrimination Policy shall be contained in Operator's policy guide books or employee handbook, whichever may exist.
- B. Operator shall publicize at least once each year its EEO Policy in newsletters and/or magazines which are intended for the general reading of management and employees.
- C. A policy statement and Federally-required Equal Employment Opportunity notice will be posted on Operator's bulletin boards in areas where employees or applicants congregate.
- D. Operator shall communicate to all employees its EEO Policy and program through regular meetings during which managers and supervisors will discuss Operator's EEO policies and programs, individual responsibilities and review progress.
- E. Applications for employment shall include a statement regarding non-discrimination.

#### **External Dissemination**

- A. Recruiting services through which Operator hires, and each labor union or workers' representative with which it has a collective bargaining agreement or other employment-related contract, shall be informed through meetings or by written notification of the Operator's policies regarding equal opportunity. Operator will encourage the above actively to recruit and refer diverse applicants.
- B. All advertisements for employment will state that Operator is an equal opportunity employer.
- C. When employees are featured in marketing campaigns, employee handbooks or similar publications under Operator's control, diverse employees will be pictured where practicable.
- D. An Equal Opportunity Clause will be inserted by Operator in all future labor union agreements, purchase orders and all other contracts relative to this Agreement.

Operator's non-discrimination plan compliance will be updated and revised periodically (at least annually) in light of experience, revised laws and regulations and their interpretations, and better understanding of effective approaches which will assure truly equal opportunity for all. The initial set of goals and timetables established pursuant to this Plan shall be forwarded to the Executive Director within 90 days after Operator's execution of the Agreement. Each updated plan will be forwarded to the Executive Director within 30 days after their adoption. Each updated plan shall be consistent with the goals and objectives of this Plan.

Any questions relating to details of this Plan should be referred to Operator's Equal Employment Opportunity Coordinator.



**PORT OF OAKLAND  
OAKLAND INTERNATIONAL AIRPORT  
AIRPORT CONTRACT SECURITY SERVICES**

**EXHIBIT "L"**

**CALIFORNIA LABOR CODE SECTION 2810**

**INFORMATION REQUIRED TO COMPLY WITH  
CALIFORNIA LABOR CODE SECTION 2810**

To comply with CA Labor Code Section 2810, Contractor shall complete and submit this Information Sheet which shall be incorporated into and be a part of the Contract. This only applies to janitorial and security guard contracts and any construction related services.

<b>Contractor</b>	
Name: HSS Inc.	
Address: 900 S. Broadway Suite 100, Denver, CO 90209	
Telephone No.: (303)603-3120	
Employer Identification No. 84-109613	
<b>Description of Services:</b>	
Describe Services: Security Guard Services	
Commencement and Completion Dates:	See Section 2.1
<b>Worker's Compensation Insurance</b>	
Policy No.	WC9827669-02
Name of Insurer (Not Broker):	Zurich American Insurance
Address of Insurer:	1400 American Lane Tower 2 Floor 5, Schaumburg, IL 60196
Telephone No. of Insurer:	(800) 382-2150
<b>For Vehicles owned by Contractor and used in performing work under this Contract</b>	
VIN (Vehicle Identification No.):	New vehicles will be purchased upon contract award
Automobile Liability Insurance Policy No.:	AS2-661-066540-013
Name of Insure (Not Broker):	Liberty Mutual Fire Insurance
Address of Insurer:	175 Berkeley Street, Boston, MA 02116
Telephone No. of Insurer:	(888)323-4487
Address of Property used to house workers on this Contract, if any:	N/A
<b>Workers employed under this Contract</b>	
Estimated Total number of workers to be employed on this Contract:	15
Estimated total wages to be paid workers:	\$396,114
Dates (or schedule) when wages will be paid: (e.g. weekly, monthly, etc.)	Bi-weekly

