



Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700
TEL 510.817.5700
TDD/TTY 510.817.5769
FAX 510.817.7848
EMAIL info@mtc.ca.gov
WEB www.mtc.ca.gov

Memorandum

TO: Bay Area Headquarters Authority

DATE: March 21, 2012

FR: Executive Director

RE: BAHA Resolution No. 5 – Office Lease and Purchase and Sale Agreements with the Bay Area Air Quality Management District and Declaration of Covenants and Restrictions for the 390 Main Street Office Building

Staff recommends approval of BAHA Resolution No. 5 authorizing the Executive Director, the Treasurer and Auditor, and each of them, to negotiate and execute the Office Lease and Purchase and Sale Agreements between BAHA and the Bay Area Air Quality and Management District (the “Air District”). Resolution No. 5 also authorizes the Executive Director and the Treasurer and Auditor to execute the Declaration of Covenants, Conditions and Restrictions (“CC&Rs”) for the 390 Main Street office building. A summary of key terms is attached to this Memorandum as Attachment A.

The Air District agreed to participate in the purchase of 390 Main Street in June 2011. As part of that approval, the Air District agreed to certain terms and principles governing the transaction, including:

- Lease with option to purchase at set price within 10 years of occupancy.
 - Base lease terms of \$1.9 million per year
 - Purchase price at not to exceed \$385/square foot
- Turn-key office space designed to the same standards as the MTC/BATA space.

The Office Lease and Purchase and Sale Agreements will establish the conditions for the purchase and occupancy of office space at 390 Main Street by the Air District.

390 Main Street Office Lease:

The first step in the process will be for the Air District to lease approximately 62,500 square feet at 390 Main Street, including 2,500 square feet would be for an air quality lab and space for specialized vans. As of the date of this memorandum the Air District is considering whether to locate the air quality lab at 390 Main Street or at another location. The initial document is the Office Lease Agreement. The main features of the lease are consistent with the terms discussed by the MTC/BATA and Air District boards last summer. The main features are:

- Lease space of approximately 60,000 square feet of office space, and approximately 2,500 square feet of space for an air quality laboratory and specialized vans.
- Lease rental of \$1.9 million annually (\$158,000 monthly) plus proportionate share of common area and joint-use space.
- Lease rate fixed for 10 years if the Air District does not exercise its option to purchase.
- Restrictions on subletting or other uses subject to BAHA approval.

The balance of the terms are consistent with any standard commercial lease. The lease will remain in effect until the Air District exercises its option to purchase the occupied space.

Purchase and Sale Agreement:

The terms of the Purchase and Sale Agreement will allow the Air District the option to purchase the building for a fixed price at any point during the first 10 years of the office lease. The purchase terms include:

- Fixed price of not to exceed \$385/square foot (\$385 x 62,500 = \$24,062,500) With space for laboratory and specialized vans
OR (\$385 x 60,000 = \$23,100,000) Office space alone
- Parking – 12% of final parking spaces.
- Office space is turn-key and to standards equivalent to MTC/BATA space including data and telecommunications equipment.
- Common/joint use areas will include pro-rata share of all joint use and common area spaces.
- Condominium Corporation membership governing all agency space decisions.

The terms for the Office Lease Agreement and Purchase and Sale Agreement have been approved by the Air District. The costs for the building purchase are the same as BAHA's purchase cost while the exterior improvement is a pro-rata share of BAHA's budgeted cost. Because the Air District wants a fixed price for a turn-key office space, including phone and data equipment, there is a contingency factor built in to offset the BAHA risk of project cost overruns.

Declaration of Covenants, Conditions and Restrictions ("CC&Rs"):

When the Air District exercises its option to purchase, its occupancy will change from tenant to a building owner.

The CC&Rs cover the operation of the public agency space. The agency space will consist of all governmental offices, as well as common area and joint public use spaces. The CC&Rs call for management of the space by a Condominium Corporation comprised of the owners. This is similar to the governance arrangement at the MetroCenter in Oakland. The Air District will become a member of the Condominium Corporation as soon as the option to purchase is exercised.

