

File No. 100900

Committee Item No. 8

Board Item No. 1

### COMMITTEE/BOARD OF SUPERVISORS

#### AGENDA PACKET CONTENTS LIST

Committee BUDGET AND FINANCE

Date 9/8/10

Board of Supervisors Meeting

Date 9/14/10

#### Cmte Board

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| <input type="checkbox"/>            | <input type="checkbox"/>            | Ordinance                                    |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Legislative Digest                           |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Budget Analyst Report                        |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Legislative Analyst Report                   |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Introduction Form (for hearings)             |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Department/Agency Cover Letter and/or Report |
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| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Budget                                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Subcontract Budget                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Contract/Agreement                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Award Letter                                 |
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#### OTHER

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Completed by: Gail Johnson

Date 9/3/10

Completed by: [Signature]

Date 9/9/10

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

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1 [Approval of Amendment No. 1 of Lease, Use and Operating Agreement for BART Station and  
2 Related Facilities and Grant of Easement at San Francisco International Airport, Lease No.  
3 L97-0081.]

4  
5 **Resolution approving and authorizing the execution of Amendment No. 1 to Lease, Use**  
6 **and Operating Agreement for BART Station and Related Facilities and Grant of**  
7 **Easement at San Francisco International Airport, Lease No. L97-0081 to: (1) limit BART**  
8 **Premium Fare (surcharge) for non-airline airport employees to \$1.50 each way for the**  
9 **remainder of the Lease; (2) remove BART Faithful Performance Deposit requirement;**  
10 **(3) permit monthly payment by BART of the annual rent in lieu of advance annual**  
11 **payment; (4) allow advertising by BART in the Airport-BART Station; and (5) include**  
12 **administrative updates to the Lease.**

13 WHEREAS, by Airport Commission Resolution No. 97-0081, the City and County of  
14 San Francisco, acting by and through its Airport Commission ("City") approved the Lease,  
15 Use and Operating Agreement for BART Station and Related Facilities and Grant of  
16 Easement at San Francisco International Airport, Lease No. L97-0081 ("Lease"), adopted  
17 on April 8, 1997, between San Francisco Bay Area Rapid Transit District ("BART") and the  
18 City; and

19 WHEREAS, by Board of Supervisors Resolution No. 621-97, the Board of  
20 Supervisors approved the Lease on June 27, 1997 between BART and City; and

21 WHEREAS, on July 1, 2009, BART increased the surcharge portion of the fare  
22 ("Premium Fare") from \$1.50 to \$4.00 each way for all persons accessing BART from the  
23 Airport-BART Station; and

24 WHEREAS, the Airport desires to alleviate the increase in the Premium Fare to non-  
25 airline Airport badged employees accessing the Airport-BART Station by limiting the Premium  
26 Fare to \$1.50 each way for the remainder of the Lease; and

1 WHEREAS, in consideration of BART's agreement to this request, City and BART  
2 desire to amend the Lease to: (1) limit the Premium Fare to \$1.50 each way for non-airline  
3 Airport employees; (2) remove BART's Faithful Performance Deposit; (3) permit monthly rent  
4 payments in lieu of advance annual payment; (4) allow BART advertising in the Airport-BART  
5 Station; and (5) include contact details and applicable City and other governmental provisions;  
6 now, therefore, be it

7 RESOLVED, that this Board of Supervisors hereby approves and authorizes the  
8 execution of Amendment No. 1 to the Lease, Use and Operating Agreement for BART Station  
9 and Related Facilities and Grant of Easement at San Francisco International Airport, Lease  
10 No. L97-0081 between San Francisco Bay Area Rapid Transit District ("BART") and the City  
11 and County of San Francisco acting through its Airport Commission ("City") to: (1) limit the  
12 Premium Fare to \$1.50 each way for non-airline Airport employees; (2) remove BART's  
13 Faithful Performance Deposit; (3) permit monthly rent payments in lieu of advance annual  
14 payment; (4) allow BART advertising in the Airport-BART Station; and (5) include contact  
15 details and applicable City and other governmental provisions.  
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**Item 8**  
**File 10-0900**

**Department(s):**  
San Francisco Airport (Airport)

## EXECUTIVE SUMMARY

### Legislative Objective

- The proposed resolution would approve Amendment No. 1 to the Lease, Use and Operating Agreement for the BART Station and Related Facilities and Grant of Easement at San Francisco International Airport (Airport) to: (1) limit BART's Premium Fare surcharge for Airport employees to \$1.50 each way; (2) remove BART's Faithful Performance Deposit requirement; (3) permit monthly lease payments by BART in lieu of advance annual payments; (4) allow advertising by BART in the Airport-BART Station; and (5) include administrative updates.

