

File No. 130879

Committee Item No. 3
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee

Date: 12/04/2013

Board of Supervisors Meeting

Date: _____

Cmte Board

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Completed by: Victor Young Date November 27, 2013
Completed by: Victor Young Date _____

1 [Agreement Amendment - Airport Professional Services - Operation and Maintenance
2 Services - AirTrain System - Not to Exceed \$98,700,000]

3 **Resolution approving Amendment No. 1 to Professional Services Agreement, Airport**
4 **Contract No. 8838, to provide Operation and Maintenance Services for the AirTrain**
5 **System, between Bombardier Transportation (Holdings) USA, Inc., and the City and**
6 **County of San Francisco, acting by and through its Airport Commission, in an amount**
7 **not to exceed \$98,700,000 pursuant to Charter, Section 9.118(b) for the period of March**
8 **1, 2014, through February 28, 2017.**

9
10 WHEREAS, On September 16, 2008, pursuant to Resolution 08-0173, the Airport
11 Commission awarded the Professional Services Agreement (PSA) to Bombardier
12 Transportation (Holdings) USA, Inc., for a five (5) year initial term with one three (3) option to
13 renew to be exercised at the discretion of the Airport Commission, at an initial not to exceed
14 amount of \$56,500,000; and

15 WHEREAS, On November 25, 2008, pursuant to Ordinance 266-08, the Board of
16 Supervisors approved the PSA to Bombardier Transportation (Holdings) USA, Inc., to perform
17 the maintenance and operation services of the AirTrain system in an amount not to exceed
18 \$56,500,000 with a contingency budget of \$500,000 on file with the Clerk of the Board of
19 Supervisors in File No. 080942, which is hereby declared to be a part of this resolution as if
20 set forth fully herein; and

21 WHEREAS, On July 23, 2013, pursuant to Resolution 13-0156, the Airport Commission
22 approved Amendment No. 1 to the Operation and Maintenance Services for the AirTrain
23 System contract with Bombardier Transportation (Holdings) USA, Inc. to exercise the three (3)
24 year option to renew the PSA through February 28, 2017 for the amount of \$42,200,000 for a
25 new not to exceed contract amount of \$98,700,000; and

1 WHEREAS, San Francisco Charter Section 9.118(b) provides that the agreements
2 entered into by a department, board or commission requiring anticipated expenditures by the
3 City and County of ten million dollars, shall be subject to approval by the Board of Supervisors
4 by resolution; and

5 WHEREAS, The Amendment No. 1 is on file with the Clerk of the Board of Supervisors
6 in File No. 130879, which is hereby declared to be a part of this resolution as if set forth fully
7 herein; now, therefore, be it

8 RESOLVED, That the Board of Supervisors hereby approves Amendment No. 1 to the
9 Professional Services Agreement for Airport Contract 8838 – Operation and Maintenance
10 Services for the AirTrain System between Bombardier Transportation (Holdings) USA, Inc.
11 and the City and County of San Francisco, acting by and through its Airport Commission, to
12 exercise the three (3) year option to renew for the amount of \$42,200,000 for a new not to
13 exceed total contract amount of \$98,700,000 copies of which are contained in Board of
14 Supervisors' File No. 130879.

| | |
|---|---|
| Item 3 File 13-0879 | 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 amend the existing agreement between the San Francisco International Airport (Airport) and Bombardier Transportation (Holdings) USA, Inc. (Bombardier) for the operation and maintenance of the AirTrain System, (a) exercising the first option to extend for a period of three years from March 1, 2014 through February 28, 2017, and (b) increasing the not-to-exceed amount of \$56,500,000 by \$42,200,000 for a total not-to-exceed amount of \$98,700,000. <p style="text-align: center;">Key Points</p> <ul style="list-style-type: none"> • On November 18, 2008 the Board of Supervisors (a) approved the existing agreement between the Airport and Bombardier for the continued operation and maintenance of the Airport's AirTrain System, for a not-to-exceed amount of \$56,500,000 for an initial five-year term, from March 1, 2009 through February 28, 2014, with one three-year options to extend and two one-year options to extend through February 28, 2019; and (b) granted the Airport Commission waiver of the competitive bidding requirements of Administrative Code Chapter 21 due to the propriety aspects of the AirTrain system, as well as the results of the negotiated settlement of the lawsuit. • However, the actual projected five-year agreement costs total \$59,700,000, which is \$3,200,000 more than the authorized budget of \$56,500,000 under the existing agreement that ends on February 28, 2014. • The projected \$3,200,000 shortfall is due to: (1) increases related to escalation on labor and material, (2) bonuses paid based on system performance, and (3) change orders for the replacement and/or upgrade of obsolete/inoperable equipment as per agreement requirements. <p style="text-align: center;">Fiscal Impact</p> <ul style="list-style-type: none"> • The budget for the proposed amended agreement with Bombardier is \$42,199,978 and includes: (1) \$38,999,978 for base operations, maintenance, escalations, and bonuses for the three-year extended term, and (2) \$3,200,000 to cover the shortfall of the existing budget for the initial five-year term of the agreement. • Under the proposed amendment, the estimated annual costs increase in FY 2014-15 by 3.0 percent, in FY 2015-16 by 3.4 percent, and in FY 2016-17 (eight months) by 4.8 percent. • Funds to pay for the proposed amended agreement will be provided from the Airport's Operating budget. <p style="text-align: center;">Recommendation</p> <ul style="list-style-type: none"> • Approve the proposed resolution. | |

