

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

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May 26, 2017

**TO:** Budget and Finance Committee

**FROM:** Budget and Legislative Analyst



**SUBJECT:** June 1, 2017 Budget and Finance Committee Meeting

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<b>Item 4</b> <b>File 17-0409</b>	<b>Department:</b> San Francisco International Airport (Airport)
<b>EXECUTIVE SUMMARY</b>	
<p style="text-align: center;"><b>Legislative Objectives</b></p> <ul style="list-style-type: none"> <li>• The proposed resolution would approve Modification No. 2 to the between New South Parking-California (NSP) and the Airport for the management and operation of the Airport's public and employee parking to (a) extend the contract term for an additional 12 months from July 1, 2017 through June 30, 2018, and (b) increase the not to exceed amount by \$20,955,485, from \$95,969,983 to \$116,925,468.</li> </ul> <p style="text-align: center;"><b>Key Points</b></p> <ul style="list-style-type: none"> <li>• In February 2012, the Airport Commission awarded a contract to NSP for the management and operation of the Airport's public and employee parking facilities for a term of five years, expiring on June 30, 2017.</li> <li>• The Airport issued a Request for Proposals (RFP) in September 2016 for a new parking contract to begin on July 1, 2017.</li> <li>• The Airport received two proposals. On March 17, 2017, shortly after Airport staff issued a Notice of Intent to Award, a protest letter was received from the losing proposer revealing that one of the scoring panelists had previously given a professional recommendation to an Assistant General Manager who was included in the winning proposal, but had left the firm in December 2016. The Airport determined that the erroneous assumption of this individual's presence on the winning proposal's staff could have inappropriately affected the scoring by the panelists.</li> <li>• Due to these irregularities, on April 4, 2017, the Airport Commission rejected all proposals received and directed staff to start a new RFP process. At the same hearing, by Resolution No. 17-0072, the Airport Commission approved Modification No. 2 to the existing contract with NSP to extend the contract term by one year through June 30, 2018 in order to allow the Airport additional time to conduct a competitive selection process for a new parking contract.</li> </ul> <p style="text-align: center;"><b>Fiscal Impact</b></p> <ul style="list-style-type: none"> <li>• From July 2012 through April 2017, the Airport received parking revenues from its public and employee parking facilities of \$497,538,412. Contract expenditures to operate parking facilities were \$90,466,160 resulting in net parking revenues to the Airport of \$407,072,252.</li> <li>• The FY 2017-18 budget of \$20,955,485 is \$610,354 or 3 percent more than the FY 2016-17 budget of \$20,345,131</li> </ul> <p style="text-align: center;"><b>Recommendations</b></p> <ul style="list-style-type: none"> <li>• Amend the proposed resolution to reduce the proposed increase in the contract not-to-exceed amount by \$564,774, from \$20,955,485 to \$20,390,711, thereby reducing the total contract not-to-exceed amount from \$116,925,468 to \$116,360,694</li> <li>• Approve the proposed resolution.</li> </ul>	

## MANDATE STATEMENT

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

## BACKGROUND

Based on a competitive process, in February 2012 the Airport Commission awarded a contract to New South Parking-California (NSP) for the management and operation of the Airport's public and employee parking facilities for a term of five years expiring on June 30, 2017, and a not-to-exceed amount of \$95,969,983. The contract amount included NSP costs for staff and operating expenses; subcontractor expenses for janitorial services, security and traffic control services, and credit card fees; and a management fee. NSP's services included (a) collection of public parking fees, (b) facilities maintenance and janitorial services, (c) security services, (d) management of the Employee Parking Program and collection of employee parking fees, and (e) providing the Airport with monthly operational and fiscal reports. The contract was approved by the Board of Supervisors by Resolution No. 133-12.

On August 10, 2012, the contract was modified by Modification No. 1, to add provisions related to Title VI of the Civil Rights Act of 1964.