The Condominium Corporation will establish rules, procedures, budgets and changes for the entire agency space. These duties include:

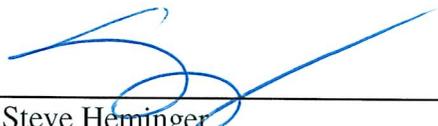
- Retention of property management company;
- Adoption of the annual operating budget; and
- Assessment of cost assessments for all joint use and common area spaces.

All property owners will be members of the Condominium Corporation with the Air District (assuming it exercises its purchase option) and BAHA the initial members. A chart setting out the 390 Main Street Organization Structure is attached to this Memorandum as Attachment B.

Recommendation

The Office Lease and Purchase and Sale Agreements and CC&Rs will provide for the purchase, development and long-term management of the agency space. Staff from legal and finance departments of both the Air District and BAHA have reviewed the documents and believe they are appropriate for approval.

Staff requests approval of Resolution No. 5 approving the forms of the Office Lease and Purchase and Sale Agreements and CC&Rs in substantially the form on file with the Secretary of BAHA and authorizes the Executive Director, the Treasurer and Auditor, and each of them, to negotiate and execute the Office Lease and Purchase and Sale Agreements with the Air District and to execute the CC&Rs. As you know, I serve as the Executive Director of BAHA and Brian Mayhew serves as both Treasurer and Auditor.



Steve Heminger

SH:bm

Summary of Key Terms

The following is a general overview and summary of key terms. For specific language, refer to the documents in their original form. Capitalized terms shall have the meanings as ascribed to them in the documents. Language contained in the documents is controlling.

Office Lease

Note: It is anticipated that the lease will convert to a purchase around the time of the Air District's occupancy of the premises, through a purchase option that may be exercised under the lease. Nonetheless, the lease is drafted as a 30 year commercial lease, in the event the option is not exercised.

- Premises will be approximately 60,000 square feet of office space, and potentially (TBD), approximately 2500 square feet of space for an air quality laboratory and specialized vans
- Lease term of 30 years, divided into initial 10 year, and succeeding 5 year increments
- Rent to commence around time of move in
- Base rent equals \$1,900,000 annually or \$158,334 monthly for years 1-10 of the lease term
- Base rent shall be adjusted on the first day of the 11th, 16th, 21st and 26th lease years, to an amount equal to 90% of the then current market rent for office space in the commercial space area of the building
- Air District responsible for 70% of prorata share of Common Area Expenses (e.g. management, ordinary maintenance, repair or operation of the part of the building constituting common area— e.g. stairwells, corridors, elevators, restrooms, etc) and 100% of prorata share of Jointly Shared Space Expenses (e.g. management, ordinary maintenance, repair or operation expenses related to board room(s), library, food service, shared conference rooms, mailroom, server room, etc)
- Parking to be provided within the building for Air District's board members to attend meetings; acknowledgment of need for 75 total parking spaces to be provided on and off-site; precise number and location of all spaces TBD. Total number of Air District owned spaces to be not less than the same percentage of parking spaces in the Building as the percentage which the rentable square footage of the Premises (exclusive of dedicated van space) bears to the rentable square footage for the Agency Space as a whole.
- Air District may transfer Lease to another governmental agency, but BAHA has right to withhold consent to transfer to a nongovernmental agency
- BAHA also has right to "recapture" space for itself upon a transfer event
- If Air District exercises the Purchase Option and closes the transaction not later than the end of the 10th Lease Year, the purchase price for its Unit is BAHA's cost per square foot of acquiring 390 Main Street, including all costs of renovating and improving the Building and furnishing the Agency Space but expressly excluding leasing and lease-up costs (the "Agency Footprint Actual Cost"), up to a maximum cost of \$385.00 per square foot of Building area multiplied by the square footage of the Unit, as shown on the recorded condominium subdivision map and exclusive of the parking spaces. If Air District exercises the Purchase Option at any time after the 10th Lease Year, the purchase price for the Unit shall be the greater of (i) the foregoing cost, as increased by the percentage increase, if any, in the Consumer Price Index from the eleventh anniversary of the date the lease is signed to the date of the closing and (ii) the then fair market value for comparable office condominium units in the San Francisco area. BAHA and Air District shall establish and agree upon the Agency Footprint Actual Cost [not later than six (6) months—NOTE: this time frame is being reviewed to coordinate with architect and contractor timing] following the date the lease is signed
- Air District has right, upon not less than two (2) years prior written notice and subject to the reasonable approval of BAHA, to terminate the Lease.