MANDATE STATEMENT / BACKGROUND**Mandate Statement**

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

Background

Based on a competitive Request for Proposal process, the San Francisco International Airport (Airport) awarded an agreement (Airport Contract No. 5703.A) with Bombardier Transportation (Holdings) USA, Inc. (Bombardier), for a total amount of \$116,626,759, which began in March 1998. The agreement was approved by the Board of Supervisors. Phase One of the agreement totaled \$104,238,450 and was for Bombardier to design, construct, and install the light rail air train system (the "AirTrain") at the San Francisco International Airport. Phase Two of the agreement totaled \$12,388,309 and was for Bombardier to operate and maintain the AirTrain until February 24, 2009.

On August 4, 2002, during Phase One testing of the system, the system malfunctioned, resulting in two trains colliding, causing property damage and delays in making the system available for public use. Bombardier subsequently corrected the problem, and the AirTrain has operated safely since it was opened to the public. However, on December 15, 2004, the City filed a lawsuit against Bombardier for general Phase One contract delays and property damage resulting from the accident. The City also named Factory Mutual Insurance Company ("FMIC") as a defendant in the lawsuit, alleging that FMIC had not adequately adjusted the City's claim following the accident. Bombardier and FMIC filed cross-complaints against the City in the same lawsuit.

On April 8, 2008, the City, Bombardier and FMIC agreed to settle the lawsuit. One of the terms of the settlement that compensated the City for its loss resulting from the accident provided that Bombardier and the City enter into an agreement for Bombardier to continue to operate and maintain the AirTrain following the expiration of Bombardier's Operations and Maintenance agreement on February 24, 2009.

On November 18, 2008 the Board of Supervisors approved Ordinance 266-08 that (a) authorized an agreement (Airport Contract No. 8838) between the Airport and Bombardier for the continued operation and maintenance of the Airport's AirTrain System, for a not-to-exceed amount of \$56,500,000 for an initial five-year term, from March 1, 2009, through February 28, 2014, with one three-year option to extend and two one-year options to extend through

February 28, 2019; and (b) granted the Airport Commission waiver of the competitive bidding requirements of Administrative Code Chapter 21 due to the propriety aspects of the AirTrain system, as well as the results of the negotiated settlement of the lawsuit.

As shown in Table 1 below, the actual projected five-year agreement costs total \$59,700,000, which is \$3,200,000 more than the authorized budget of \$56,500,000 under the existing agreement.

**Table 1: Existing AirTrain Agreement Budget
March 1, 2009 through February 28, 2014**

| | FY 2008-09 (March 1, 2009 - June 30, 2009, 4 months) | FY 2009-10 | FY 2010-11 | FY 2011-12 | FY 2012-13 | FY 2013-14 (July 1, 2013 - February 28, 2014, 8 months) | Five-Year Total |
|-------------------------------------|--|---------------------|---------------------|---------------------|---------------------|---|---------------------|
| Base Operations & Maintenance (O&M) | \$3,766,667 | \$11,300,000 | \$11,300,000 | \$11,300,000 | \$11,300,000 | \$7,533,333 | \$56,500,000 |
| O&M Escalation | | 39,896 | 129,709 | 238,093 | 547,740 | 526,175 | 1,481,613 |
| Change Orders | 51,402 | 569,943 | 834,262 | 135,500 | 83,865 | 50,000 | 1,724,972 |
| Bonuses ¹ | 9,417 | 47,707 | 38,166 | 38,166 | 19,857 | 80,758 | 234,071 |
| Penalties ¹ | (20,126) | (50,803) | (57,579) | (39,173) | (47,975) | (25,000) | (240,656) |
| Annual Totals | \$3,807,360 | \$11,906,744 | \$12,244,558 | \$11,672,586 | \$11,903,486 | \$8,165,266 | \$59,700,000 |
| Approved Five-Year Budget | | | | | | | 56,500,000 |
| Existing Budget Shortfall | | | | | | | (\$3,200,000) |

According to Mr. Lee Mitchell, AirTrain Project Manager, Airport, the projected \$3,200,000 shortfall is due to: (1) increases related to escalation on labor and material, (2) bonuses paid based on system performance, and (3) change orders for the replacement and/or upgrade of obsolete/inoperable equipment as per agreement requirements. Mr. Mitchell reports that when negotiating the initial terms of the agreement, it was decided to submit a request to the Board of Supervisors for the appropriation of the additional amount at the end of the five-year term as it is not possible to accurately predict the actual annual increases of escalation, bonuses and change orders.