According to Ms. Cynthia Avakian, Director of Contracts in the Airport's Administration and Policy Division, Airport staff started work on a new Request for Proposal (RFP) process in the Summer of 2016 in anticipation of the end of the current contract on June 30, 2017. On September 6, 2016, staff received Airport Commission approval to issue the RFP.

The Commission received two proposals. Scoring of the written portion of the proposal began on December 7, 2016 and was completed on December 30, 2016. The oral interview process occurred between January 18, 2017 and January 20, 2017. On March 9, 2017, Airport staff issued a Notice of Intent to Award.

According to Ms. Avakian, on March 14, 2017, a protest letter was received from the proposer not awarded the contract. The letter alerted Airport staff that one of the panelists scoring the proposals had previously provided a professional reference for an assistant general manager who was included as part of the winning proposal. The letter also revealed that the same assistant general manager had left the company in December 2016. This information had not been revealed over the course of the RFP review.

According to the minutes of the April 4, 2017 Airport Commission hearing, Mr. Leo Fermin, Chief Business and Finance Officer for the Airport, noted that because the former assistant general manager was included in the proposal, the panelists may have been influenced by his presence even though he was no longer with the firm. Due to these irregularities, the Airport Commission rejected all proposals received and directed staff to start a new RFP process.

At the same hearing, the Airport Commission approved Modification No. 2 to the existing contract with NSP, which allowed for an extension of the current contract term with NSP for an additional 12 months from July 1, 2017 through June 30, 2018 in order to allow the Airport additional time to conduct a competitive selection process for a new parking contract.

According to Ms. Avakian, the Airport is redrafting the requirements of the new RFP to address concerns that were raised during the prior process.

### DETAILS OF PROPOSED LEGISLATION

In order to allow the Airport time to conduct a new competitive RFP process, the proposed resolution would approve Modification No. 2 to the existing contract between New South Parking-California and the Airport for the management and operation of the Airport's public and employee parking facilities. Modification No. 2, extends the contract term for an additional 12 months from July 1, 2017, through June 30, 2018, and increases the total contract amount by \$20,955,485 from not-to-exceed \$95,969,983 to \$116,925,468.

### FISCAL IMPACT

From July 2012 through April 2017, the Airport received parking revenues from its public and employee parking facilities of \$497,538,412. Contract expenditures to operate parking facilities were \$90,466,160 resulting in net parking revenues to the Airport of \$407,072,252, as shown in Table 1 below.

**Table 1. Net Parking Revenues to the Airport from FY 2012-13 to FY 2016-17**

	Parking Revenues	Contract Expenditures	Net Parking Revenues to the Airport
FY 2012-13	\$101,040,636	\$18,013,895	\$83,026,741
FY 2013-14	101,800,695	18,438,274	83,362,421
FY 2014-15	102,552,342	19,005,309	83,547,033
FY 2015-16	103,489,062	19,602,600	83,886,462
FY 2016-17 (through April 17)	88,655,677	15,406,082	73,249,595
<b>Total</b>	<b>\$497,538,412</b>	<b>\$90,466,160</b>	<b>\$407,072,252</b>

Table 2 below, shows the estimated budget of \$20,955,485 for the contract expenditures of New South Parking to manage and operate the Airport public and employee parking over the requested 12-month contract extension for FY 2017-18. The FY 2017-18 budget of \$20,955,485 is \$610,354 or 3 percent more than the FY 2016-17 budget of \$20,345,131.