### Key Points

- On April 8, 1997, the Board of Supervisors approved a 50-year Lease, Use and Operating Agreement (Agreement) between the Bay Area Rapid Transit District (BART) and the Airport for the BART Station and Related Facilities and Grant of Easement at the Airport from June 22, 2003 through June 21, 2053.
- On July 1, 2009, BART increased the Premium Fare surcharge from \$1.50 to \$4.00 in each direction, for all persons accessing BART from the Airport BART Station. In response to the increased Premium Fare surcharge, the Airport began operating a free shuttle bus for Airport employees between the Airport and Millbrae BART Stations.
- The proposed Amendment No. 1 would add a new BART Premium Fare program that would allow Airport employees to go back to paying a reduced Premium Fare surcharge of \$1.50 in each direction for trips to and from the Airport BART Station for the duration of the Lease, or through June 21, 2053. Upon commencement of the program, the Airport will cease operation of the Airport's free shuttle bus for Airport employees between the Airport and the Millbrae BART Stations.
- Under the existing Agreement, BART is required to maintain a Faithful Performance Deposit equal to the greater of either (i) 50 percent of the Annual Rent and the Estimated Repair Contribution each Fiscal Year, or (ii) \$2,351,650. The proposed Amendment No. 1 would eliminate this requirement.
- Under the existing Agreement, BART must pay the Airport annual rent of \$2,500,000, in advance, for the lease of the Airport BART Station and related facilities. Under the proposed Amendment, BART would stop paying rent in one annual payment and instead would remit monthly payments in the amount of \$208,333.
- The proposed Amendment No. 1 would allow BART to advertise at the BART Airport Station consisting of wall-mounted dioramas, floor and wall wraps, with a maximum of (a) 20 advertising displays during the first five years, and (b) 30 advertising displays during the remaining 38 years of the Agreement.
- Under the terms of the existing advertising agreement between BART and the San Francisco Municipal Transportation Agency (SFMTA), BART would pay 15.58 percent of the revenues from advertising in the BART Airport Station to the SFMTA, which is the same percentage of revenues that SFMTA receives from advertising in all BART stations.

### Fiscal Impact

- The proposed transition from advance annual to monthly payments will prevent the Airport from earning interest of \$16,340.
- The Airport's estimated cost of operating the free shuttle bus for Airport employees in FY 2010-11 is \$534,982, which would be the Airport's approximate annual savings from discontinuing the free shuttle bus.
- The reduction in BART's Premium Fare to \$1.50 and the corresponding elimination of the Airport's

Millbrae-Airport BART free shuttle bus will result in increased annual revenue of approximately \$528,728 (352,485 x \$1.50) to BART in FY 2010-11.

- BART will receive a minimum of \$3,000,000 from BART's advertising contractor, Titan Outdoor LLC, through September 30, 2018 to advertise in the BART Airport Station.
- Under the terms of the existing advertising agreement between BART and the SFMTA, BART would pay 15.58 percent of the revenues from advertising in the BART Airport Station to the SFMTA. Based on the projected \$3,000,000 of revenue to BART, the SFMTA will receive a minimum of an additional \$467,400 from BART through September 30, 2018.

#### **Policy Considerations**

- Approval of the proposed resolution and the elimination of the Airport's free shuttle bus would require that Airport employees to again pay a \$1.50 Premium Fare surcharge when traveling to or from the Airport via BART. The \$1.50 surcharge represents a higher cost to Airport employees as compared to Airport employees paying for parking or riding the Airport's free shuttle bus. However, riding BART directly to the Airport results in a faster commute than riding the Airport's free shuttle bus.
- The existing lease between the Airport and BART does not permit BART to advertise in the BART Station at the Airport, with the exception of limited advertisements on existing digital information displays..
- The proposed Amendment allows BART to advertise and retain advertising revenues within the fare areas, non-fare areas and agents' booths of the leased Airport BART Station. This provision raises questions of (1) altering the aesthetics of public transit space, and (2) allowing BART to advertise and retain advertising revenues within the leased Airport BART Station, with no provisions for the Airport to share in any of the advertising revenues during the remaining 43 years of the Agreement, which began June 22, 2003 and ends June 21, 2053. However, under the terms of the existing advertising agreement between BART and the SFMTA, BART would pay 15.58 percent of the revenues from advertising in the BART Airport Station to the SFMTA.

#### **Recommendation**

Approval of the proposed resolution is a policy matter for the Board of Supervisors.

**MANDATE STATEMENT/ BACKGROUND****Mandate Statement**

In accordance with Charter Section 9.118(c), any lease amendment in which the City would receive \$1,000,000 or more in revenues is subject to Board of Supervisors approval.

**Background**

On April 8, 1997, the Board of Supervisors approved a 50-year Lease, Use and Operating Agreement (Agreement) between the San Francisco Bay Area Rapid Transit District (BART) and the Airport for the BART Station and Related Facilities and Grant of Easement at San Francisco International Airport (Airport) (Resolution No. 621-97), for the term of June 22, 2003 through June 21, 2053.

BART's Premium Fare Surcharge and the Airport's free Shuttle for Airport Employees between the Millbrae and Airport BART Stations: A Premium Fare surcharge, the fee charged in addition to the base BART fare, of \$1.50 in each direction for trips to and from the Airport BART Station, was initiated with the opening of the BART Station at the Airport in 2003. The existing Agreement does not specify the amount of the Premium Fare surcharge, but rather states that BART may set premium-market based fares for BART passengers accessing the Airport BART Station. In addition, the existing Agreement states that BART will provide a 25 percent discount for Airline employees who purchase prepaid, multi-use passes.<sup>1</sup> According to Ms. Teresa Rivor, Airport Property Manager, the airlines were part of initial negotiations for the funding of the Airport-BART Station, such that the 25 percent discount was negotiated between BART and the airlines. Airport employees are not eligible for this 25 percent discount.