Under the provisions of the existing agreement, the three-year option to extend the agreement on March 1, 2014 is dependent on Bombardier meeting a set of pre-defined performance

¹ Per the current and subject amended agreement, bonuses and penalties are based on system performance and are determined as follows: for any calendar month that the AirTrain System Service Availability falls below ninety-nine and one-half percent (99.50%) or exceeds ninety-nine and seventy-nine one hundredths percent (99.79%), a bonus payment factor shall be applied to Bombardier's Average Monthly Payment for that month. Increases shall be incentives for improved service whereas decreases shall be penalties for liquidated damages for not providing the required service, recognizing that demand for services during such times may have been denied or delayed and cannot be made up.

standards, including (1) system availability ratings, (2) an inventory and verification that all Airport owned spares, tools and equipment are in good working condition, (3) training certifications are up-to-date for appropriate Bombardier staff, and (4) the on-time preventative maintenance program meets or exceeds agreement requirements.

According to Mr. Mitchell, Bombardier has met the performance standards required for the three-year extension, including: (1) maintaining a 99.5% or higher average annual performance of system availability ratings, as shown in Table 2 below; (2) a sampling of the inventory of all tools and equipment is performed annually; (3) technician training certifications are verified on a monthly basis; and (4) maintaining an on-time preventative maintenance program, which is audited monthly.

Table 2: Average Annual Performance of System Availability Ratings

| Year | Average Annual Performance Rating |
|------|-----------------------------------|
| 2009 | 99.688% |
| 2010 | 99.726% |
| 2011 | 99.747% |
| 2012 | 99.700% |
| 2013 | Year to date 99.638% |

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would amend the existing agreement between the Airport and Bombardier for the operation and maintenance of the AirTrain System, (a) exercising the first option to extend for a period of three years from March 1, 2014, through February 28, 2017, and (b) increasing the not-to-exceed amount of \$56,500,000 by \$42,200,000 for a total not-to-exceed amount of \$98,700,000, which includes the \$3,200,000 additional amount needed to cover the shortfall of the existing budget for the initial five-year agreement.

FISCAL IMPACT

As shown in Table 3 below, the budget for the requested increased authorization of \$42,200,000 for the three-year extended period under the agreement with Bombardier is \$42,199,978. This amount includes: (1) \$38,999,978 for base operations, maintenance, escalations, and bonuses for the three-year extended term, and (2) \$3,200,000 to cover the shortfall of the existing budget for the initial five-year term of the agreement.

**Table 3: AirTrain Proposed Amended Agreement Budget
March 1, 2014 through February 28, 2017**

| | FY 2013-14 (March 1, 2014 - June 30, 2014) | FY 2014-15 | FY 2015-16 | FY 2016-17 (July 1, 2016 - February 28, 2017) | Three-Year Total |
|--|--|---------------------|---------------------|--|---------------------|
| Base Operations & Maintenance (O&M) | \$3,766,666 | \$11,300,000 | \$11,300,000 | \$7,533,334 | \$33,900,000 |
| O&M Escalation/ Change Orders | 295,895 | 1,257,040 | 1,678,769 | 1,547,398 | \$4,779,102 |
| Bonuses | 42,720 | 103,428 | 108,083 | 66,645 | \$320,876 |
| Annual Totals | \$4,105,281 | \$12,660,468 | \$13,086,852 | \$9,147,377 | \$38,999,978 |
| Existing Budget Shortfall | | | | | 3,200,000 |
| Total Three-Year Budget | | | | | \$42,199,978 |

Under the proposed amendment, the estimated annual costs increase in FY 2014-15 by 3.0 percent, in FY 2015-16 by 3.4 percent, and in FY 2016-17 (eight months) by 4.8 percent. According to Mr. Mitchell, the estimated annual cost increases are based on the provision of annual escalations on labor, materials, and incentive bonuses based on system performance over the past 10 years of operation and the age of the system.

According to Mr. Mitchell, the existing agreement's shortfall of \$3,200,000 was initially calculated to be \$3,216,265 to cover bonuses through February 2014. However, it has been determined that only \$3,200,000, as is included in the proposed amendment, will be needed as Bombardier did not reach the level of service required to obtain the bonus in the last two months.

Mr. Mitchell reports that the funding for the proposed amended agreement will be provided from the Airport's Operating budget.

RECOMMENDATION

Approve the proposed resolution.

AIRPORT COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 08-0173

AWARD CONTRACT NO. 8838, AIRTRAIN OPERATIONS AND MAINTENANCE, TO BOMBARDIER TRANSPORTATION (HOLDINGS) USA, INC., IN THE AMOUNT OF \$56,500,000 FOR A FIVE-YEAR TERM.