**Table 2. New South Parking Estimated Budget for Managing and Operating the Public and Employee Parking Facilities in FY 2017-18**

<b>Operating Budget</b>	
<u>New South Parking Personnel Costs</u>	
Parking garage cashiers, valets, and supervisory staff	\$6,311,356
General management, administrative, technical, and support staff	2,793,136
Payroll taxes	1,550,270
<b>Subtotal, Personnel Costs</b>	<b>10,654,762</b>
<u>New South Parking Non-Personnel Costs</u>	
Office expenses	653,705
Insurance	122,353
<b>Subtotal, Non-Personnel Costs</b>	<b>776,058</b>
<u>Subcontractor Costs</u>	
Janitorial services	2,783,304
Security and traffic control	4,195,147
Credit card and merchant fees	1,837,277
Other contract services	609,938
<b>Subtotal, Subcontractor costs</b>	<b>9,425,666</b>
<b>Total Operating Costs</b>	<b>20,856,485</b>
Management fee	99,000
<b>Total FY 2017-18 Budget</b>	<b>\$20,955,485</b>

According to Mr. Kevin Van Hoy, Airport Director of Parking and Aviation Management, the Airport projects total contract expenditures of \$95,405,210 through June 30, 2017, which is \$564,774 less than the contract not-to-exceed amount of \$95,969,984 through June 30, 2017. Therefore, the proposed increase in the contract not-to-exceed amount should be reduced by \$564,774, from \$20,955,485 to \$20,390,711, thereby reducing the total contract not-to-exceed amount from \$116,925,468 to \$116,360,694.

## RECOMMENDATIONS

1. Amend the proposed resolution to reduce the proposed increase in the contract not-to-exceed amount by \$564,774, from \$20,955,485 to \$20,390,711, thereby reducing the total contract not-to-exceed amount from \$116,925,468 to \$116,360,694.
2. Approve the proposed resolution.

<b>Item 5</b> <b>File 17-0432</b>	<b>Department:</b> San Francisco International Airport (Airport)
<b>EXECUTIVE SUMMARY</b>	
<p style="text-align: center;"><b>Legislative Objectives</b></p> <ul style="list-style-type: none"> <li>• The proposed resolution would approve the first amendment of the lease between the Airport and World Duty Free Group, North America, LLC (WDFG) which would (1) reduce the total square footage of the WDFG leasehold space from 5,617 square feet to 4,999 square feet, (2) reimburse WDFG for unamortized construction costs in an amount not to exceed \$937,961 in the form of rental credits, and (3) reduce the Minimum Annual Guarantee (MAG) portion of the rent and the annual promotional charge in proportion to the net reduction in the square footage premises.</li> </ul> <p style="text-align: center;"><b>Key Points</b></p> <ul style="list-style-type: none"> <li>• The Airport and World Duty Free Group North America, LLC (WDFG) currently have a lease for three newsstand spaces and one combined newsstand and Starbucks space containing a total of approximately 5,617 square feet located in the International Terminal and Terminal 3. The lease term began on November 18, 2015, when the tenant improvements for all four locations were completed, and extends through November 17, 2025.</li> <li>• As part of the Airport’s Capital Plan, the Airport will begin renovation and expansion of the International Terminal security screening checkpoints in October 2018. In order to expand the security screening, the Airport will need to relocate three of WDFG’s existing lease locations in the International Terminal.</li> </ul> <p style="text-align: center;"><b>Fiscal Impact</b></p> <ul style="list-style-type: none"> <li>• WDFG has paid the Airport both the Minimum Annual Guarantee (MAG) rent and percentage rent of \$2,807,183 from November 12, 2013 through June 20, 2017.</li> <li>• Under the proposed first amendment, the MAG per square foot is \$133.95, which is the same as the MAG under the existing lease. The MAG under the existing lease is \$752,372 for 5,617 square feet of space, and the MAG under the proposed first amendment is \$669,616 for 4,999 square feet of space.</li> <li>• WDFG would pay the Airport estimated net revenues of \$4,911,882 based on the Minimum Annual Guarantee from July 1, 2017 through November 17, 2025. The Airport expects the tenant to pay percentage rent, rather than the MAG, which would result in rent to the Airport of exceeding \$4,911,882</li> </ul> <p style="text-align: center;"><b>Recommendation</b></p> <ul style="list-style-type: none"> <li>• Approve the proposed resolution</li> </ul>	

## MANDATE STATEMENT

City Charter Section 9.118(c) states that any modification, amendment or termination of a lease that had an initial term of ten years or more, including options to extend, or that had anticipated revenues of \$1 million or more is subject to Board of Supervisors approval.

