

AGREEMENT BETWEEN CITY AND COUNTY OF SAN FRANCISCO AND COUNTY OF
SAN MATEO FOR PARTIAL REIMBURSEMENT OF AIRPORT/COMMUNITY
ROUNDTABLE COSTS INCURRED BY COUNTY OF SAN MATEO TO ASSIST AIRPORT
COMMISSION IN IDENTIFYING NOISE REDUCTION MEASURES AND OTHER
SERVICES

Contract No. 50197

This Agreement, dated July 1, 2019, is by and between the County of San Mateo, a political subdivision of the State of California, hereinafter referred to as “County,” and the City and County of San Francisco, a municipal corporation, hereinafter referred to as “City,” acting by and through its Airport Commission, hereinafter referred to as “Commission.”

RECITALS

WHEREAS, the Parties to this Agreement believe that the residents of the County and the residents of the City have important interests in resolving any noise related problems created by the operation of aircraft at San Francisco International Airport (“Airport” or “SFO”); and

WHEREAS, in the interest of resolving any noise-related problems, City, County, and communities located in County have formed the Airport/Community Roundtable (“Roundtable”) as a centralized forum for addressing aircraft related noise issues; and

WHEREAS, on March XX, 2019, by Resolution No. 19-XXXX, the Commission accepted this Agreement with County; and

WHEREAS, approval for services to be provided in this Agreement was obtained from a Civil Service Commission Notice of Action for Contract Number 49293-18/19 on XX, 2019; and

WHEREAS, Commission and City are members of the Roundtable; and

WHEREAS, County is the coordinating lead for the Roundtable and has used its resources to provide advisory and technical services to the Roundtable, including development of possible noise mitigation measures; and

WHEREAS, through the efforts of the Roundtable, improved methods of operation and other measures for preventing and alleviating noise due to aircraft operations at SFO have been and will continue to be presented to Commission; and

WHEREAS, the Roundtable provides consultation to the Commission regarding any findings, conclusions, recommendations, reports of activities, or other matters in connection with the performance of this Agreement; and

WHEREAS, the Roundtable is funded by its membership and each member of the Roundtable reimburses the County for the County’s expenses for services rendered to the Roundtable, including but not limited to County staff support, consultant contracts, office supplies/equipment, mailing, and photocopying costs; and

WHEREAS, Commission's reimbursement to County for its share of County's costs has been determined to be **\$220,000.00 per fiscal year for fiscal years 2019-2020, 2020-2021, 2021-2022, 2022-2023, and 2023-2024, commencing July 1, 2019, through June 30, 2024;** and

NOW, THEREFORE, the parties agree as follows:

1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation

This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the City's Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability, or expense of any kind to City 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 at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. County's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

2. Term of the Agreement

A. Subject to Section 1, the term of this Agreement shall be from **July 1, 2019 to June 30, 2024;** provided, however, that this Agreement shall continue in effect only so long as: (1) at least five of the following Roundtable members – Brisbane, Burlingame, Daly City, Foster City, Hillsborough, Millbrae, Pacifica, San Bruno, South San Francisco – remain members of the Roundtable and remain signatories to the Memorandum of Understanding (MOU) approved by the Roundtable on April 6, 2005, and effective October 5, 2005, and (2) the County remains a member of the Roundtable and a signatory to the MOU. If either condition is not fully met, the Agreement shall terminate upon written notice to County by SFO, and County shall be paid only for those services performed pursuant to this Agreement prior to such notice, less the amount of any payment previously made.

B. City or County may terminate this Agreement by providing a 30-day written Notice of Intent to Terminate Agreement, as provided in Section 12 of this Agreement. After notice has been delivered, the party issuing the Notice of Intent shall set a meeting with the Airport Director and Roundtable Chair to discuss termination of this Agreement. Upon Termination of this Agreement by either Party, County shall be paid for the services performed pursuant to this Agreement prior to the date of termination of this Agreement, less the amount of any payment previously made.

C. Notwithstanding the other termination provisions of this section, County shall be under no obligation to provide any services under this Agreement until such time as City's Controller has certified to the availability of funds, and City's assumption of risk that such services will not be provided is part of the consideration for this Agreement.

3. Effective Date of Agreement

This Agreement shall become effective when City's Controller has certified to the availability of funds and County has been notified in writing.

4. Services Provided by County

A. County is retained as an independent contractor to use its professional skills and best efforts during the term of this Agreement to coordinate the efforts of the Roundtable and to provide professional services to the Roundtable, as hereinafter described.

B. County shall provide staffing to the Roundtable, through its own forces or through the use of consultants, consisting of the following:

- Planner for San Mateo County – Attend all Roundtable meetings, provide Roundtable oversight as Program Coordinator, part-time position
- Roundtable Technical Support (consultant contract) – Perform services set forth in Section 4.C, below
- County of San Mateo Administrative Support – Provide administrative support, part-time position
- Roundtable Media Program – Media support and website content

Consultants selected and furnished by County shall have the requisite experience for the tasks to be performed, including education and training in the field of urban planning, and shall also possess experience, education, and training in the field of airport land use and noise issues as appropriate.