Purchase and Sale Agreement and Joint Escrow Instructions

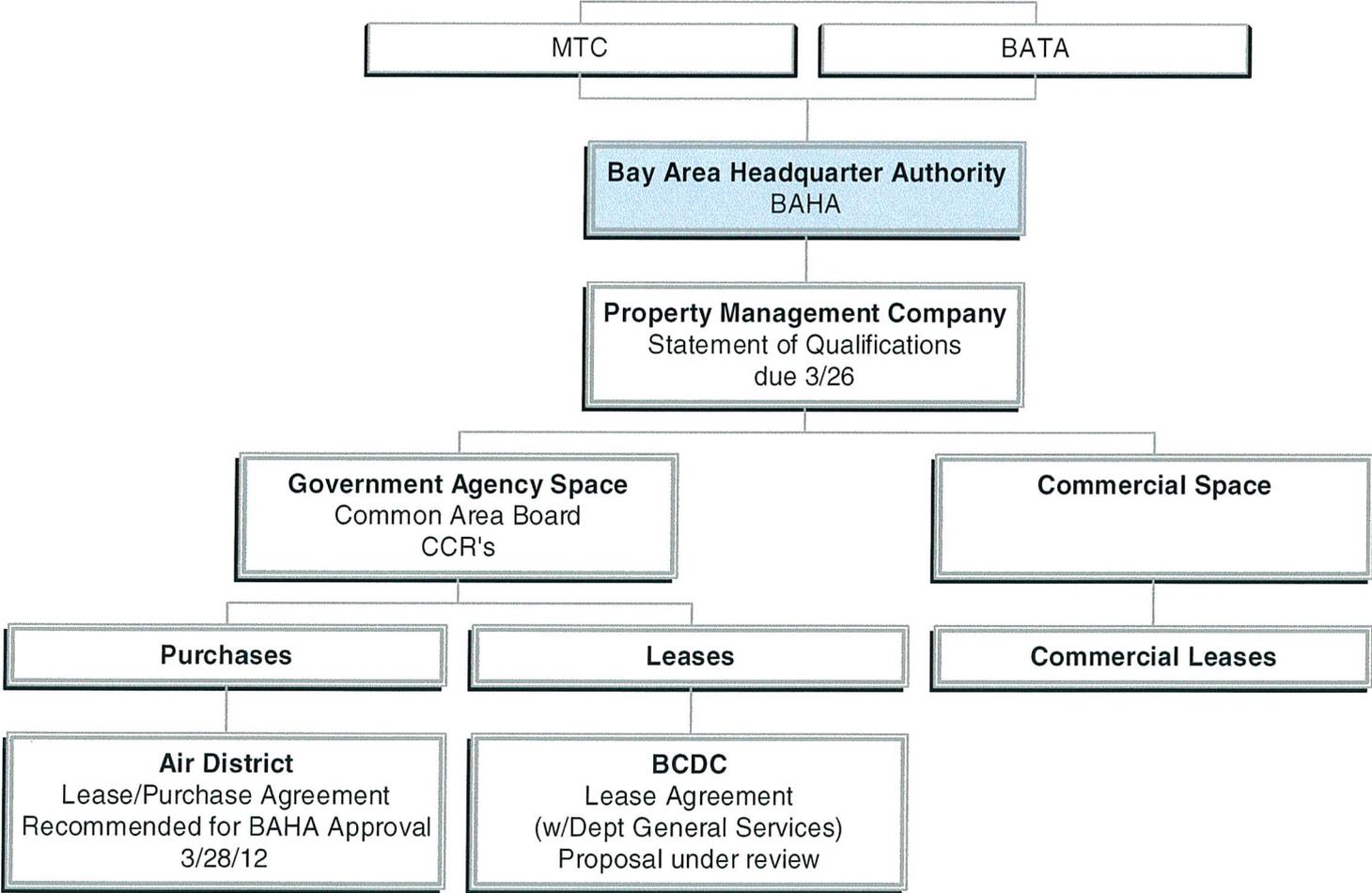
- Anticipated to be executed at the time the Air District occupies its space (Unit), (but Air District may exercise its purchase option at its discretion and elect instead to continue under the Lease)
- Purchase of the Unit, together with all rights, including membership in the Condominium corporation, rights to the Common Area and Jointly Shared Spaces and a TBD number of parking spaces in the building
- Purchase of personal property, plans, specifications, permits
- Purchase price as determined in the Lease provision dealing with “option to purchase”
- If Air District sells its interest to any party other than a successor functioning in role of Air District, for an amount more than what Air District originally paid to BAHA, BAHA entitled to recover any amounts it spent on the unit over and above the purchase price paid by Air District originally
- Sale is “AS IS”
- Utilities and Common Area assessments for the Unit, which have been paid by Air District under the terms of the Lease continue to be paid in same fashion after closing. Any other operating expenses attributable to the Unit are prorated and adjusted between Buyer and Seller as of the Closing Date
- In the event there is damage and/or destruction by fire or other casualty prior to the Closing, and the cost to repair and/or restore such damage and/or destruction exceeds \$50,000,000, then Air District shall have the right to terminate Purchase Agreement by written notice to BAHA within five (5) business days
- BAHA required to indemnify, defend and hold harmless Air District from any Repair and Remediation Costs arising from the release, treatment, use, generation, storage or disposal by BAHA or any of its employees, agents or contractors of Hazardous Materials on, under or from the Unit occurring prior to the Closing