<b>Independent Contractors utilized under this Contract</b>	
Estimated total number of independent contractors to be used in this contract:	0
List of current local, state and federal contractor license identification numbers required by law for independent contractors:	0
<b>Commissions</b>	
Amount of commission paid under this contract	0

**FIRST SUPPLEMENTAL AGREEMENT TO  
METROPOLITAN OAKLAND INTERNATIONAL AIRPORT  
AGREEMENT  
FOR  
AIRPORT CONTRACT SECURITY SERVICES**

**Between**

**CITY OF OAKLAND, A MUNICIPAL CORPORATION,  
ACTING BY AND THROUGH ITS BOARD OF PORT COMMISSIONERS  
as the "Port"**

**And**

**HSS INC.  
(formerly HSS, INC.)**

**Dated**

April 25, 2017

**FIRST SUPPLEMENTAL AGREEMENT**  
(Airport Contract Security Services)

**THIS FIRST SUPPLEMENTAL AGREEMENT** ("Agreement"), dated April 25, 2017 ("Effective Date"), by and between the **CITY OF OAKLAND**, a municipal corporation, acting by and through its Board of Port Commissioners, hereinafter called the "Port", and **HSS INC. (formerly HSS, Inc.)**, a Colorado corporation, hereinafter called the "Operator",

**WITNESSETH:**

**WHEREAS**, the Port and Operator have previously entered into the Metropolitan Oakland International Airport Agreement for Airport Contract Security Services, dated July 1, 2015 (the "Initial Agreement"), for airport security guard services; and

**NOW, THEREFORE**, it is hereby agreed that the Initial Agreement by and between the Port and Operator shall be and the same hereby is amended as follows:

1. Section 2.1 (Term) of Section 2 (Term of Agreement) is hereby amended to read as follows:

"2.1 Term. This Agreement shall have an initial term of three (3) years commencing July 1, 2015 ("commencement Date"), and terminating at 11:59 P.M. on June 30, 2018; provided however, that this Agreement shall automatically be renewed for up to two (2) extension periods of one (1) year each (each referred to as an "Extension Term") unless either party provides the other with written notice of non-renewal not less than sixty (60) days before the last day of the initial term or applicable Extension Term. The term "Operating Term" shall mean the initial term of this Agreement and any Extension Term resulting from the automatic renewal of this Agreement under this Section 2.1. Notwithstanding any provision of this Agreement to the contrary, the Port's Executive Director or the Director may terminate this Agreement with or without cause at any time as provided in Section 21.1 below."

2. Section 3.1 (Services) of Section 3 (Scope of Services; Workplace Requirements) is hereby amended to read as follows:

"3.1 Services. The Operator agrees to provide the Services as directed from time to time by the Director or the Designee. Operator agrees to provide the Services at such locations and during the hours specified in attached Exhibit "A", unless and until other locations or hours for the Services are established by the Director or the Designee, in which case Operator shall provide the Services from those locations and during those hours. The Port shall have the right to increase or decrease Service hours as described in this Section 3.1. Operator shall provide replacement security guards to cover vacancies within four (4) hours of a request by the Director or the Designee. Operator shall provide up to four (4) security guards for emergency assignments within four (4) hours' notice from the Director or the Designee. In addition, Operator shall provide hours as specified in Exhibit "A", to be used by the Port or Port's designated contractors or subcontractors for Services ("Pool Hours"). All Pool Hours shall be invoiced to and payable by the Port whether actually used or not by the Port or Port's contractors or subcontractors. The Port may prioritize how Pool Hours are to be used by providing Operator with notice of its preference for prioritization. The Port shall have the option to increase Pool Hours on a temporary basis by up to ten percent (10%) by providing Operator with no less than three (3) business days' notice in advance. If Operator provides less than the required notice or requests an increase in Pool Hours that

