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

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

Note: Additions are single-underlined italics Times New Roman; deletions are strikethrough italics Times New Roman. Board amendment additions are double underlined. Board amendment deletions are strikethrough normal.

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

Section 1. General Findings:

(a) On or about March 3, 1998, the City and County of San Francisco ("City") entered into a two-phase contract with Bombardier Transportation (Holdings) USA, Inc. (Bombardier), Airport Contract 5703.A. Phase One of the contract 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 contract was for Bombardier to operate and maintain that system until February 24, 2009.

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

(c) During Phase One testing of the system, on August 4, 2002, 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 Air Train has been operating safely since it was opened to the public.
(d) On December 15, 2004, the City filed a lawsuit against Bombardier for general Phase One contract delays and property damage resulting from the accident of August 4, 2002. 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 August 4, 2002 accident. The lawsuit was filed in the United States District Court for the Northern District of California as case number C 04-5307 PJH.

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

(f) 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 the lawsuit through monetary and other consideration. (g) One of the terms of the settlement that compensates the City for its loss resulting from the accident provides that Bombardier and the City will enter into an operations and maintenance contract for the continued function of the AirTrain on terms favorable to the City following the expiration of Bombardier's current Operations and Maintenance contract on February 24, 2009.

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

(i) The O & M contract negotiated pursuant to the settlement ("the O & M contract") provides that Bombardier will contract with the Airport 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.

(i) The O & M contract further provides for 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.

(k) The O & M contract further provides that the Airport 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 operation and maintenance services from Bombardier to the Airport.

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

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

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

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

(p) The propriety aspects of this system, as well as the results of the negotiated settlement of the lawsuit require this contract to be exempt from the competitive bidding requirements of Chapter 21.
Section 2. Waiver of competitive bidding requirements found in Chapter 21 of the Administrative Code and award of contract:

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

(b) Further, by this Ordinance, the Board of Supervisors grants the award of contract 8838, AirTrain Operations and Maintenance, to Bombardier Transportation (Holdings) USA, Inc. (Bombardier) for a five-year term 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.

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

By: Kathryn Luna
Deputy City Attorney
Ordnance waiving competitive bid requirements and approving the award of an Operations and Maintenance Contract ("O&M") with Bombardier Transportation (Holdings) USA, Inc. (Bombardier) to operate and maintain the San Francisco International Airport's AirTrain system for five years in the amount of $56,500,000.

November 4, 2008  Board of Supervisors — PASSED ON FIRST READING
Ayes: 11 - Alioto-Pier, Ammiano, Chu, Daly, Dufty, Elsbernd, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval

November 18, 2008  Board of Supervisors — FINALLY PASSED
Ayes: 11 - Alioto-Pier, Ammiano, Chu, Daly, Dufty, Elsbernd, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval
I hereby certify that the foregoing Ordinance was FINALLY PASSED on November 18, 2008 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

11/25/2008

Date Approved

Mayor Gavin Newsom