

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE COUNTY OF SAN MATEO
AND
THE AIRPORT COMMISSION OF THE CITY AND COUNTY OF SAN FRANCISCO
RELATING TO VARIOUS MATTERS**

This Intergovernmental Agreement (the “Agreement”) between the **COUNTY OF SAN MATEO** (the “County”), a political subdivision of the State of California, and the **CITY AND COUNTY OF SAN FRANCISCO** (the “City”), a municipal corporation and political subdivision of the State of California, acting by and through its **AIRPORT COMMISSION** (the “Commission”), is dated as of _____, 2016.

RECITALS

- A. The City owns and operates the San Francisco International Airport (the “Airport”) through the Commission.
- B. The County provides certain emergency response services to the Airport and the Commission wishes to pay the County for the cost of these services.
- C. The Commission is planning to build and own a Grand Hyatt hotel (the “Hotel”) located on Airport property in an unincorporated area of the County that will be managed and operated by Hyatt Corporation (“Hyatt”) under a Hotel Management Agreement between the Commission and Hyatt.
- D. The County levies a TOT (as defined in paragraph 1 below) on the guests of hotels located in the unincorporated areas of the County and is willing to provide an economic development incentive relative to the TOT in order to assist the Commission in building a successful hotel at the Airport.
- E. On November 21, 2013, the Federal Aviation Administration (“FAA”) amended its 1999 Revenue Use Policy (as defined in paragraph 1 below) to provide that state and local taxes on aviation fuel, whether part of a general sales tax or otherwise, and whether imposed by an airport operator or by state or local taxing authorities, are subject to the federal restrictions on the uses of airport revenue. The County receives taxes on the sale of aviation fuel dispensed at the Airport.
- F. Consistent with Section 9.118 of the Charter of the City and County of San Francisco, all contracts entered into by a City commission or department, which contract has an anticipated revenue of one million dollars or more require approval by resolution of the City’s Board of Supervisors. Similarly, contracts or agreements having a term in excess of ten years must also be approved by the City’s Board of Supervisors.

- G. The County and the Commission are entering into this Agreement to document their agreement on various matters and to mutually assist each other.

THEREFORE, THE COUNTY AND THE COMMISSION AGREE as follows:

1. Definitions

“Dispatch Calls” means emergency dispatch calls (i.e., 911 calls) for emergency response services (including law enforcement, fire response, emergency medical services and ambulance transportation) received by the County’s Public Safety Communications Dispatch Center.

“Fuel Tax Proceeds” means the proceeds of any tax on the sale of aviation and/or jet fuel at the Airport received by the County.

“Revenue Use Policy” means the FAA’s 1999 *Policies and Procedures Concerning the Use of Airport Revenue* (64 Fed. Reg. 7696), as amended and supplemented, including as amended on November 21, 2013 (79 Fed. Reg. 66282).

“TOT” means the Transient Occupancy Tax authorized under California State Revenue and Taxation Code Section 7280 and levied by the County under San Mateo County Ordinance Code Chapter 5.136, equal to ten (10%) percent of the rent charged by the operator of a hotel for the privilege of occupying a room at a hotel located in the unincorporated areas of the County, as such tax may be amended from time to time.

2. Payment for Dispatch Call Services to the Airport

- A. Dispatch Call Services: The Commission will pay the County an allocable share of the annual cost to operate the County’s Public Safety Communications Dispatch Center based on the percentage of Dispatch Calls to the Airport, calculated according the following formula (the object code references are to the County’s budget system report entitled “SR13 Adopted Book {SYS} {1240P, Public Safety Communications}”):

$$\frac{[\text{Net Appropriations (NETAPP)} - \text{Total Sources (TOTSRC)}]}{[\text{Airport Dispatch Calls} / \text{Total Dispatch Calls}]} = \text{Airport payment to County}$$

As an illustration, the payment for Fiscal Year 2014-15 would have been calculated as follows:

$$[\$10,667,788 - \$8,028,373] \times [3,940 / 65,340] = \$159,157$$

- B. Maximum Amount of Payment. For purposes of encumbrance of funds and certification of this Agreement by the San Francisco City Controller, the maximum payment amount for services under this Section 2 will not exceed One Million

Dollars (\$1,000,000) during the term set forth in Section 2.E. This maximum amount may be adjusted by the parties from time to time as needed by amendment to this Agreement.

- C. Notice of Changes in Payment Rates. The County will notify the Airport in writing of any change in the payment rates for the services described above no later than sixty (60) days following such change, and in any event prior to sending the next quarterly invoice.
- D. Invoicing and Payment. The County will send the Airport a quarterly invoice for the reimbursable services described above, with such detail and back-up cost documentation as the Airport may require. The Airport will pay each approved invoice within thirty (30) days. The frequency of invoices is subject to change as the parties may agree. The parties shall perform an annual true-up at the end of each fiscal year, as needed.
- E. Term for Payment of Emergency Response Services. The provisions of this Section 2 will apply to emergency response services received by the Airport from and after July 1, 2015 through June 30, 2020, unless extended by the parties by amendment of this Agreement. Notwithstanding the expiration of this Section 2, the other provisions of this MOU will continue in force as amended until terminated by the parties.
- F. FAA-Related Representations. In compliance with subsections VI.B.1 and 2 of the FAA's Revenue Use Policy, the County represents that the payment rate for Dispatch Calls (i) is now, and in the future will be, based on a cost allocation formula that is calculated consistently for the Airport and other comparable units or cost centers of government, and (ii) does not and will not exceed the cost of providing the services to the Airport.
- G. Budget Changes. The parties shall meet and confer in case of significant budget changes.

