

CITY AND COUNTY OF SAN FRANCISCO
BOARD OF SUPERVISORS
BUDGET AND LEGISLATIVE ANALYST

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February 8, 2018

TO: Budget and Finance Committee

FROM: Budget and Legislative Analyst



SUBJECT: February 15, 2018 Budget and Finance Committee Meeting

TABLE OF CONTENTS

Item	File	Page
2	18-0070 Real Property Lease Renewal and Amendment - BRCP 1390 Market, LLC - 1390 Market Street - Initial Annual Base Rent of \$1,801,119.96.....	1
7	18-0105 Hearing - Release of Reserved Funds - District Attorney - Staffing in the Independent Investigations Bureau - \$266,645	5
8	18-0011 Airport Professional Services Agreement Modification - Bombardier Transportation (Holdings) USA, Inc.- AirTrain System Operation and Maintenance Services - Not to Exceed \$130,299,196.....	8

Item 2 File 18-0070	Department: Department of Public Health (DPH) Real Estate Division (RED)
EXECUTIVE SUMMARY	
<p>Legislative Objectives</p> <ul style="list-style-type: none"> • The proposed resolution approves the fourth amendment to a lease agreement between BRCP 1390 Market, LLC as landlord, and Department of Public Health (DPH) as tenant, for approximately 27,826 square feet of office space at 1390 Market Street, increasing the annual rent from \$993,817 to \$1,801,120, with three percent annual increases thereafter, and extending the lease for three years, from December 1, 2018 through November 30, 2021, with two five-year options to extend. <p>Key Points</p> <ul style="list-style-type: none"> • In 1996, the Board of Supervisors approved a seven year lease for DPH to occupy 25,939 square feet of office space at 1390 Market Street for its Environmental Health Section (EHS). The Board of Supervisors approved three lease modifications to exercise five-year options to extend the lease in 2003, 2008, and 2013, and has authorized expansion of the leased premises to 27,826 square feet. DPH currently pays \$993,817 in annual rent, or \$35.72 per square foot. • The lease is scheduled to expire November 30, 2018 and DPH has an option to extend for another five years. However, EHS is scheduled to move into the new City office building at 49 South Van Ness in mid-2020, and the additional five years are not needed. The proposed fourth amendment to the lease extends the term for an additional three years, beginning December 1, 2018 and expiring November 30, 2021, but provides for the City the right to terminate the lease any time after November 30, 2019 with at least 270 days' notice. DPH would have two five-year options to extend the lease through November 2031. <p>Fiscal Impact</p> <ul style="list-style-type: none"> • The initial annual rent of \$1,801,120 would be an increase of \$807,303 from the current rent of \$993,817. The annual rent of \$1,801,120 equals \$64.72 per square foot, which was determined to be fair market value based on a third party appraisal and appraisal review. • Over the three-year term of the lease extension, DPH would pay \$5,567,082 in total rent. <p>Recommendation</p> <ul style="list-style-type: none"> • Approve the proposed resolution. 	

MANDATE STATEMENT

City Administrative Code 23.27 states that any lease with a term of one year or longer or with monthly rent of \$5,000 or more and where the City is the tenant is subject to Board of Supervisors approval. If the base rent is more than \$45 per square foot, the Director of the City's Real Estate Division must obtain an independent appraisal; if the base rent is more than \$60 per square foot, the Director of the City's Real Estate Division must obtain an appraisal review.

BACKGROUND

In 1996, the Board of Supervisors approved a seven year lease for the Department of Public Health (DPH) to occupy 25,939 square feet of office space for its Environmental Health Section (EHS) at Fox Plaza, 1390 Market Street (Resolution 699-96). The Board of Supervisors has approved three lease modifications to exercise five-year options to extend in 2003 (File 03-0179, Resolution 159-03), 2008 (File 08-0121, Resolution 74-08), and 2013 (File 13-0295, Resolution 174-13). The 2013 amendment increased the leased premises to 27,826 square feet. DPH currently pays \$993,817 in annual rent, or \$35.72 per square foot.