C. County, through qualified consultant(s), shall provide the following services:

1. Study the source, extent, and areas in which noise from aircraft operations is produced at SFO;
2. Evaluate any problems created in surrounding communities by aircraft noise;
3. Furnish information to the Roundtable, the Commission, and Airport Director regarding improved methods of operation and other measures for preventing and alleviating noise from aircraft operations at SFO;
4. Consult with Roundtable, Commission, and Airport Director as requested regarding any findings, conclusions, recommendations, reports of activities, or other matters in connection with the performance of this Agreement;

5. Develop the Annual Work Plan for adoption by the Roundtable;
6. Assist the Roundtable in addressing any unresolved or any new issues relating to the compatibility of SFO with the surrounding communities; and
7. Perform such special studies and other work as directed by the Commission, Airport Director, or Roundtable Chair.

D. County shall provide for the operating needs of the Roundtable, including postage, photocopying, office equipment/supplies, website support and maintenance, and other similar costs.

5. Compensation

A. The total payment to County under this Agreement for City's share of operating costs related to the Roundtable and for services provided by County pursuant to this Agreement shall not exceed **Two Hundred Twenty-Thousand Dollars (\$220,000) per fiscal year** for each fiscal year of this Agreement. In no event shall the total amount of this Agreement exceed **One Million One Hundred Thousand Dollars (\$1,100,000)**.

B. County will submit an annual report generally describing the work performed for the Roundtable by any assigned staff and consultants during the prior fiscal year.

C. Payment for services under this Agreement for each fiscal year shall be made by City in two payments on July 1 and January 1, beginning July 1, 2019, following receipt of statements and the bi-annual summary from County. Statements shall be submitted to:

San Francisco International Airport
Aircraft Noise Abatement Office
P.O. Box 8097
San Francisco, CA 94128
Attention: Bert Ganoung

6. Guaranteed Maximum Costs

A. City's obligation hereunder shall not at any time exceed the amount certified by City's Controller for the purpose and period stated in such certification.

B. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the County for goods or services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law.

C. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by City's Controller.

D. City's Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

E. County is not obligated hereby to perform or provide services beyond the services for which it is compensated pursuant to this Agreement.

7. General Conditions

A. This Agreement shall be deemed to be made in and shall be construed in accordance with the laws of the State of California.

B. City designates the Airport Director, or authorized representative, and the Roundtable Chair, for the direction of all services to be performed by County under this Agreement.

C. County shall retain the detailed records and documentation of services provided under this Agreement for six years, as required by the Federal Aviation Administration. Commission and City Controller shall have the right to examine, inspect, and copy the books and any other records of County with respect to the services performed by County under this Agreement.

D. Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

E. County may subcontract for the services contemplated by this Agreement.

8. Sunshine Ordinance

County acknowledges that this Agreement and all records related to its formation, County's performance of Services, and City's payment are subject to the California Public Records Act (California Government Code § 6250, *et. seq.*) and the San Francisco Sunshine Ordinance (San Francisco Administrative Code Chapter 67). Such Records are subject to public inspection and copying unless exempt from disclosure under federal, state, or local law.

9. Tropical Hardwood and Virgin Redwood Ban

Under San Francisco Environment Code section 804(b), City urges County not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product.

10. Resource Conservation

County will use recycled paper or paper products to the maximum extent possible and, when appropriate, print documents using double-sided pages.

11. Cooperative Drafting

This Agreement has been drafted through a cooperative effort of City and County, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

12. Assignment

No assignment or transfer of this Agreement, or any part thereof, rights under or interest in, shall be valid unless and until the assignment or transfer is approved in writing by the other party. This Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties hereto.

13. Notification

All notices required to be given shall be sent by U.S. Mail as follows:

A. City:

San Francisco International Airport
Aircraft Noise Abatement Office
P.O. Box 8097
San Francisco, CA 94128
Attention: Bert Ganoung

Telephone: (650) 821-5100
Fax: (650) 821-5112

B. County:

Planning and Building Division
County of San Mateo
455 County Center, Second Floor
Redwood City, CA 94063
Attention: James Castañeda
Victoria Mejia

Telephone: (650) 363-1853
Fax: (650) 363-4849

Any Notice of Intent to Terminate Agreement must be sent by registered mail and will be deemed sent on the date of postmark.

14. Headings

The headings given in this Agreement are for labeling purposes only and shall not be considered in the interpretation of this Agreement.

15. Counterparts

This Agreement may be executed in counterparts, each of which is an original and all of which constitute one and the same instrument.

16. Waiver

A waiver of any requirement of this Agreement must be in writing by an authorized representative of the Party waiving the requirement. The waiver by either Party of a breach of any requirement of this Agreement will not be deemed a waiver of any such breach in the future or of a breach of any other requirement.

17. No Third Party Rights

The Parties do not intend this Agreement to create rights in any third Parties and nothing in this Agreement should be construed to do so.

18. Entirety of Agreement

This Agreement constitutes the entire agreement between City and County, and supersedes all other oral or written provisions. No modification of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement shall be binding on the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

AIRPORT COMMISSION
City and County of San Francisco

COUNTY OF SAN MATEO

Ivar C. Satero
Airport Director

President, Board of Supervisors

ATTEST:

ATTEST:

Corina Monzón
Airport Commission Secretary

Clerk of the Board of Supervisors

Resolution No: 19-XXXX
Adopted: March XX, 2019

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Dennis J. Herrera, City Attorney

John C. Beiers, County Counsel

Nicholas T. Niiro
Deputy City Attorney

Melissa Andrikopoulos
Deputy County Counsel