- WHEREAS, on April 8, 2008, City and County of San Francisco, Bombardier Transportation (Holdings) USA, Inc. (Bombardier), and Factory Mutual Insurance Company agreed to settle their disputes which were part of a lawsuit filed in the United States District Court for the Northern District of California, case number C 04-5307 PJH by providing for, among other things, cost recovery of damages suffered by the Airport as a result of the accident of August 4, 2002 during testing of the AirTrain system prior to opening (the Agreement); and,
- WHEREAS, one of the terms of the Agreement provides the Airport with full cost recovery of its remaining damages stemming from the accident through negotiating a favorable contract with Bombardier for an initial five (5) year fixed term at \$11,300,000 for the first year, escalated thereafter for the life of the contract, based on the economic price adjustment formula utilized in the original 5703.A - AirTrain System, Phase II (O&M) contract; and,
- WHEREAS, an automatic renewal of an additional three-year fixed term will be awarded to Bombardier, pending their meeting certain performance criteria as contained in the new contract; and,
- WHEREAS, the Commission will have the discretion to exercise two (2) one-year options following the expiration of the three-year fixed period, with training requirements of Airport-designated personnel, which provides the opportunity for the Airport to transition O&M services from Bombardier to the Airport; and,
- WHEREAS, as a result of the proprietary nature of the AirTrain automated train control system, following the transition to Airport Staff of the O&M services, the Airport will continue to contract with Bombardier as the sole-source provider of technical support and parts supply for a majority of the systems of AirTrain; and,
- WHEREAS, Airport Staff has also negotiated new contract terms which provide for an increased focus on passenger service and system reliability, as well as negotiated, value-added services at no additional cost; and
- WHEREAS, PGH Wong Engineering Inc., an independent firm, recently performed an analysis of the contract terms and conditions, and concluded that this agreement provides significant cost incentives which allow the Airport to fully recover its damages, and that the sole source award is in the best interest of SFO and provides the Airport with critical advantages and risk mitigations which cannot be provided by other contractors; and,
- WHEREAS, funding for this contract will be provided from the Airport's Operating budget; and,
- WHEREAS, Airport Staff, with the assistance of the City Attorney, has assisted in the negotiations and preparation of Contract #8838; and,
- WHEREAS, the HRC has determined that Bombardier Transportation is in compliance and responsive to Chapter 14B and its LBE requirements; and,

AIRPORT COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 08-0173

- WHEREAS, the San Francisco Administrative Code requires Board of Supervisors approval of all settlements of litigation, and award of non-construction contracts in excess of \$10M; now, therefore be it
- RESOLVED, that the Commission hereby awards Contract 8838, AirTrain Operations and Maintenance, to Bombardier Transportation (Holdings) USA, Inc., for a five-year contract in the amount of \$56,500,000, and approves a contingency budget of \$500,000 for payment of incentive bonuses and other changes during Year 1 of the new contract, all subject to Board of Supervisors approval of the Agreement and award of this contract; and, be it further
- RESOLVED, that the City Attorney's Office, the Commission Secretary, and the Airport Director, are authorized to take such other actions as are appropriate to implement this award of contract, including seeking the award of this contract by the San Francisco Board of Supervisors.

I hereby certify that the foregoing resolution was adopted by the Airport Commission

at its meeting of SEP 16 2008


Secretary

AIRPORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO
RESOLUTION NO. **13_0156**

APPROVE MODIFICATION NO. 1 TO CONTRACT NO. 8838 WITH BOMBARDIER TRANSPORTATION (HOLDINGS) USA, INC. FOR AIRTRAIN OPERATIONS AND MAINTENANCE SERVICES IN THE AMOUNT OF \$42,200,000, TO: 1) EXERCISE THE THREE-YEAR CONTRACT EXTENSION BEGINNING MARCH 1, 2014 THROUGH FEBRUARY 28, 2017, AND 2) REQUEST APPROVAL TO FUND THE BUDGET SHORTFALL FROM ESCALATION AND BONUS ADJUSTMENTS FOR THE INITIAL FIVE-YEAR TERM FOR A REVISED NOT TO EXCEED TOTAL CONTRACT AMOUNT OF \$98,700,000.

WHEREAS, on September 16, 2008, this Commission approved Resolution No. 08-0173 awarding Contract No. 8838 AirTrain Operations and Maintenance to Bombardier Transportation (Holdings) USA, Inc. for a five-year contract, with one (1) 3-year option, and two (2) 1-year options, in the amount of \$56,500,000 and approved a one-year contingency budget of \$500,000 for payment of incentive bonuses and other changes, all subject to Board of Supervisors (BOS) approval of the agreement and award of this contract; and

WHEREAS, on November 18, 2008, the BOS of the City and County of San Francisco passed Ordinance No. 080942 in which the BOS granted the Airport Commission a waiver of the competitive bidding requirements found in Administrative Code Chapter 21; and

WHEREAS, in accordance with Ordinance No. 080942, the BOS granted the award of Contract No. 8838 to Bombardier Transportation (Holdings) USA, Inc. for a five-year term in the amount of \$56,500,000 and approved the contingency budget of \$500,000 for payment of incentive bonuses and other changes during Year One of the new contract; and