The current lease is scheduled to expire November 30, 2018. The City has an option to extend the lease for an additional five years, through November 30, 2023. However, according to Mr. Charlie Dunn, Senior Real Property Officer, EHS is planning to move into the new City building at 49 South Van Ness in mid-2020, so DPH does not need to exercise the option.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would extend the lease between BRCP 1390 Market, LLC as landlord and DPH as tenant for a term of three years, beginning December 1, 2018 and expiring November 30, 2021. DPH would pay annual rent of \$1,801,120 for approximately 27,826 square feet, or \$64.72 per square foot annually. The rent would increase by 3 percent each year. The premises are comprised of 14,549 square feet in Suite 210, 3,247 square feet in Suite 410, 4,646 square feet in Suite 810, 4,971 square feet in Suite 910, and 413 square feet of storage space. DPH may terminate the lease after November 30, 2019 with no penalty as long as written notice is provided 270 days in advance. DPH has two five-year options to extend the lease through November 30, 2026 and November 30, 2031. The key provisions of the lease amendment are shown in Table 1 below.

Table 1: Key Provisions of Lease Amendment

Premises	27,826 square feet
Annual Rent	\$1,801,120 (\$64.20 per square foot)
Operating Expenses	Approximately \$0.60 per square foot per year for electricity on Suite 210 space. Janitorial services, maintenance, and operating costs paid by landlord.
Term	3 years from December 1, 2018 to November 30, 2021
Early Termination	City may terminate early with 9 months written notice after November 2019
Options to Extend	City has two five year options to extend through November 2026 and November 2031 at 95% of Fair Market Rent
Rent Adjustment	3% annually on December 1, starting in 2019

FISCAL IMPACT

In the first year of the lease extension, DPH will pay \$1,801,120 in rent. This is an increase of \$807,303, or approximately 81 percent, from the current annual rent of \$993,817. According to Mr. Dunn, the rental rate is derived from an appraisal conducted by Mateo Advisors and reviewed by Clifford & Associates showing \$66 per square foot for fully serviced office space and \$12 per square foot for storage space. The breakdown of the rent paid on each piece of the premises is shown in Table 2 below.

Table 2: Initial Rent Paid by Leased Area

Area	Square Feet	Annual Rent per Square Foot	Base Annual Rent
Suite 210	14,549	\$65.10	\$947,140
Suites 410, 810, 910	12,864	66.00	849,024
Storage Premises	413	12.00	4,956
Total	27,826	64.72	1,801,120

According to Mr. Dunn, the rent for Suite 210 is slightly lower than for the other suites because it has its own electricity meter and electricity is supplied through the San Francisco Public Utilities Commission's (SFPUC) Hetch Hetchy Power System. DPH pays approximately \$0.60 per square foot per year, or \$8,729, to SFPUC for electricity for this space and receives a \$0.90 per square foot per year, or \$13,094, reduction in rent for Suite 210. For the other suites, the landlord provides the electricity, which it builds into the rental rate.

Over the three year term of the lease extension, DPH would pay \$5,567,082 in rent. Should DPH decide to extend the lease for an additional five years, it would pay 95 percent of Fair Market Rent, based on rents of similar buildings in the Civic Center area. The breakdown of the rent paid by year is shown in Table 3 below.

Table 3: Annual Rent Paid by DPH over Extension Term

Year	Annual Rent
Year 1 (December 2018 – November 2019)	\$1,801,120
Year 2 (December 2019 – November 2020)	1,855,154
Year 3 (December 2020 – November 2021)	1,910,808
Total	\$5,567,082

RECOMMENDATION

Approve the proposed resolution.