CC&Rs

- Similar in form and terms to the CC&Rs currently in effect for the MetroCenter
- Applicable to all Agency Space in the building
- Jointly Shared Space to be owned by BAHA
- All Agency Space administered by a Facility Operator, reporting to a Condominium Corporation Board and BAHA
- Proportional votes on the Board aligned with prorata ownership of Agency Space
- Capital Improvements defined as any improvements or alterations which increase the size, value of life of the Facility. The Facility is the entire building
- All costs of ordinary maintenance, repair, replacement and improvements other than Capital Improvements shall be borne by all the Unit Owners as a Common Expense. All Capital Improvements and restoration (to the extent not covered by insurance carried by the Corporation) and all costs of the initial furnishing of the Common Areas and Jointly Shared Spaces shall be borne by BAHA

Attachment B

390 Main Street Organization Structure



Date: March 28, 2012

W.I.: 1542

ABSTRACT

BAHA Resolution No. 5

This resolution authorizes the Executive Director and the Treasurer and Auditor, and each of them, to negotiate and enter into an Office Lease and a Purchase and Sale Agreement with the Bay Area Air Quality Management District for office space located at 390 Main Street in San Francisco, California. This resolution also approves the form of the Declaration of Covenants, Conditions and Restrictions for agency space located at 390 Main Street and authorizes the Executive Director and the Treasurer and Auditor, and each of them, to execute the document.

Discussion of this action is contained in the Executive Director's Memorandum, dated March 21, 2012.

Date: March 28, 2012
W.I.: 1542

Re: Office Lease and Purchase and Sale Agreement with the Bay Area Air Quality Management District and Declaration of Covenants, Conditions and Restrictions for 390 Main Street Office Building

BAY AREA HEADQUARTERS AUTHORITY
RESOLUTION NO. 5

WHEREAS, the Metropolitan Transportation Commission (“MTC”) and the Bay Area Toll Authority (“BATA”) have executed a joint exercise of powers agreement dated September 28, 2011 (the “Agreement”), which Agreement creates and establishes the Bay Area Headquarters Authority (“BAHA”); and