WHEREAS, the originally approved \$56,500,000 to fund the initial five-year term did not include funding for labor and material escalation and bonuses beyond Year One of the contract, resulting in a shortfall of \$3,200,000 over the initial five (5) year term; and

WHEREAS, the contract includes a renewal of an additional three-year contract extension dependent on the contractor meeting a set of pre-defined performance standards. Based on the contractor's performance to date the contractor will meet these standards; and

WHEREAS, funding for this project will be provided from the Airport's operating budget; and

AIRPORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO
RESOLUTION NO. 13-0156

WHEREAS, the Human Rights Commission has determined that Bombardier Transportation (Holdings) USA, Inc. is in compliance and responsive to Chapter 14B and its LBE requirements; and

WHEREAS, the San Francisco Administrative Code requires Board of Supervisors approval of all non-construction contracts in excess of \$10M; now, therefore, be it

RESOLVED, that this Commission hereby approves Modification No. 1 to Contract No. 8838, AirTrain Operations and Maintenance, with Bombardier Transportation (Holdings) USA, Inc., in the amount of \$42,200,000, to: 1) exercise the three-year contract extension beginning March 1, 2014 through February 28, 2017 in the amount of \$39,000,000; and 2) request approval to fund the budget short fall from escalation and bonus adjustments for the initial five-year term in the amount of \$3,200,000, for a revised not to exceed total contract amount of \$98,700,000; and, be it further

RESOLVED, that the Airport Director is authorized to take the necessary steps to obtain Board of Supervisors' approval of the contract modification pursuant to San Francisco Charter Section 9.118(b).

Page 2 of 2

I hereby certify that the foregoing resolution was adopted by the Airport Commission

at its meeting of _____

JUL 23 2013


Secretary



San Francisco International Airport

MEMORANDUM

July 23, 2013

TO: AIRPORT COMMISSION
Hon. Larry Mazzola, President
Hon. Linda S. Crayton, Vice President
Hon. Eleanor Johns
Hon. Richard J. Guggenlime
Hon. Peter A. Stern

FROM: Airport Director

SUBJECT: Modification No. 1 to Contract No. 8838 with Bombardier Transportation (Holdings) USA, Inc. for AirTrain Operations and Maintenance

DIRECTOR'S RECOMMENDATION: APPROVE MODIFICATION NO. 1 TO CONTRACT NO. 8838 WITH BOMBARDIER TRANSPORTATION (HOLDINGS) USA, INC. FOR AIRTRAIN OPERATIONS AND MAINTENANCE SERVICES IN THE AMOUNT OF \$42,200,000, TO: 1) EXERCISE THE THREE-YEAR CONTRACT EXTENSION BEGINNING MARCH 1, 2014 THROUGH FEBRUARY 28, 2017 (\$39,000,000), AND 2) REQUEST APPROVAL TO FUND THE BUDGET SHORTFALL FROM ESCALATION AND BONUS ADJUSTMENTS FOR THE INITIAL FIVE-YEAR TERM (\$3,200,000) FOR A REVISED NOT TO EXCEED TOTAL CONTRACT AMOUNT OF \$98,700,000.

Executive Summary

Contract No. 8838 with Bombardier Transportation (Holdings) USA, Inc. provides for AirTrain operations and maintenance services. Modification No. 1 to Contract No. 8838 requests Commission approval to exercise a three-year contract extension and fund a budget shortfall from escalation and bonus adjustments in the initial five-year term.

Background

On September 16, 2008, this Commission adopted Resolution No. 08-0173, which awarded Contract No. 8838, AirTrain Operations and Maintenance, to Bombardier Transportation (Holdings) USA, Inc. for a five-year contract (March 1, 2009 to February 28, 2014) with one (1) three-year option, and two (2) 1-year options, in the amount of \$56,500,000, and approved a contingency budget of \$500,000 for payment of incentive bonuses and other changes during Year One of the new contract, all subject to Board of Supervisors approval of the Agreement and award of this contract.

On November 18, 2008, the Board of Supervisors of the City and County of San Francisco passed Ordinance No. 080942, which granted the Airport Commission waiver of the competitive bidding requirements found in Administrative Code Chapter 21, and awarded the contract to Bombardier Transportation (Holdings) USA, Inc.

AIRPORT COMMISSION CITY AND COUNTY OF SAN FRANCISCO

THIS PRINT COVERS CALENDAR ITEM NO. 2

EDWIN M. LEE
MAYOR

LARRY MAZZOLA
PRESIDENT

LINDA S. CRAYTON
VICE PRESIDENT

ELEANOR JOHNS

RICHARD J. GUGGENHIME

PETER A. STERN

JOHN L. MARTIN
AIRPORT DIRECTOR

This contract includes provisions for an additional three-year term extension that is dependent on the contractor meeting a set of pre-defined performance standards. The pre-defined performance standards include factors such as system availability ratings and on-time preventative maintenance program. Based on the contractor's performance to date, the contractor will meet these standards.

This contract also includes provisions for annual escalation on labor, material, and incentive bonuses based on the system performance. The original contract amount under-funded the amounts required for annual escalation and performance bonuses over the five-year term, resulting in a \$3,200,000 shortfall.