Item 7 File 18-0105	Department: District Attorney's Office (District Attorney)
EXECUTIVE SUMMARY	
<p style="text-align: center;">Legislative Objectives</p> <ul style="list-style-type: none"> • The requested hearing is for the release of \$266,645 on Budget and Finance Committee reserve to fund one 8177 Attorney position and other operating expenses in the District Attorney's Office's Independent Investigations Bureau in FY 2017-18. <p style="text-align: center;">Key Points</p> <ul style="list-style-type: none"> • In 2016, the District Attorney's (DA) Office created the Independent Investigations Bureau to investigate officer involved shootings, excessive use of force, and in-custody deaths. • The DA's Office's FY 2017-18 budget included \$2,618,840 for the Independent Investigations Bureau, of which the Budget and Finance Committee placed \$266,645 on Budget and Finance Committee reserve pending notification that the Bureau would begin conducting conviction review cases. The Bureau began the process of establishing its conviction review function by Spring 2017 and began performing some of this work in June 2017, but prioritized its work in 2017 on the backlog of officer-involved shooting and in-custody death investigations that had accumulated over the past two to three years. <p style="text-align: center;">Fiscal Impact</p> <ul style="list-style-type: none"> • The DA's Office expects to fully spend the \$2,352,195 available in the Independent Investigation Bureau's FY 2017-18 budget. According to the DA's Office, the balance of \$266,645 on Budget and Finance Committee reserve is needed to fund one additional 8177 Attorney position to conduct conviction review and pay other costs. • The FY 2017-18 salary and benefit costs for the additional Attorney for approximately 3 ½ months are \$84,360. The DA's Office is requesting that the balance of \$182,285 be allocated to operating expenses. However, the DA's Office has not shown that the Office will have insufficient funds in the FY 2017-18 budget to pay for operating expenses. Therefore, the Budget and Legislative Analyst recommends releasing \$84,360 to pay for the salary and benefits of one Attorney position, with a hire date of March 13, 2018, and retaining \$182,285 on Budget and Finance Committee reserve. <p style="text-align: center;">Recommendation</p> <ul style="list-style-type: none"> • Approve the release of \$84,360 to fund one Attorney position from March 12, 2018 through June 30, 2018, and retain \$182,285 on Budget and Finance Committee reserve pending justification for other Independent Investigations Bureau operating expenses. 	

MANDATE STATEMENT

City Administrative Code Section 3.3(e) states that the Budget and Finance Committee of the Board of Supervisors has jurisdiction over the City's budget and may reserve proposed expenditures to be released at a later date subject to Board of Supervisors approval. The practice of the Board of Supervisors is for the Budget and Finance Committee to approve release of funds placed on reserve by the Committee, without further Board of Supervisors approval.

BACKGROUND

In 2016, the District Attorney's (DA) Office created the Independent Investigations Bureau to investigate police officer involved shootings, excessive use of force, and in-custody deaths. These cases had previously been investigated by the Police Department, but following recommendations from former President Obama's Task Force on 21st Century Policing in 2015, the City moved the investigations to the DA's Office.

DETAILS OF PROPOSED LEGISLATION

The DA's Office's FY 2017-18 budget included \$2,618,840 for the Independent Investigations Bureau, of which the Budget and Finance Committee placed \$266,645 on Budget and Finance Committee reserve pending notification that the Independent Investigations Bureau would begin conducting conviction review cases. The DA's conviction review function is to determine whether a defendant was wrongly convicted due to officer or prosecutor misconduct. The requested hearing is for the release of \$266,645 on Budget and Finance Committee reserve to fund one 8177 Attorney position and other operating expenses in FY 2017-18.

According to Mr. Eugene Clendinen, DA's Office Chief Administrative and Financial Officer, the Independent Investigations Bureau began the process of establishing its conviction review function by Spring 2017 and began performing some of this work in June 2017. However, The Independent Investigations Bureau prioritized its work in 2017 on the backlog of officer-involved shooting and in-custody death investigations that had accumulated over the past two to three years.

The Independent Investigations Bureau currently has 13 positions, including one Head Attorney, four Attorneys, one Assistant Chief District Attorney's Investigator, five District Attorney Investigators, and two District Attorney's Investigative Assistants. The DA's Office is requesting a fifth Attorney for the Independent Investigations Bureau with an anticipated start date of March 12, 2018. According to Mr. Clendinen, each Attorney has an average caseload of approximately five excessive use of force cases, 100 Brady review cases¹, 415 cases identified for conviction review, and one conviction review case for evaluation of actual innocence or wrongful conviction claim. Attorneys are also on call 24 hours a day for one week per month to

¹ Brady review cases are requests from other prosecutors in the DA's Office for the Independent Investigations Bureau to review its files for potential exculpatory impeachment evidence concerning officers who are witnesses in other cases.

respond to officer involved shooting incidents. According to Mr. Clendinen, the additional attorney position is necessary to fully staff the Independent Investigations Bureau in order to fulfill its conviction review function; while conviction review matters have been accepted into the unit for investigation and review, one additional attorney is required to actually conduct the review.

FISCAL IMPACT

The Independent Investigations Bureau budget in FY 2017-18 is \$2,618,840, of which \$2,352,195 was previously approved by the Board of Supervisors and \$266,645 is on Budget and Finance Committee reserve. According to Mr. Clendinen, the DA's Office expects to fully spend the \$2,352,195 in FY 2017-18, and the balance of \$266,645 on Budget and Finance Committee reserve is needed to fund one additional 8177 Attorney position and other Bureau operating expenses, as shown in Table 1 below.

