

File No. 130879

Committee Item No. 3

Board Item No. 12

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee

Date: 12/04/2013

Board of Supervisors Meeting

Date: 12/10/2013

#### Cmte Board

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| <input type="checkbox"/>            | <input type="checkbox"/>            | Legislative Digest                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Budget and Legislative Analyst Report        |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Legislative Analyst Report                   |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Youth Commission Report                      |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Introduction Form                            |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/>            | <input type="checkbox"/>            | MOU  |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Budget                                 |
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| <input type="checkbox"/>            | <input type="checkbox"/>            | Contract/Agreement                           |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Form 126 – Ethics Commission                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Application                                  |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Public Correspondence                        |

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Completed by: Victor Young

Date November 27, 2013

Completed by: Victor Young

Date 12/5/2013

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.

<b>Item 3</b> <b>File 13-0879</b>	<b>Department:</b> San Francisco International Airport (Airport)
<b>EXECUTIVE SUMMARY</b>	
<b>Legislative Objectives</b>	
<ul style="list-style-type: none"> <li>• 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.</li> </ul>	
<b>Key Points</b>	
<ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> <li>• 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.</li> </ul>	
<b>Fiscal Impact</b>	
<ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> <li>• Funds to pay for the proposed amended agreement will be provided from the Airport's Operating budget.</li> </ul>	
<b>Recommendation</b>	
<ul style="list-style-type: none"> <li>• Approve the proposed resolution.</li> </ul>	

**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 <sup>1</sup>	9,417	47,707	38,166	38,166	19,857	80,758	234,071
Penalties <sup>1</sup>	(20,126)	(50,803)	(57,579)	(39,173)	(47,975)	(25,000)	(240,656)
<b>Annual Totals</b>	<b>\$3,807,360</b>	<b>\$11,906,744</b>	<b>\$12,244,558</b>	<b>\$11,672,586</b>	<b>\$11,903,486</b>	<b>\$8,165,266</b>	<b>\$59,700,000</b>
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

<sup>1</sup> 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
<b>Annual Totals</b>	<b>\$4,105,281</b>	<b>\$12,660,468</b>	<b>\$13,086,852</b>	<b>\$9,147,377</b>	<b>\$38,999,978</b>
Existing Budget Shortfall					3,200,000
<b>Total Three-Year Budget</b>					<b>\$42,199,978</b>

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. **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



**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.

(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.

(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:

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

<p><b>CITY</b> AIRPORT COMMISSION CITY AND COUNTY OF SAN FRANCISCO</p> <p>By: <u>John L. Martin</u> John L. Martin, Airport Director</p> <p>Attest:</p> <p>By: <u>Jean Caramatti</u> Jean Caramatti, Secretary Airport Commission</p> <p>Resolution No: <u>13-0186</u></p> <p>Adopted on: <u>July 23, 2013</u></p> <p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By: <u>Constance Menefee</u> Constance Menefee Deputy City Attorney</p>	<p><b>CONTRACTOR</b></p> <p><u>Johnetta Fawcett / Douglas V. Hertzendorf</u> Authorized Signature <u>Johnetta Fawcett / Douglas V. Hertzendorf</u> Printed Name <u>Secretary / Engineering Mgr.</u> Title</p> <p><u>Bombardier Transportation (Holdings) USA Inc.</u> Company Name</p> <p><u>40554</u> City Vendor Number</p> <p><u>1501 Lebanon Church Road</u> Address</p> <p><u>Pittsburgh, PA 15236</u> City, State, ZIP</p> <p><u>(412) 655-5700</u> Telephone Number</p> <p><u>25-1579550</u> Federal Employer ID Number</p>
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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  
2013 SEP 13 PM 1:30  
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

AIRPORT COMMISSION CITY AND COUNTY OF SAN FRANCISCO

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

<b>City Elective Officer Information</b> <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

<b>Contractor Information</b> <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

<b>Filer Information</b> <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

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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