Recommendation

Based upon the satisfactory performance provided by Bombardier Transportation (Holdings) USA, Inc. in operating and maintaining the AirTrain under the terms of this contract, I recommend the Commission approve Modification No. 1 to Contract No. 8838 with Bombardier Transportation (Holdings) USA, Inc. in the amount not to exceed \$42,200,000, which includes \$3,200,000 budget shortfall for labor and materials escalation and performance bonuses during the initial five (5) year term, and \$39,000,000 for an additional three-year term extension beginning March 1, 2014 through February 28, 2017, for a new total contract amount not to exceed \$98,700,000.



John L. Martin
Airport Director

Prepared by: Jeff Littlefield
Deputy Airport Director
Operations & Security

Attachment

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

First Amendment

THIS AMENDMENT (this "Amendment") is made as of August 1, 2013, in San Francisco, California, by and between **Bombardier Transportation (Holdings) USA Inc.** ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Airport Commission or the Commission's designated agent, hereinafter referred to as "**Commission.**"

RECITALS

WHEREAS, City and Contractor have entered into the Agreement (as defined below); and

WHEREAS, City and Contractor desire to amend the Agreement on the terms and conditions set forth herein to exercise the three-year contract extension and provide funding for the budget shortfall from escalation and bonus adjustments for the initial contract term; and

WHEREAS, the Commission awarded this contract to Contractor on September 16, 2008, pursuant to an agreement to settle a dispute among the City and County of San Francisco, Bombardier Transportation (Holdings) USA, Inc., and Factory Mutual Insurance Company which was filed in the United States District Court for the Northern District of California, case number C 04-5307 PJH, and further pursuant to Resolution No. 08-0173; and

WHEREAS, Commission approved this Amendment 1 pursuant to Resolution No. 13-0156 on July 23, 2013; and

WHEREAS, pursuant to San Francisco Charter Section 9.118, the Board of Supervisors by its Resolution No. 266-08, adopted November 18, 2008, approved the contract to Contractor; and

WHEREAS, pursuant to San Francisco Charter Section 9.118, the Board of Supervisors by its Resolution No. [RESOLUTION NUMBER], adopted [DATE], approved the amendment to the Agreement; and

WHEREAS, the Commission desires to amend the Agreement for administrative changes required by recently enacted San Francisco contracting ordinances; and

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

1. **Definitions.** The following definitions shall apply to this Amendment:
 - a. **Agreement.** The term "Agreement" shall mean the Agreement dated September 16, 2008 between Contractor and City.
 - b. **Other Terms.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.
2. **Section 2. Term of the Agreement** is hereby amended to extend the term of the contract for an additional three year term for a new ending date of February 28, 2017.

3. **Section 5. Compensation** is hereby amended to increase the total compensation payable by an amount not to exceed \$42,200,000 for a new total not to exceed amount of \$98,700,000.

4. **New Section 8. Submitting False Claims; Monetary Penalties** is hereby replaced in its entirety to read as follows:

8. Submitting False Claims; Monetary Penalties.

Pursuant to San Francisco Administrative Code §21.35; any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code is available on the web at:

<http://www.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:sanfrancisco.ca>. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

5. **New Section 45. First Source Hiring Program** is hereby replaced in its entirety to read as follows:

45. First Source Hiring Program

a. Application of Administrative Code Provisions by Reference. The provisions of Chapter 83 of the San Francisco Administrative Code apply to this Agreement. Contractor shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

b. First Source Hiring Agreement. As an essential term of, and consideration for, any contract or property contract with the City, not exempted by the FSHA, the Contractor shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the contract or property contract. Contractors shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

(1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs maybe certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

(2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

(3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

(4) Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals.

(5) Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with City departments to develop employer good faith effort requirements appropriate to the types of contracts and property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the FSHA finds that the employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

(6) Set the term of the requirements.

(7) Set appropriate enforcement and sanctioning standards consistent with this Chapter.

(8) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.

(9) Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.

c. **Hiring Decisions.** Contractor shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

d. **Exceptions.** Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

e. **Liquidated Damages.** Contractor agrees:

(1) To be liable to the City for liquidated damages as provided in this section;

(2) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;

(3) That the contractor's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.

(4) That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to \$10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;

(5) That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this section is based on the following data:

A. The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of \$348 per month, totaling approximately \$14,379; and

B. In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year; therefore, liquidated damages that total \$5,000 for first violations and \$10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City by the failure of a contractor to comply with its first source referral contractual obligations.

(6) That the failure of contractors to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law.