exceeds ten percent (10%), Operator shall have the right to accept or reject such request in its sole discretion. Pool Hours shall be billed at the same rates as those shown in Exhibit "B". Port may request a change in permanent Pool Hours by providing no less than sixty (60) calendar days advance notice to Operator. Such requests shall be submitted through the Guard Request Form from the Port to Operator. Pool Hours may not be decreased by more than fifteen percent (15%) per month from existing permanent Pool Hours in any request and such decrease shall remain in effect for at least thirty (30) calendar days. If Port requests an increase in permanent Pool Hours, such increase shall remain in effect for a period of no less than ninety (90) calendar days. Queue Management hours may be reduced or eliminated by no less than sixty (60) calendar days advance notice from Port to Operator. Queue Management hours may be increased as mutually agreed by Port and Operator. All security guards working under this Agreement are required to work a minimum of eight hours every two weeks."

3. The first paragraph of subsection (a) of Section 3.2 (Workforce Requirements) of Section 3 (Scope of Services; Workforce Requirements) is hereby amended to read as follows:

"3.2 Workforce Requirements.

Operator must provide a reliable and consistent work force, qualified to perform the Services under this Agreement, with a low turnover rate. Throughout the Operating Term of this Agreement, all employees assigned to perform work under this Agreement unless otherwise approved by the Aviation Security Manager, shall possess a valid security guard license issued by the California Department of Consumer Affairs Bureau of Security and Investigative Services in the appropriate discipline for the type of work performed, and shall obtain and maintain all other licenses required to provide any of the Services under applicable California, City of Oakland and Federal law. In addition, Operator and its employees providing any of the Services must comply with the following:"

4. Section 3.3 (Resources) of Section 3 (Scope of Services; Workforce Requirements) is hereby amended to read as follows:

"3.3 Resources. Operator shall dedicate sufficient staff, equipment and other resources exclusively to implement the Services as specified in this Agreement and shall not divert such dedicated staff, equipment or resources to any other security service or to any other business. Operator will assign a project manager for this Agreement. The initial project manager is set forth in Exhibit A. Operator agrees that it shall not change the project manager for the Agreement without the Port's approval. The initial project manager shall within three (3) months of the commencement of this Agreement, and any subsequent project managers shall within six (6) months of becoming the project manager hereunder attain at least the American Association of Airport Executives (A.A.A.E.) – A.C.E. - Security Certification. Operator will also assign one (1) administrative manager and one (1) designated trainer to service the contract."

5. Operator's notice information as set forth in Section 29 is amended to read as follows:

"29. CONSENTS AND APPROVALS: NOTICES

Written notices to Operator hereunder shall be given by personal delivery, or by registered or certified mail or overnight courier services, with all postage or freight charges prepaid, and address to:

HSS Inc.  
900 S. Broadway, Suite 100  
Denver, CO 80209  
Samir Singh, General Counsel & Compliance Officer  
[ssingh@hss-us.com](mailto:ssingh@hss-us.com)  
303-603-3076

6. Exhibit A (Paragraphs Security Guard Services, Activity Reports, and Third Party Annual Audit) is hereby amended to read as follows:

**“SECURITY GUARD SERVICES**

The total number of Pool Hours is 600 hours per week. Pool Hours may be adjusted by the Parties from time to time in accordance with Section 3.1 of the Agreement. Guards must be available for posts twenty-four (24) hours per day, Sunday through Saturday.

Position	Hrs./Week
Hours Included in Pool (600 per week)	
Supervisor	112
Rover/Breaker	91
Security Officer	397
Hours in Addition to Pool	
Administrative Manager	40
Trainer	40
Queue Management	392

**“ACTIVITY REPORTS**

Operator shall submit a monthly report to the Aviation Security Manager using the report format agreed upon by both the Operator and Port, which shall be provided by Operator or Port, at Port's election. These report forms may be modified at any time by the Aviation Security Manager. Such reports shall include, at a minimum:

1. TSA compliance testing
2. Client security compliance testing
3. Prohibited items discovered during inspection
4. HSS staffing report
5. Equipment items
6. Leadership and development
7. Training
8. Billable hours, broken out by “base contract hours” and “specials,” at a minimum
9. General information

10. Terminated employees
11. Active roster sheet
12. Security guard license expiration dates
13. Security guard driver's license expiration dates

Daily reports, including daily activity / concession inspection logs and reports, shall be provided to the Port upon request by the Aviation Security Manager. Operator shall maintain and retain hard or electronic copies of these reports in a professional and organized manner through the end of the current calendar year plus two additional years. In the event this agreement should terminate, Operator shall turn over electronic copies of these records (in an organized manner acceptable to the Aviation Security Manager) at no cost to the Port.

Weekly reports shall be submitted by the Wednesday of the following week upon request by the Aviation Security Manager.

Monthly reports shall be submitted within ten (10) calendar days of the end of the month, or part thereof, for which a report is due.

Annual reports shall be submitted by February 1st, of each year of the Operating Term of this Agreement upon request of the Aviation Security Manager.

Operator shall supply Port with such other financial or statistical reports as the Aviation Security Manager may request from time to time during the Operating Term of this Agreement. In addition, Operator shall address each customer complaint regarding the Services within five (5) business days of receipt by Operator of the notice of such complaint."

#### **"THIRD PARTY ANNUAL AUDIT**

Operator will perform an in-depth internal compliance annual audit at no charge to the Port, conducted by a nationally recognized third party aviation security consultant. The audit will be comprised of the following areas: Administrative Processes, Contract Compliance, Equipment/Facilities, Post Orders, Communications, Safety/Health, and Operations (which includes Customer Service and Training/Qualifications). The auditor will interview the Aviation Security Manager or designee and a synopsis of the audit will be shared with the Port. Audit recommendations will be implemented in accordance with the Operator's standard operating policy & procedures."

7. In all other respects, said Initial Agreement is hereby ratified and confirmed.

[SIGNATURE PAGE FOLLOWS]

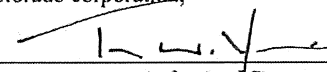
IN WITNESS WHEREOF, the parties hereto have executed this First Supplemental Agreement as of the Effective Date.

CITY OF OAKLAND, a municipal corporation, acting by and through its Board of Port Commissioners,

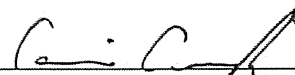
By   
J. CHRISTOPHER LYTLE  
Executive Director

Date: 4-21-17

HSS INC. (formerly HSS, Inc.),  
a Colorado corporation,

By   
Authorized Signature  
Tony W. York, CEO  
Print Name and Title  
(If Corporate: Chairman, President or Vice President)

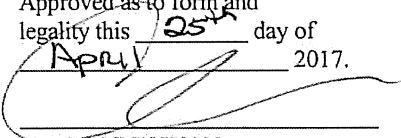
Date: 04.11.17

Attest   
Authorized Signature  
Samir Singh General Counsel  
Print Name and Title

(If Corporate: Secretary, Assistant Secretary,  
Chief Financial Officer, or Assistant Treasurer)

Date: 4/11/17

Approved as to form and  
legality this 25th day of  
April 2017.

  
DANNY WAN  
Port Attorney

THIS AGREEMENT SHALL NOT BE VALID  
OR EFFECTIVE FOR ANY PURPOSE  
UNLESS AND UNTIL SIGNED BY THE PORT  
ATTORNEY.