WHEREAS, BAHA is the owner of certain real property located at 390 Main Street in the City and County of San Francisco, State of California (hereinafter referred to as the “Building”); and

WHEREAS, BAHA intends to divide the Building into two separate components, with approximately 200,000 or more square feet allocated to the development of separate condominium units to be acquired or leased by government agencies, who will share certain jointly used and common areas (hereinafter referred to as the “Agency Space”) and the balance of the Building to be retained by BAHA for future expansion of the Agency Space and leased to public and private sector tenants until expansion occurs; and

WHEREAS, the Bay Area Air Quality Management District (hereinafter referred to as “BAAQMD”) wishes to enter into a lease (hereinafter referred to as the “Office Lease”) with BAHA for a portion of the Agency Space with an option to purchase the space; and

WHEREAS, should BAAQMD exercise its option to purchase, it shall enter into a Purchase and Sale Agreement and Joint Escrow Instructions (hereinafter referred to as the “Purchase Agreement”) with BAHA; and

WHEREAS, BAHA wishes to impose on Agency Space divided into separate condominium units mutually beneficial restrictions under a general plan or scheme of improvement for the benefit of all of said condominiums and the owners thereof in the form of a Declaration of Covenants, Conditions and Restrictions (hereinafter referred to as the "CC&Rs"); and

WHEREAS, forms of the Office Lease, Purchase Agreement, and CC&Rs are on file with the Secretary of BAHA; and

WHEREAS, it furthers BAHA's purpose as stated in the Agreement for BAHA to negotiate, execute and deliver the Office Lease, Purchase Agreement and CC&Rs; and

WHEREAS, all acts, conditions and things required by the Constitution and the laws of the State of California to exist, to have happened and to have been performed in connection with the execution of the Office Lease, Purchase Agreement, and CC&Rs and the other BAHA actions contemplated hereby do exist, have happened and have been performed in regular and due time, form and manner as required by law, and BAHA is now duly authorized and empowered, pursuant to each and every requirement of law, to take such actions; now, therefore, be it

RESOLVED, that BAHA specifically finds and declares that the statements, findings and determinations of BAHA set forth in the preambles above are true and correct; and be it further

RESOLVED, that BAHA authorizes the lease of a portion of the Agency Space to the BAAQMD and further authorizes the Executive Director of BAHA and the Treasurer and Auditor of BAHA, and each of them (each, an "Authorized Representative"), to negotiate, execute and deliver, for and on behalf of BAHA, the Office Lease with BAAQMD in substantially the form on file with the Secretary of BAHA, with such revisions as the Authorized Representative executing the same, with the advice of the General Counsel to BAHA, may approve, such approval to be conclusively evidenced by the execution of the Office Lease in final form; and be it further

RESOLVED, that should BAAQMD exercise its option to purchase the portion of Agency Space leased under the Office Lease together with rights to the common area and jointly shared spaces and other property and rights set forth in the Purchase Agreement, BAHA authorizes the sale of such portion of Agency Space and associated property and rights and further authorizes each Authorized Representative to negotiate, execute and deliver, for and on behalf of BAHA, the Purchase Agreement with BAAQMD in substantially the form on file with the Secretary of BAHA, with such revisions as the Authorized Representative executing the same, with the advice of the General Counsel to BAHA, may approve, such approval to be conclusively evidenced by the execution of the Purchase Agreement in final form; and be it further

RESOLVED, that BAHA approves the development of the Agency Space into condominium units and further approves the form of the CC&Rs and authorizes each Authorized Representative to execute and deliver, for and on behalf of BAHA, the CC&Rs in substantially the form on file with the Secretary of BAHA, with such revisions as the Authorized Representative executing the same, with the advice of the General Counsel to BAHA, may approve, such approval to be conclusively evidenced by the execution of the CC&Rs in final form; and be it further

RESOLVED, that this Resolution shall take effect from and after its adoption.

BAY AREA HEADQUARTERS AUTHORITY

Adrienne J. Tissier, Chair

The above resolution was entered into by the Bay Area Headquarters Authority at a regular meeting of BAHA held in Oakland, California, on March 28, 2012.