## BACKGROUND

The Airport and Host International, Inc. entered into a ten-year lease on April 17, 2012, for three newsstand spaces and one combined newsstand and Starbucks space containing a total of approximately 5,617 square feet, plus an optional 400 square feet for seating, located in the International Terminal and Terminal 3. Host International, Inc. was subsequently acquired by World Duty Free Group North America, LLC (WDFG), and the Airport Commission approved an assignment of the lease to WDFG on November 12, 2013.

WDFG occupied the four locations in the International Terminal and Terminal 3 between December 10, 2012 and November 18, 2015 to construct tenant improvements. The lease term began on November 18, 2015, when the tenant improvements for all four locations were completed, and extends through November 17, 2025.

Under the existing lease for the period of November 18, 2015 through November 17, 2025, WDFG pays the Airport the higher of (a) the Minimum Annual Guarantee (MAG) of \$752,372,<sup>1</sup> or (b) percentage rent, which was set by the Airport, at:

- 12% of gross revenues up to and including \$500,000, plus
- 14 % of gross revenues of \$500,000.01 up to and including \$1,000,000, plus
- 16 % of gross revenues over \$1,000,000.

The current lease also requires a promotional charge of \$1 per square foot per year, or \$5,617 per year for a total of 5,617 square feet of space payable by WDFG to the Airport to reimburse the Airport for marketing and advertising costs.

As part of the Airport's Capital Plan, the Airport will begin renovation and expansion of the International Terminal security screening checkpoints in October 2018. In order to expand the security screening, the Airport will need to relocate three of WDFG's existing lease locations in the International Terminal, as shown in Table 1 below. The Airport entered into negotiations with WDFG on September 15, 2016, and the Airport Commission approved the first amendment to the lease on February 21, 2017.

## DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve the first amendment of the lease between the Airport and World Duty Free Group, North America, LLC (WDFG) for WDFG to operate three newsstands and one combined newsstand and a Starbucks in the International Terminal and

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<sup>1</sup> The MAG was \$733,176 in the initial lease year and is adjusted annually by the Airport based on the Consumer Price Index.

Terminal 3. The proposed first amendment to the lease would (1) reduce the total square footage of the WDFG leasehold space by 618 square feet or 11 percent, from 5,617 square feet to 4,999 square feet, (2) reimburse WDFG for unamortized construction costs<sup>2</sup> in an amount not to exceed \$937,961 in the form of rental credits, and (3) reduce the Minimum Annual Guarantee (MAG) portion of the rent and the annual promotional charge in proportion to the net reduction in the square footage of the lease locations. Table 1 below compares existing lease locations and square feet to the proposed lease locations.

**Table 1: WDFG's Locations in Terminal 3 and the International Terminal**

Location	Use	Current Square Feet	Proposal	Revised Square Feet
International Terminal Boarding Area A	San Francisco Chronicle News Stand	2,353	Relocate to space currently operated by InMotion Entertainment	1,971
International Terminal Boarding Area G	San Francisco Chronicle News Stand	1,360	Relocated to space currently operated by Burger Joint	800
International Terminal Boarding Area G	Starbucks <sup>a</sup> and San Francisco Travel News	1,435	Relocate Starbucks, operated by WDFG, to shared space with San Francisco Chronical in Boarding Area G and close San Francisco Travel News	1,360
Terminal 3	San Francisco Travel News	469	No changes other than to reflect current square footage of the space	868
<b>Total<sup>a</sup></b>		<b>5,617</b>		<b>4,999</b>

<sup>a</sup> The Starbucks' location in the International Terminal Board Area G currently has an additional 400 square feet space designated for seating. This will not be in the leased premises after the Starbucks in relocated.

Following the completion of the space modifications, the new lease will be comprised of four locations totaling approximately 4,999 square feet, down from 5,617 square feet.