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

f. Subcontracts. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

6. New Section 63. Labor Peace / Card Check Rule is hereby replaced in its entirety to read as follows:

63. Labor Peace / Card Check Rule. Without limiting the generality of other provisions herein requiring Contractor to comply with all Airport Rules, Contractor shall comply with the Airport's Labor Peace / Card Check Rule, adopted on February 1, 2000, pursuant to Airport Commission Resolution No. 00-0049 (the "Labor Peace / Card Check Rule"). Capitalized terms not defined in this provision are defined in the Labor Peace/Card Check Rule. To comply with the Labor Peace/Card Check Rule, Contractor shall, among other actions: (a) Enter into a Labor Peace/Card Check Rule Agreement with any Labor Organization which requests such an agreement and which has registered with the Airport Director or his / her designee, within thirty (30) days after Labor Peace/Card Check Rule Agreement has been requested; (b) Not less than thirty (30) days prior to the modification of this Agreement, Contractor shall provide notice by mail to any Labor Organization or federation of labor organizations which have registered with the Airport Director or his / her designee (registered labor organization"), that Contractor is seeking to modify or extend this Agreement; (c) Upon issuing any request for proposals, invitations to bid, or similar notice, or in any event not less than thirty (30) days prior to entering into any Subcontract, Contractor shall provide notice to all registered Labor Organizations that Contractor is seeking to enter into such Subcontract; and (d) Contractor shall include in any subcontract with a Subcontractor performing services pursuant to any covered Contract, a provision requiring the Subcontractor performing services pursuant to any covered Contract, a provision requiring the Subcontractor to comply with the requirements of the Labor Peace/Card Check Rule. If Airport Director determines that Contractor violated the Labor Peace/Card Check Rule, Airport Director shall have the option to terminate this Agreement, in addition to exercising all other remedies available to him / her.

7. New Section 67. Cooperative Drafting is hereby added to the Agreement, as follows:

67. Cooperative Drafting. This Agreement has been drafted through a cooperative effort of both parties, 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.

8. New Section 68. Federal Non-Discrimination Provisions is hereby added to read as follows:

68. Federal Non-Discrimination Provisions. Contractor for itself, its personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree that Contractor shall maintain and operate the Airport facilities and services in compliance with all requirements imposed pursuant to Title 49, Code of Federal Regulations, DOT, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964, as said regulations may be amended. Contractor, for itself, its personal representatives, successors in interest, and assigns, agrees that Contractor in its operation at and use of San Francisco International Airport, covenants that (1) no person on the grounds of race, color, national origin or sex shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (2) that in the construction of any improvements on, over, or under the Airport and the furnishing of services thereon, no person on the grounds of race, color, national origin or sex shall be excluded from participation or denied the benefits of, or otherwise be subject to discrimination, (3) that Contractor shall use all City premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, DOT, Subtitle A – Office of the Secretary of Transportation, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended. These Regulations are incorporated as though fully set forth herein. Contractor agrees to include the above statements in any subsequent contract that it enters into with subcontractors and cause those agreements to similarly include the statements, and cause those businesses to include the statements in further agreements.

Failure by the contractor to comply with the requirements of this section is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Airport deems appropriate.

9. Effective Date. Each of the modifications set forth in Section 2 shall be effective on and after August 1, 2013.

10. Legal Effect. Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

| CITY AIRPORT COMMISSION CITY AND COUNTY OF SAN FRANCISCO | CONTRACTOR |
|---|---|
| By: <u>Troy McCoy</u> John L. Martin, Airport Director <i>For</i> | <u><i>Johnetta Faurc / Douglas V. Hertzendorf</i></u> Authorized Signature <u>Johnetta Faurc / Douglas V. Hertzendorf</u> Printed Name |
| Attest: By: <u>Jean Caramatti</u> Jean Caramatti, Secretary Airport Commission | <u>Secretary / Engineering Mgr.</u> Title <u>Bombardier Transportation (Holdings) USA Inc.</u> Company Name |
| Resolution No: <u>13-0160</u> | <u>40554</u> City Vendor Number <u>1501 Lebanon Church Road</u> Address <u>Pittsburgh, PA 15236</u> City, State, ZIP |
| Adopted on: <u>July 23, 2013</u> Approved as to Form: Dennis J. Herrera City Attorney By: <u>Constance Menefee</u> Constance Menefee Deputy City Attorney | <u>(412) 655-5700</u> Telephone Number <u>25-1579550</u> Federal Employer ID Number |



San Francisco International Airport

September 6, 2013

Ms. Angela Calvillo
Clerk of the Board
Board of Supervisors
City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, California 94102-4689

130279

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
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AK

Subject: Approval of Amendment No. 1 to Contract 8838 to provide AirTrain Operations and Maintenance Services at San Francisco International Airport with Bombardier Transportation (Holdings) USA, Inc. and the City and County of San Francisco, acting by and through its Airport Commission

Dear Ms. Calvillo,

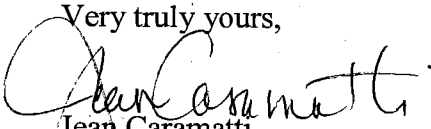
Pursuant to Section 9.118 of the City Charter, I am forwarding for the Board of Supervisor's approval, the Amendment 1 to Contract 8838 to provide AirTrain Operations and Maintenance Services at San Francisco International Airport with Bombardier Transportation (Holdings) USA, Inc. The Airport Commission has approved the terms of the contract amendment by adopting Resolution 13-0156 on July 23, 2013.