Port Resolution No. 15-036



**SECOND SUPPLEMENTAL AGREEMENT TO  
METROPOLITAN OAKLAND INTERNATIONAL AIRPORT  
AGREEMENT  
FOR  
AIRPORT CONTRACT SECURITY SERVICES**

**Between**

**CITY OF OAKLAND, A MUNICIPAL CORPORATION,  
ACTING BY AND THROUGH ITS BOARD OF PORT COMMISSIONERS  
as the "Port"**

**And**

**HSS INC.  
(formerly HSS, INC.)**

**Dated**

Sept 26, 2017

**SECOND SUPPLEMENTAL AGREEMENT**  
(Airport Contract Security Services)

**THIS SECOND SUPPLEMENTAL AGREEMENT** ("Agreement"), dated Sept 26, 2017 ("Effective Date"), is entered into by and between the **CITY OF OAKLAND**, a municipal corporation, acting by and through its Board of Port Commissioners, hereinafter called the "Port", and **HSS INC. (formerly HSS, Inc.)**, a Colorado corporation, hereinafter called the "'Operator."

**WITNESSETH:**

**WHEREAS**, the Port and Operator have previously entered into the Metropolitan Oakland International Airport Agreement for Airport Contract Security Services, dated July 1, 2015, as amended by the First Supplemental Agreement, dated April 25, 2017 (the "Agreement"), for airport security guard services; and

**WHEREAS**, the Agreement provided for an initial term of three years (July 1, 2015-June 30, 2018), with two automatic one year extensions (each referred to as an "Extension Term"), unless either party provided the other with written notice of non-renewal not less than sixty (60) days before the last day of the initial term or applicable Extension Term; and

**WHEREAS**, the parties desire to renew the Agreement for the first Extension Term and increase the compensation and scope of services of the Agreement.

**NOW, THEREFORE**, it is hereby agreed that the Agreement by and between the Port and Operator shall be and the same hereby is amended as follows:

1. Section 2.1 (Term) of Section 2 (Term of Agreement) is hereby amended to read as follows:

"2.1 Term. The parties hereby agree to renew the Agreement for the first Extension Term (July 1, 2018 – June 30, 2019), with a term of this Agreement commencing July 1, 2015 ("Commencement Date"), and terminating at 11:59 P.M. on June 30, 2019; provided however, that this Agreement shall automatically be renewed for one additional extension period of one (1) year, unless either party provides the other with written notice of non-renewal not less than sixty (60) days before June 30, 2019. The term "Operating Term" shall mean the initial term of this Agreement (July 1, 2015-June 30, 2018) and any Extension Term pursuant to this Section 2.1. Notwithstanding any provision of this Agreement to the contrary, the Port's Executive Director or the Director may terminate this Agreement with or without cause at any time as provided in Section 21.1 below."

2. Section 3.1 (Services) of Section 3 (Scope of Services; Workplace Requirements) is hereby amended to read as follows:

"3.1 Services. The Operator agrees to provide the Services as directed from time to time by the Director or the Designee. Operator agrees to provide the Services at such locations and during the hours specified in attached Exhibit "A", unless and until other locations or hours for the Services are established by the Director or the Designee, in which case Operator shall provide the Services from those locations and during those hours. The Port shall have the right to increase or decrease Service hours as described in this Section 3.1. Operator shall provide replacement security guards to cover vacancies within four (4) hours of a request by the Director or the Designee. Operator shall provide up to four (4) security guards for emergency assignments within four (4) hours' notice from the Director or the Designee. In addition, Operator shall provide hours as specified in Exhibit "A", to be used by the Port or Port's designated contractors or subcontractors for Services ("Pool Hours"). All Pool Hours shall be invoiced to and payable by the Port whether actually used or not by