<sup>2</sup> Amortized costs are payments for capital expenditures spread over multiple periods. Unamortized costs are those costs aggregated in one period.



**FISCAL IMPACT**

WDFG has paid the Airport both the Minimum Annual Guarantee (MAG) rent and percentage rent of \$2,807,183 from November 12, 2013 through June 20, 2017, as shown in Table 2 below.<sup>3</sup>

**Table 2: Minimum Annual Guarantee (MAG) or Rental Payments by WDFG to the Airport**

<b>Fiscal Year</b>	<b>MAG or Percentage Rent</b>	<b>Amount Paid</b>
FY 2013-14	MAG	\$642,400
FY 2014-15	MAG	642,400
FY 2015-16	Percentage Rent	675,551
FY 2016-17 (estimated)	Percentage Rent	846,832
<b>Total</b>		<b>\$2,807,183</b>

Under the proposed first amendment, the MAG per square foot is \$133.95, which is the same as the MAG under the existing lease. The MAG under the existing lease is \$752,372, equal to \$133.95 per square foot for 5,617 square feet of space, and the MAG under the proposed first amendment is \$669,616, which is also equal to \$133.95 per square foot for 4,999 square feet of space.

Upon completion of the relocations, the promotional charge of one dollar per square foot will be reduced from \$5,617 to \$4,999 per year to reflect the reduced square footage.

**Amortization of Tenant Improvements**

Under the proposed first amendment to the lease, the Airport will provide rent credits to WDRF equal to the unamortized construction costs of \$937,961, which represents the unamortized portion of the tenant improvements between the time the concessions opened and the time the new premises will become operational. According to Ms. Cheryl Nashir, Airport Director of Revenue Development and Management, the unamortized construction costs were based on (a) certified construction costs for the new spaces submitted by WDFG and (b) Airport calculations on the unamortized capital investment.

As shown in Table 3 below, World Duty Free Group would pay the Airport estimated net revenues of \$4,911,882 based on the Minimum Annual Guarantee from July 1, 2017 through November 17, 2025.

<sup>3</sup> According to Ms. Cheryl Nashir, Airport Director of Revenue Development and Management, the rent paid by WDFG to the Airport of \$642,400 in FY 2013-14 and FY 2014-15 and of \$675,551 in FY 2015-16 was less than the MAG of \$733,176 in FY 2013-14, (increasing by the Consumer Price Index in FY 2014-15 and FY 2015-16) due to phase in of the leased spaces during tenant improvements.

**Table 3: Minimum Net Payments by WDFG to the Airport from FY2017-18 until FY2024-25**

<b>Fiscal Year</b>	<b>Estimated MAG</b>	<b>Rent Credit</b>	<b>Net Rent</b>
FY 2017-18	\$669,616	\$468,981	\$200,636
FY 2018-19	686,356	468,981	217,376
FY 2019-20	703,515	-	703,515
FY 2020-21	721,103	-	721,103
FY 2021-22	739,131	-	739,131
FY 2022-23	757,609	-	757,609
FY 2023-24	776,549	-	776,549
FY 2024-25	795,963	-	795,963
<b>Total</b>	<b>\$5,849,843</b>	<b>\$937,961</b>	<b>\$4,911,882</b>

\*The table estimates the MAG by using the current CPI of 2.5 percent

According to Ms. Nashir, the Airport expects the tenant to pay percentage rent, rather than the MAG, which would result in rent to the Airport exceeding \$4,911,882 shown in Table 3 above.

