

1 [Approval of contract pursuant to settlement; Waiver of competitive bidding.]

2 **Ordinance waiving competitive bid requirements and approving the award of an**
3 **Operations and Maintenance Contract ("O&M") with Bombardier Transportation**
4 **(Holdings) USA, Inc. (Bombardier) to operate and maintain the San Francisco**
5 **International Airport's AirTrain system for five years in the amount of \$56,500,000.**

6 Note: Additions are *single-underline italics Times New Roman*;
7 deletions are *strikethrough italics Times New Roman*.
8 Board amendment additions are double underlined.
9 Board amendment deletions are ~~strikethrough normal~~.

10 Be it ordained by the People of the City and County of San Francisco:

11 Section 1. General Findings:

12 (a) On or about March 3, 1998, the City and County of San Francisco ("City")
13 entered into a two-phase contract with Bombardier Transportation (Holdings) USA, Inc.
14 (Bombardier), Airport Contract 5703.A . Phase One of the contract was for Bombardier to
15 design, construct, and install the light rail air train system (the "AirTrain") at the San Francisco
16 International Airport. Phase Two of the contract was for Bombardier to operate and maintain
17 that system until February 24, 2009.

18 (b) The AirTrain is operated through the communications-based, train-control
19 software that Bombardier developed and to which Bombardier has exclusive, proprietary
20 rights.

21 (c) During Phase One testing of the system, on August 4, 2002, the system
22 malfunctioned, resulting in two trains colliding, causing property damage and delays in making
23 the system available for public use. Bombardier subsequently corrected the problem, and the
24 Air Train has been operating safely since it was opened to the public.

1 (d) On December 15, 2004, the City filed a lawsuit against Bombardier for general
2 Phase One contract delays and property damage resulting from the accident of August 4,
3 2002. The City also named Factory Mutual Insurance Company ("FMIC") as a defendant in
4 the lawsuit, alleging that FMIC had not adequately adjusted the City's claim following the
5 August 4, 2002 accident. The lawsuit was filed in the United States District Court for the
6 Northern District of California as case number C 04-5307 PJH.

7 (e) Bombardier and FMIC filed cross-complaints against the City in the same
8 lawsuit.

9 (f) On April 8, 2008, City and County of San Francisco, Bombardier Transportation
10 (Holdings) USA, Inc. (Bombardier), and Factory Mutual Insurance Company agreed to settle
11 their disputes which were part of the lawsuit through monetary and other consideration. (g)

12 One of the terms of the settlement that compensates the City for its loss resulting from
13 the accident provides that Bombardier and the City will enter into an operations and
14 maintenance contract for the continued function of the AirTrain on terms favorable to the City
15 following the expiration of Bombardier's current Operations and Maintenance contract on
16 February 24, 2009.

17 (h) The Board of Supervisors has reviewed the settlement agreement, found it
18 favorable to the City, and has approved it. The monetary compensation together with the
19 negotiated O & M contract provides the Airport with full cost recovery of its damages resulting
20 from the accident and Phase One contract delays.

21 (i) The O & M contract negotiated pursuant to the settlement ("the O & M contract")
22 provides that Bombardier will contract with the Airport for an initial five (5) year fixed term at
23 \$11,300,000 for the first year, escalated thereafter for the life of the contract, based on the
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1 economic price adjustment formula utilized in the original 5703.A – AirTrain System, Phase II
2 (O&M) contract.

3 (i) The O & M contract further provides for an automatic renewal of an additional
4 three-year fixed term will be awarded to Bombardier, pending their meeting certain
5 performance criteria as contained in the new contract.

6 (k) The O & M contract further provides that the Airport Commission will have the
7 discretion to exercise two (2), one-year options following the expiration of the three-year fixed
8 period, with training requirements of Airport-designated personnel, which provides the
9 opportunity for the Airport to transition operation and maintenance services from Bombardier
10 to the Airport.

11 (l) The O & M contract further provides contract terms, which have an increased
12 focus on passenger service and system reliability and include value-added services, such as
13 upgrades and motor overhauls, at no additional cost to the City.

14 (m) PGH Wong Engineering, Inc., an independent firm, performed an analysis of the
15 contract terms and conditions and concluded that the O & M contract provides significant cost
16 incentives which allow the Airport to recover its damages and further provides the Airport with
17 critical advantages and risk mitigations which other contractors cannot provide, particularly
18 given the proprietary nature of the AirTrain automated train control system.

19 (n) Section 9.118(b) of the San Francisco Charter requires approval of the Board of
20 Supervisors for contracts in excess of ten million dollars with duration of ten years or more.

21 (o) Funding for this contract will be provided from the Airport's Operating budget.

22 (p) The propriety aspects of this system, as well as the results of the negotiated
23 settlement of the lawsuit require this contract to be exempt from the competitive bidding
24 requirements of Chapter 21.

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1 Section 2. Waiver of competitive bidding requirements found in Chapter 21 of the
2 Administrative Code and award of contract:

3 (a) By this Ordinance, the Board of Supervisors grants the Airport Commission
4 waiver of the competitive bidding requirements found in Administrative Code Chapter 21.

5 (b) Further, by this Ordinance, the Board of Supervisors grants the award of
6 contract 8838, AirTrain Operations and Maintenance, to Bombardier Transportation
7 (Holdings) USA, Inc. (Bombardier) for a five-year term in the amount of \$56,500,000, and
8 approves a contingency budget of \$500,000 for payment of incentive bonuses and other
9 changes during Year 1 of the new contract..

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11 APPROVED AS TO FORM:
12 DENNIS J. HERRERA, City Attorney

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14 By: _____
15 Kathryn Luhe
16 Deputy City Attorney

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