Table 1: Cost Breakdown of DA's Office Release of Reserves

Item	Cost
8177 Attorney (0.31 FTE, Step 16)	
<i>Salary (from March 12, 2018 through June 30, 2018)</i>	\$61,635
<i>Fringe Benefits (36.87%)</i>	22,725
8177 Attorney Total	\$84,360
Other Operating Costs	
732 Brannan Street Rent (6 months)	\$99,769
Litigation Expenses (Experts, transcripts, translations, etc.)	50,000
Training	15,000
Misc. Costs (Copiers, online legal subscription, publications, materials, supplies)	17,516
Operating Costs Total	\$182,285
Total	\$266,645

The FY 2017-18 salary and benefit costs for the additional attorney for approximately 3 ½ months, from March 12, 2018 through June 30, 2018, are \$84,360, as shown in Table 1 above.

The DA's Office is requesting that the balance of \$182,285 be allocated to operating expenses, including rent for the office space at 732 Brannan Street, litigation expenses, training, and miscellaneous costs, as shown in Table 1 above. However, the DA's Office has not shown that the Office will have insufficient funds in the FY 2017-18 budget to pay for rent and other operating expenses. Therefore, the Budget and Legislative Analyst recommends releasing \$84,360 to pay for the salary and benefits of one Attorney position, from March 12, 2018 through June 30, 2018, and retaining \$182,285 on Budget and Finance Committee reserve, pending justification for other Independent Investigations Bureau operating expenses.

RECOMMENDATION

Approve the release of \$84,360 to fund one Attorney position from March 12, 2018 through June 30, 2018, and retain \$182,285 on Budget and Finance Committee reserve pending justification for other Independent Investigations Bureau operating expenses.

Item 8 File 18-0011	Department: San Francisco International Airport (Airport)
EXECUTIVE SUMMARY	
<p style="text-align: center;">Legislative Objectives</p> <ul style="list-style-type: none"> • The proposed resolution would approve the fourth modification to the existing contract between the Airport and Bombardier Transportation (Holdings) USA Inc. (Bombardier) to (a) exercise the second of the two (2) one-year options to extend the contract from March 1, 2018, through February 28, 2019, in order for Bombardier to continue to provide operations and maintenance services for the AirTrain System, and (b) increase the contract not-to-exceed amount by \$14,854,228 from \$115,444,968 to \$130,299,196. <p style="text-align: center;">Key Points</p> <ul style="list-style-type: none"> • In March 1998, the Airport entered into a two-phase contract with Bombardier, based on a competitive Request for Proposals process, to design, construct, and install the light rail air train system (AirTrain) (Phase I) and operate and maintain the AirTrain system through February 2009 (Phase II). • In December 2004, the Airport filed a lawsuit against Bombardier, which was settled in April 2008. The settlement included a provision that the Airport would approve a new five-year contract for Bombardier to operate and maintain the AirTrain system from March 2009 through February 2014. The Board of Supervisors approved the contract and exempted the contract from a competitive request for proposal process. • In February 2017, the Board of Supervisors approved the third modification to the 2004 contract to exercise the first of two (2) one-year options to extend the contract from March 1, 2017, through February 28, 2018, and increase the not-to-exceed amount by \$14,901,134 from \$100,543,834 to \$115,444,968. <p style="text-align: center;">Fiscal Impact</p> <ul style="list-style-type: none"> • The proposed resolution would increase the existing not-to-exceed contract amount with Bombardier by \$14,854,228 from \$115,444,968 to \$130,299,196 for operations and maintenance services for the Airport's Airtrain System. • The contract is funded through the Airport's annual operating fund. The operating fund has \$15,000,000 budgeted for this contract for FY2017-18. <p style="text-align: center;">Policy Consideration</p> <ul style="list-style-type: none"> • The Airport plans to ask for approval from the Office of Contract Administration for a new sole source maintenance and operation contract with Bombardier. <p style="text-align: center;">Recommendation</p> <ul style="list-style-type: none"> • Approve the proposed resolution 	

MANDATE STATEMENT

City Charter Section 9.118(b) states that any contract entered into by a department, board or commission that (1) has a term of more than ten years, (2) requires expenditures of \$10 million or more, or (3) requires a modification of more than \$500,000 is subject to Board of Supervisors approval.