The following is a list of accompanying documents:

- Board of Supervisors Resolution;
- Approved Airport Commission Resolution No. 08-173;
- Approved Airport Commission Resolution No. 13-0156;
- Memorandum to the Airport Commission recommending Resolution No. 13-0156
- Form SFEC-126 for the Board of Supervisors;
- Form SFEC-126 for Mayor Lee; and
- Copy of Original Agreement, Contract 8838
- Approval as to form of Amendment 1 to Contract 8838 from the City Attorney's Office.

Please contact Cathy Widener, Airport Governmental Affairs at 650-821-5023 if you have any questions or concerns regarding this matter.

Very truly yours,


Jean Caramatti
Commission Secretary

Enclosures

**FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL
(S.F. Campaign and Governmental Conduct Code § 1.126)**

| | |
|---|---|
| City Elective Officer Information <i>(Please print clearly.)</i> | |
| Name of City elective officer(s): Members, SF Board of Supervisors | City elective office(s) held: Members, SF Board of Supervisors |
| Contractor Information <i>(Please print clearly.)</i> | |
| Bombardier Transportation (Holdings) USA Inc. | |
| (1) Board of Directors of Bombardier Transportation (Holdings) USA Inc. (BTHUSA)- B. Jill Hampton, John M. Bigley and David James Barry (2) Chief Executive/Operation Officer- David James Barry, Chief Financial Officer- John M. Bigley (3) N/A- No person owns 20 percent or more (4) N/A (5) BTHUSA does have a group of employees known as the "PAC-Political Action Committee" whose role is to support the Government in the U.S. at State and Federal levels when mass transit is involved. | |
| Contractor address: 1501 Lebanon Church Road Pittsburgh PA 15236 | |
| Date that contract was approved: | Amount of contract: \$98,700,000 |
| Describe the nature of the contract that was approved: Maintenance and operation services of the AirTrain system which operates 24 hours every day, providing access to SFO's Terminals, Terminal Parking Garages, Rental Car Center and BART Station. | |
| Comments: Amendment 1 to Contract 8838, originally awarded pursuant to a settlement filed in the United States District Court for the Northern District of California, case number C 04-5307 PJH and further pursuant to Airport Commission Resolution No. 08-0173 and No. 13-0156. | |

This contract was approved by (check applicable):

the City elective officer(s) identified on this form

a board on which the City elective officer(s) serves San Francisco Board of Supervisors
Print Name of Board

the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

| | |
|--|---|
| Filer Information <i>(Please print clearly.)</i> | |
| Name of filer: Angela Calvillo, Clerk of the Board | Contact telephone number: (415) 554-5184 |
| Address: City Hall, Room 244 1 Dr. Carlton B. Goodlett Place; San Francisco, CA 94102 | E-mail: Board.of.Supervisors@sfgov.org |

Signature of City Elective Officer (if submitted by City elective officer)

Date Signed

Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

Date Signed

**FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL**
(S.F. Campaign and Governmental Conduct Code § 1.126)

| | |
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| City Elective Officer Information <i>(Please print clearly.)</i> | |
| Name of City elective officer(s): Members, SF Board of Supervisors | City elective office(s) held: Members, SF Board of Supervisors |

| | |
|---|-------------------------------------|
| Contractor Information <i>(Please print clearly.)</i> | |
| Bombardier Transportation (Holdings) USA Inc. | |
| (1) Board of Directors of Bombardier Transportation (Holdings) USA Inc. (BTHUSA)- B. Jill Hampton, John M. Bigley and David James Barry (2) Chief Executive/Operation Officer- David James Barry, Chief Financial Officer- John M. Bigley (3) N/A- No person owns 20 percent or more (4) N/A (5) BTHUSA does have a group of employees known as the "PAC-Political Action Committee" whose role is to support the Government in the U.S. at State and Federal levels when mass transit is involved. | |
| Contractor address: 1501 Lebanon Church Road Pittsburgh PA 15236 | |
| Date that contract was approved: | Amount of contract: \$98,700,000 |
| Describe the nature of the contract that was approved: Maintenance and operation services of the AirTrain system which operates 24 hours every day, providing access to SFO's Terminals, Terminal Parking Garages, Rental Car Center and BART Station. | |
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This contract was approved by (check applicable):

- the City elective officer(s) identified on this form
- a board on which the City elective officer(s) serves San Francisco Board of Supervisors
Print Name of Board
- the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits
Print Name of Board

| | |
|--|---|
| Filer Information <i>(Please print clearly.)</i> | |
| Name of filer: Angela Calvillo, Clerk of the Board | Contact telephone number: (415) 554-5184 |
| Address: City Hall, Room 244 1 Dr. Carlton B. Goodlett Place; San Francisco, CA 94102 | E-mail: Board.of.Supervisors@sfgov.org |

Signature of City Elective Officer (if submitted by City elective officer)

Date Signed

Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

Date Signed