the Port or Port's contractors or subcontractors. The Port may prioritize how Pool Hours are to be used by providing Operator with notice of its preference for prioritization. The Port shall have the option to increase Pool Hours on a temporary basis by up to ten percent (10%) by providing Operator with no less than three (3) business days' notice in advance. If Port provides less than the required notice or requests an increase in Pool Hours that exceeds ten percent (10%), Operator shall have the right to accept or reject such request in its sole discretion. Pool Hours shall be billed at the same rates as those shown in Exhibit "B". Port may request a change in permanent Pool Hours by providing no less than sixty (60) calendar days advance notice to Operator. Such requests shall be submitted through the Guard Request Form from the Port to Operator. Pool Hours may not be decreased by more than fifteen percent (15%) per month from existing permanent Pool Hours in any request and such decrease shall remain in effect for at least thirty (30) calendar days. If Port requests an increase in permanent Pool Hours, such increase shall remain in effect for a period of no less than ninety (90) calendar days. Queue Management hours may be reduced or eliminated by no less than sixty (60) calendar days advance notice from Port to Operator. Queue Management hours may be increased as mutually agreed by Port and Operator. Automated Passport Control (APC) kiosk customer service support hours may be reduced or eliminated by no less than sixty (60) calendar days advance notice from Port to Operator. Automated Passport Control kiosk customer service support hours may be increased as mutually agreed by Port and Operator. All security guards working under this Agreement are required to work a minimum of eight hours every two weeks."

3. Exhibit A (Paragraph Security Guard Services) is hereby amended to read as follows:

**"SECURITY GUARD SERVICES**

The total number of Pool Hours is 600 hours per week. Pool Hours may be adjusted by the Parties from time to time in accordance with Section 3.1 of the Agreement. Guards must be available for posts twenty-four (24) hours per day, Sunday through Saturday.

Position	Hrs./Week
Hours Included in Pool (600 per week)	
Supervisor	112
Rover/Breaker	91
Security Officer	397
Hours in Addition to Pool	
Administrative Manager	40
Trainer	40
Queue Management	392
APC Kiosk Customer Service*	112

\*One customer service agent and one supervisor

4. Exhibit B (Compensation) is hereby amended to read as follows:

**"1. Compensation to Operator:**

The maximum amount payable under this Agreement shall not exceed: the initial \$5,400,000 over a period of five years, plus \$415,000 for FY 18 and FY19 for APC Kiosk customer services for a total of \$5,815,000.

**HOURLY RATE**

\$26.95 (initial); \$27.81 (FY17); \$28.71 (FY 18)

\$28.71, plus 8% for APC Kiosk customer service (FY 18)

\$28.71, plus 10%, plus 8% for APC Kiosk supervisor (FY 18)

5. In all other respects, the Agreement is hereby ratified and confirmed.

[SIGNATURE PAGE FOLLOWS]

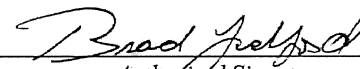
IN WITNESS WHEREOF, the parties hereto have executed this Second Supplemental Agreement as of the Effective Date.

CITY OF OAKLAND, a municipal corporation, acting by and through its Board of Port Commissioners,

By   
J. CHRISTOPHER LYTLE  
Executive Director

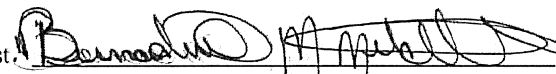
Date: 9-22-17

HSS INC. (formerly HSS, Inc.),  
a Colorado corporation,

By   
Authorized Signature  
Brad Lufford CFO  
Print Name and Title

(If Corporate: Chairman, President or Vice President)

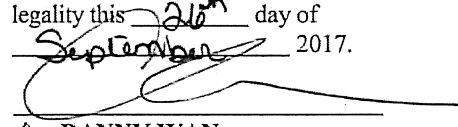
Date: Sep. 7, 2017

Attest:   
Authorized Signature  
Bernadine M. Mitchell  
Print Name and Title

(If Corporate: Secretary, Assistant Secretary,  
Chief Financial Officer, or Assistant Treasurer)

Date: Sept. 7, 2017

Approved as to form and  
legality this 26<sup>th</sup> day of  
September 2017.

  
DANNY WAN  
Port Attorney

Port Resolution No. 17-65

P. A. #: 2017-366

THIS AGREEMENT SHALL NOT BE VALID  
OR EFFECTIVE FOR ANY PURPOSE  
UNLESS AND UNTIL SIGNED BY THE PORT  
ATTORNEY.