### **RECOMMENDATION**

Approve the proposed resolution

<b>Item 6</b> <b>File 17-0628</b>	<b>Department:</b> General Services Agency - Department of Technology (DOT)
<b>EXECUTIVE SUMMARY</b>	
<p style="text-align: center;"><b>Legislative Objectives</b></p> <ul style="list-style-type: none"> <li>• Based on a competitive process, the proposed resolution would authorize the Department of Technology and the Office of Contract Administration to enter into a new three-year agreement with PCMG, Inc. (PCMG) for Microsoft Office 365 licenses and Microsoft enterprise software product licenses for an amount not to exceed \$30,328,541 for three years from June 1, 2017 until May 31, 2020.</li> </ul> <p style="text-align: center;"><b>Key Points</b></p> <ul style="list-style-type: none"> <li>• The Department of Technology entered into two agreements with En Pointe Technologies Sales, LLC (En Pointe) in 2014 to provide (i) cloud-based Microsoft Office 365 subscription services for all departments, to be administered by the Department of Technology, and (ii) Microsoft enterprise software products at discounted rates accessible to all City Departments. The Department of Technology will combine the two agreements (Microsoft Office 365 subscription services and Microsoft enterprise software products) into one agreement in order to increase administrative efficiency, and to provide the City with greater protection against risks, such as more secure liability allocation provisions.</li> <li>• The Department selected a reseller to provide the Microsoft Office 365 subscription services and Microsoft enterprise software products through a competitive process in April 2017. However, the selected reseller was unable to afford the required premium payments for the mandatory \$25,000,000 insurance policy for cyber-security and data privacy. After further negotiations, Microsoft agreed to increase their cap on limitation of liability to \$23,000,000, and allowing the City to reduce the cyber-security and data privacy insurance policy amount for the contractor from \$25,000,000 to \$2,000,000.</li> <li>• Due to the material change of risk allocation, the City issued a new request for quotes on May 9, 2017 and selected PCMG to provide Microsoft Office 365 subscription services and Microsoft enterprise software products.</li> </ul> <p style="text-align: center;"><b>Fiscal Impact</b></p> <ul style="list-style-type: none"> <li>• Under the proposed new three year agreement, the cost with PCMG for an amount of \$30,328,541 is \$1,699,071 or 5.9 percent more than the existing three year agreement with En Pointe. According to the Department, Microsoft continuously upgrades its existing products and therefore the prices increase over time. In addition, the demand on new computing power and data storage is likely to continue to grow in the next three years.</li> <li>• Funds to pay the agreement's costs will come from the annual operating budgets of respective City departments, as appropriated by the Board of Supervisors.</li> </ul> <p style="text-align: center;"><b>Recommendation</b></p> <ul style="list-style-type: none"> <li>• Approve the proposed resolution.</li> </ul>	

## MANDATE STATEMENT

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

## BACKGROUND

The Department of Technology entered into two agreements with En Pointe LLC<sup>1</sup> (En Pointe) in 2014 to provide (i) core Microsoft Office 365 subscription licenses for all departments, to be administered by the Department of Technology, and (ii) Microsoft enterprise software products at discounted rates, accessible to all City Departments. The Department of Technology sought and received approval from the City's Office of Contract Administration (OCA) to use the County of Riverside's competitive procurement process for two existing Microsoft blanket purchase order contracts under Section 21.16(b) of the Administrative Code.

Microsoft Office 365 subscription licenses under the original agreement between the City and En Pointe consist of secure cloud-based email and administrative tools, other cloud software<sup>2</sup>, server and database licenses required to operate the City's email system, the Microsoft Office Suite including Word and Excel, Skype for Business, and trial or development-scale access to new products and features. The initial total not-to-exceed amount for the agreement to provide Microsoft Office 365 subscription services and servers was \$9,574,455 for a term of three years from June 1, 2014 through May 31, 2017.

Microsoft enterprise software products under the original agreement between the City and En Pointe consist of Windows server and database licenses required to operate various software applications, Azure Government Cloud, Intune, Microsoft Customer Relationship Management (CRM), Virtual Desktop Access (VDA), SharePoint Online, Access Pro, Visio Pro, Project Pro and training credit and technical support credits usable during the agreement term. The initial total not-to-exceed amount of the agreement between the City and En Pointe LLC to provide Microsoft enterprise software products at discounted rates for all City Departments was \$9,869,293 for a term of three years from June 1, 2014 through May 31, 2017.