BACKGROUND

In March 1998, the Airport entered into a two-phase contract with Bombardier Transportation (Holdings) USA Inc. (Bombardier), based on a competitive Request for Proposals process, to (a) design, construct, and install the light rail air train system (AirTrain) (Phase I) and (b) operate and maintain the AirTrain system through February 2009 (Phase II).

In December 2004, the Airport filed a lawsuit against Bombardier for contract delays and property damages, which was settled in April 2008. The settlement included a provision that allowed the Airport to recover costs if Bombardier did not meet performance incentives, and the Airport would approve a five-year contract for Bombardier to operate and maintain the AirTrain system from March 2009 through February 2014. The Board of Supervisors approved the contract in November 2008 (File 08-0942) and exempted the contract from a competitive request for proposal process because the contract was awarded as a result of a legal settlement.

The new five-year contract included one option to extend the term of the contract by three years through February 2017, which was mandatory if Bombardier met performance benchmarks, and two additional one-year options to extend the term of the contract through February 2019 at the sole discretion of the Airport. The new five-year contract was for an amount not-to-exceed \$56,500,000. Since then, the Airport has modified the contract three times.

In December 2013, the Board of Supervisors approved the first modification to the contract (File 13-0879) to exercise the option to extend the term of the contract by three years, from March 2014 through February 2017 and increase the total not-to-exceed contract amount by \$42,200,000 from \$56,500,000 to \$98,700,000.

In September 2014, the Board of Supervisors approved the second modification to the contract to increase the not-to-exceed amount by \$1,843,834 from \$98,700,000 to \$100,543,834 to replace outdated equipment and provide a contingency for equipment replacement and repair (File 14-0742).

In February 2017, the Board of Supervisors approved the third modification to the contract to exercise the first of two (2) one-year options to extend the contract from March 1, 2017, through February 28, 2018, and increase the not-to-exceed amount by \$14,901,134 from \$100,543,834 to \$115,444,968.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve the fourth modification to the existing contract between the Airport and Bombardier to (a) exercise the second of the two (2) one-year options to extend the contract from March 1, 2018, through February 28, 2019, in order for Bombardier to continue to provide operations and maintenance services for the AirTrain System, and (b) increase the contract not-to-exceed amount by \$14,854,228 from \$115,444,968 to \$130,299,196.

FISCAL IMPACT

The proposed resolution would increase the existing not-to-exceed contract amount with Bombardier by \$14,854,228 from \$115,444,968 to \$130,299,196 for operations and maintenance services for the Airport's Airtrain System. The breakdown of the increase is shown in Table 1 below.

Table 1: AirTrain Proposed Increased Modification

Labor	\$12,150,109
Material	2,436,531
Potential Bonuses*	145,016
Passenger Count Data Management	22,572
Contingency for Replacement of Obsolete Parts	100,000
Total	\$14,854,228

*The Airport pays Bombardier a monthly bonus if it achieves 99.8 percent on time performance, and imposes penalties if the company does not achieve this performance measure. Bombardier has never received the full budgeted bonus amount.

The Airport determined the increase in contract cost using the escalation set forth in the general requirements of the original contract using indexed changes for labor and parts and materials.

To date, the Airport has paid Bombardier a total of \$114,557,089, or \$887,879 less than the total not-to-exceed amount of \$115,444,968. There is still one month remaining on the contract.

The contract is funded through the Airport's annual operating fund. The operating fund has \$15,000,000 budgeted for this contract for FY2017-18.

POLICY CONSIDERATION

Under the proposed resolution, the contract with Bombardier to operate and maintain the AirTrain System expires on February 28, 2019. According to Ms. Cathy Widener, Airport Director of Government Affairs, there are currently no other companies that perform operations and maintenance on a Bombardier installed system due to its proprietary nature and complexity.

The Airport plans to ask for approval from the Office of Contract Administration for a new sole source maintenance and operation contract with Bombardier. After obtaining approval, Airport staff plans to begin negotiations with Bombardier for a new operations and maintenance contract. According to Ms. Widener, the Airport will perform an analysis of the operating costs on similar transit systems in different jurisdictions, as well as work with a consultant on transit systems, to negotiate a new contract with Bombardier. The Airport will also use the previous contract's value and annual escalation over the last 10 years as part of the cost determination.

The Airport expects the new contract to be finalized in September for approval by the Board of Supervisors.

RECOMMENDATION

Approve the proposed resolution