3. Hotel Economic Development Incentive

- A. Amount of Incentive. As an economic development incentive to assist the Commission in building a successful hotel at the Airport, the County will pay to the Airport an amount up to fifty percent (50%) of the TOT generated by the Hotel per fiscal year until the Airport has received a cumulative total incentive equal to Eight Million Dollars (\$8,000,000), as provided in this Section 3.
- B. Flow of Funds and Timing. Each quarter following the opening of the Hotel (currently estimated to open in July 2019), the operator of the Hotel will transfer 100% of the TOT proceeds to the County on a quarterly basis as required by law. Prior to the end of the fiscal year, the County will transfer fifty percent (50%) of the

TOT collected for the fiscal year to the Airport (the “Airport’s TOT share”) as an economic development incentive without the need for an invoice or demand from the Airport. However, if during that fiscal year the County pays Fuel Tax Proceeds to the Airport, then the Airport’s TOT share will be reduced by the amount of Fuel Tax Proceeds paid to the Airport. If the Fuel Tax Proceeds paid during the fiscal year exceed the Airport’s TOT share for that fiscal year, then the excess amount will offset the Airport’s TOT share for the succeeding fiscal years. Payments to the Airport of both the Airport’s TOT share and Fuel Tax Proceeds will be applied to the Airport’s cumulative maximum economic development incentive of \$8,000,000.

- C. Term for Economic Development Incentive. The sharing of the TOT with the Airport as provided in this Section 3 will end on the earlier to occur of (i) the end of the fiscal year in which the cumulative incentive amount paid to the Airport equals \$8,000,000; (ii) June 30, 2029; or (iii) the termination of this Agreement pursuant to Section 5. Following such expiration of this Section 3, the parties acknowledge that the Airport will no longer be paid a portion of the TOT as an economic development incentive, but that the County may be required to continue remitting Fuel Tax Proceeds to the Airport as required by the Revenue Use Policy without any further offsets. Notwithstanding the expiration of this Section 3, the other provisions of this MOU will continue in force as amended until terminated by the parties.
- D. Responsibility for use of Fuel Tax Proceeds. The parties agree that (i) the County bears the sole responsibility for its compliance with the FAA’s Revenue Use Policy with respect to the Fuel Tax Proceeds, and (ii) the County may decide to pay Fuel Tax Proceeds to the Airport in excess of the incentive amount, both before and after the effectiveness of this Section 3, in order to comply with the Revenue Use Policy. This Agreement shall not be construed as County’s assent to the Revenue Use Policy.

4. Limitation on Payments

Any obligation or liability of the City or the Airport created by or arising out of this Agreement shall be payable solely out of the revenues and other lawfully available moneys of the Airport, and shall not constitute a general obligation of the City or a charge upon its general fund. This Agreement shall not obligate the City to make any appropriation from its general fund for any payment due hereunder. No breach by the City hereunder shall impose any pecuniary liability upon the City, other than from Airport revenues, or be payable from or constitute a charge upon the general credit or against the taxing power of the City.

5. Termination of the Agreement; Budget and Fiscal Provisions

- A. Termination for Non-Appropriation. This Agreement is subject to the budget and fiscal provisions of the City’s Charter and the annual appropriation of funds by the City and the County. This Agreement will terminate without penalty, liability or

expense of any kind to the City or the County at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind to the City or the County at the end of the term for which funds are appropriated.

B. Optional Termination. In addition to the expiration and termination provisions in Sections 2.E, 3.C and 5.A, either party may terminate this Agreement in its entirety without cause or penalty at the end of any fiscal year upon at least thirty (30) days' prior written notice to the other party.

C. Effect of Termination. Upon any termination under this Section 6, the County will send the Airport a final invoice for the amounts due under Section 2 to pay the County for emergency response services provided through the termination date. The parties will also perform a final calculation as of the termination date relating to the TOT and Fuel Tax Proceeds as provided in Section 3.B and the County will pay any amount due to the Airport as of the termination date.

6. Access to Records

Both parties shall maintain books and records showing all revenues, expenses, and payments for those matters under this Agreement, and each party shall have the right, at its own expense, upon reasonable notice and during regular business hours, to inspect and audit the other party's books and records.

7. Notices and Communications

Any notice, request, demand or other communication required or permitted hereunder shall be deemed to be properly given when deposited in the United States mail, postage prepaid, by certified mail addressed:

A. In the case of the County, to:

County Manager
County of San Mateo
400 County Center, 1st Floor
Redwood City, CA 94063

or to such person or address as the County may, from time to time furnish to the Commission.

B. In the case of the Commission or the City, to:

Airport Director

Administrative Offices
International Terminal
San Francisco International Airport
P.O. Box 8097
San Francisco, CA 94128

or to such person or address as the Commission may, from time to time furnish to the County.

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IN WITNESS WHEREOF, the County and the Commission have caused this Agreement to be executed by their duly authorized representatives on the dates, as shown below:

COUNTY OF SAN MATEO

Date: _____

ATTEST: _____
Clerk, Board of Supervisors

BY: _____
President, Board of Supervisors

Resolution # _____

AIRPORT COMMISSION OF THE CITY
AND COUNTY OF SAN FRANCISCO

Date: _____

BY: _____
John L. Martin
Airport Director

APPROVED AS TO FORM:

AUTHORIZED BY:

DENNIS J. HERRERA
City Attorney

Commission Resolution No.: _____

Adopted: _____

BY: _____
Sheryl L. Bregman
Airport General Counsel

ATTEST: _____
Jean Caramatti
Secretary, Airport Commission