In November 2016, the Board of Supervisors approved a resolution, amending the two agreements between the City and En Pointe LLC to (i) increase the total not-to-exceed amount for Microsoft Office 365 subscription licenses by \$4,335,418 from \$9,574,455 to \$13,909,873 (File 16-1227), and (ii) to increase the total not-to-exceed amount for Microsoft enterprise software products by \$4,850,304 from \$9,869,293 to \$14,719,597 (File 16-1228). The end date of the agreements of May 31, 2017 was not changed. The total combined cost of both agreements is \$28,629,470.

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<sup>1</sup> The reseller was originally named En Pointe Technology Sales, Inc., but was renamed to En Pointe LLC.

<sup>2</sup> Cloud computing provides access to information technology applications and data through web-based tools, rather than through wirelines.

Under the original agreements with En Pointe, the City in its sole discretion may extend each of the two agreements for two additional years through May 31, 2019. However, the City decided not to extend the agreements. According to Mr. Hao Xie, Strategic Sourcing Manager at the Department of Technology, En Pointe is no longer entitled to offer the best prices granted by Microsoft to all government agencies within the State of California. In 2016, En Pointe LLC became a wholly owned subsidiary of PCM, Inc., the parent company of another national Microsoft licensing reseller known as PCMG, Inc. In addition, after discussions with the City Attorney and the City's Risk Manager, the Department of Technology decided to combine the two agreements (Microsoft Office 365 subscription licenses and Microsoft enterprise software product licenses) into one agreement in order to create administrative efficiency, and to provide the City with greater protection against risks, such as more secure liability allocation provisions.<sup>3</sup>

On April 7, 2017, the City requested quotes from the seven large account resellers<sup>4</sup> authorized by Microsoft to supply both the (i) Microsoft Office 365 subscription licenses to all departments via the Department of Technology, and (ii) Microsoft enterprise software product licenses at discounted government rates for all City Departments. The City added a requirement that the reseller become compliant with the City's Administrative Code within ten working days after preliminary notice of award. At the time that the initial request for quotes was in final preparation, but prior to publication, two of the seven authorized large account resellers were compliant with City Administrative Code provisions and a third was completing the documentation. On April 21, the City received quotes from these three large account resellers: Comparex USA Inc., Crayon Software Experts, LLC, and PCMG, Inc.

Subsequent to the submissions, Comparex USA Inc. determined that they had made a mistake on their quote and consequently withdrew their proposal. Therefore the City determined Crayon Software Experts, LLC (Crayon) to be the lowest bidder of the two remaining resellers who submitted quotes.

### **Cyber-Security and Data Privacy Insurance**

The request for quotes issued by the City in April 2017 required the selected reseller to provide a \$25,000,000 insurance policy for cyber-security and data privacy. The amount of the \$25,000,000 insurance policy was determined by Microsoft's low limitation of liability cap.<sup>5</sup> However, Crayon confirmed on May 9, 2017 that they could not afford to pay the premium on the required \$25,000,000 cyber-security and data privacy insurance policy. According to Mr. Xie, after continuing negotiations with Microsoft, Microsoft agreed to raise their liability limit directly to the City to \$23,000,000. As a result, the City's Risk Manager and Attorney agreed to

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<sup>3</sup> "Limitation of liability" clauses are included in contracts to limit, define or eliminate money damages that may result from a breach of the contract or tort by one of the parties.

<sup>4</sup> According to the Department of Technology, Microsoft only sells licenses in the quantities and pricing required by the City through an authorized large account reseller. The large account reseller, as authorized by Microsoft, sells to California state and local governments at a 7.5 percent discounted price from standard government rates, based on the aggregated volume estimate of purchases from all state and local California jurisdictions during the Resellers' applicable contract with Microsoft.

<sup>5</sup> The limitation of liability cap is the maximum amount of money that Microsoft will compensate the City in case of a cyber security or data privacy breach, or other direct damages resulting from use of Microsoft products.

reduce the cyber-security and data privacy insurance policy requirement from the reseller from \$25,000,000 to \$2,000,000.

Due to the material change in the agreement term, the City issued a new request for quotes on May 9, 2017 and received four new proposals by May 15, 2017, as seen in Table 1 below. PCMG, Inc. was deemed the lowest responsive bidder with a bid amount of \$30,328,541, and is currently a City compliant vendor.

**Table 1: Comparison of Evaluated Bids in Response to April 2017 and May 2017 Request for Quotes**

<b>Company Name</b>	<b>Bid Amount in Response to April 2017 Request for Quotes</b>	<b>Bid Amount in Response to May 2017 Request for Quotes</b>
PCMG, Inc.	\$33,944,199	\$30,328,541
SHI	-	30,859,083
Comparex USA, Inc.	30,221,208	31,301,257
Crayon Software Experts, LLC	31,574,463	31,574,463

## DETAILS OF PROPOSED LEGISLATION

Based on a competitive process, the proposed resolution would authorize the Department of Technology and the Office of Contract Administration to enter into a new three-year agreement with PCMG, Inc. (PCMG) for Microsoft Office 365 licenses and Microsoft enterprise software product licenses for an amount not to exceed \$30,328,541 for three years from June 1, 2017 until May 31, 2020.

## FISCAL IMPACT

According to Ms. Kathy Lu, Principal Analyst at the Department of Technology, the Department of Technology estimated the total cost of the new three year agreement to be \$31,595,756, which is \$1,267,215 more than the proposed agreement with PCMG, Inc. for which the City would pay \$30,328,541, as seen in Table 2 below. The Department estimated the agreement cost based on the current number of licenses and data storage, with an added margin for the migration to Outlook 365 of additional City departments not currently using Microsoft Outlook 365, such as the City Attorney and the Public Utilities Commission, to Outlook 365 and other Microsoft products. The City currently has 32,230 Microsoft licenses, which are tracked via online portal and regular communications with the reseller and Microsoft.

**Table 2: Proposed Agreement with PCMG, Inc. as compared to the estimate from the Department of Technology**

Description	Department Estimate	Final price to be charged to the City by PCMG, Inc.	Reduction in City cost compared to original Department estimate
Year 1-3 Upfront Commitment <sup>1</sup>	\$24,788,116	\$24,087,036	\$701,080
Year 1 True-Up Estimate <sup>2</sup>	2,288,729	2,076,507	\$212,222
Year 2 True-Up Estimate	2,286,189	2,094,783	\$191,406
Year 3 True-Up Estimate	2,232,723	2,070,215	\$162,508
<b>Total Estimated Cost</b>	<b>\$31,595,756</b>	<b>\$30,328,541</b>	<b>\$1,267,215</b>

1. Upfront commitment is based on the minimum forecast that the Department of Technology and major City departments anticipate needing and therefore purchasing for each fiscal year.
2. The True-Up Estimate is the additional, foreseeable forecast that the Department of Technology predicts will be spent based on past practices.

The proposed new three year agreement cost with PCMG in an amount of \$30,328,541 is \$1,699,071 or 5.9 percent more than the existing three year agreement with En Pointe LLC of \$28,629,470. According to Mr. Xie, Microsoft continuously upgrades its existing products and therefore the prices increase over time. In addition, the demand on new computing power and data storage is likely to continue to grow in the next three years. The Department of Technology estimated the cost of Microsoft services and products under the proposed agreement based on extensive discussions with 27 participating City departments, plus a contingency for new products that the City has not yet used today but may need in the future.<sup>6</sup>

Funds to pay the agreements' costs will come from the annual operating budgets of respective City departments, as appropriated by the Board of Supervisors.

## RECOMMENDATION

Approve the proposed resolution

<sup>6</sup> According to Ms. Lu, these products may include products to enhance data analytics, data visualization, central management of disparate devices, Skype for Business, and cloud versions of on premise applications.