On July 1, 2009, BART increased the Premium Fare surcharge from \$1.50 to \$4.00 in each direction for passengers accessing BART from the Airport BART Station. In response to the increase in the BART Premium Fare surcharge, the Airport began operating a free shuttle bus for Airport employees between the Millbrae BART Station and the Airport BART Station, such that Airport employees do not have to pay BART's \$4.00 Premium Fare surcharge. Ms. Rivor advised that in FY 2009-2010, the Airport's shuttle bus transported a total of 352,485 Airport employees, an average of 29,374 riders per month, or 966 riders per day between the Millbrae and Airport BART Stations.

Faithful Performance Deposit: Under the existing Agreement, BART is required to maintain a Faithful Performance Deposit in the form of a letter of credit naming the Airport as beneficiary equal to the greater of (i) 50 percent of the Annual Rent and the Estimated Repair Contribution for each Fiscal Year, or (ii) \$2,351,650<sup>2</sup>. Under Section 6.2 of the existing Agreement, any rent that is not paid when due by BART to the Airport bears interest payable by BART at the lesser rate of 1.5 percent per month, or the maximum interest rate permitted by law.

<sup>1</sup> The 25 percent discount applies to both the regular commute and the \$4.00 Premium Fare surcharge.

<sup>2</sup> The \$2,351,650 was based upon the total Annual Rent and the Airport's and BART's Estimated Repair Contribution for the first Fiscal Year of the Agreement. Pursuant to Section 12.1 of the existing Agreement, BART and the Airport shall maintain the Premises, the BART Operating Systems, and other portions of the On Airport BART Project.

Existing Lease Rent: Under the existing Agreement, BART is obligated to pay the Airport annual rent of \$2,500,000 in one advance payment each year from June 22, 2003 through June 21, 2053, with no increases over the term of the lease.

Airport BART Station Advertising: The existing Agreement does not permit BART to display paid advertisements in the Airport BART Station, with the exception of paid advertisements on “displays”, which are the electronic destination signs and other electronic information displays that typically provide BART information and public information. The Airport does not receive any revenues from these existing advertisements on the digital displays.

## DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve Amendment No. 1 to the Lease, Use and Operating Agreement between the Airport and BART for the BART Station and Related Facilities and Grant of Easement at San Francisco International Airport (Airport) to:

- (1) Reduce the BART Premium Fare surcharge charged to Airport employees from \$4.00 to \$1.50 in each direction via the Airport BART Station;
- (2) Remove the BART Faithful Performance Deposit requirement equal to the greater of (i) 50 percent of the Annual Rent and the Estimated Repair Contribution payable by BART to the Airport for each Fiscal Year, or (ii) \$2,351,560;
- (3) Permit monthly rent payments to the Airport by BART in lieu of advance annual rent payments;
- (4) Allow additional advertising by BART within the fare areas, non-fare areas and agents’ booths of the Airport BART Station, with the advertising revenues to be retained by BART; and
- (5) Include administrative updates to the lease such as changes to names, addresses and locations included in the existing lease that are no longer accurate.

BART Premium Fare Surcharge and Shuttle for Airport Employees between the Millbrae and Airport BART Stations: On July 1, 2009 BART increased the Premium Fare surcharge from \$1.50 to \$4.00 in each direction for trips via the Airport BART Station. According to the May 4, 2010 memorandum (Attachment No. 1) from Airport Director John Martin to the Airport Commission, “Airport employees accessing the Airport BART station were particularly affected by these increases on a daily basis. The Airport, in an effort to help alleviate the increase to affected Airport employees requested, but BART declined to restore the Premium Fare back to \$1.50 each way. In an effort to assist Airport employees and encourage BART to revisit the Premium Fare increase, the Airport continued its communication with BART to find viable alternatives while simultaneously commencing interim operations of a daily (free) shuttle bus service transporting Airport employees to and from the Airport and the Millbrae-BART Station.”



The proposed Amendment No. 1 would enable Airport employees to participate in a new Airport-Badged Employee<sup>3</sup> Premium Fare Program. As participants of the Program, Airport employees would pay a reduced BART Premium Fare surcharge of \$1.50, instead of \$4.00, for trips to and from the Airport BART Station for the remaining 43 years of the Agreement. Upon commencement of the Airport-Badged Employee Premium Fare Program, the Airport will cease operation of the Airport's free shuttle bus for Airport employees between the Airport and Millbrae BART Stations.

Faithful Performance Deposit: The proposed Amendment No. 1 would eliminate the requirement that BART maintain a Faithful Performance Deposit. The attached memorandum from the Airport Director explains that, "In light of BART's continuous demonstration of timely payments to the Airport, BART is excused from providing the City with an annual deposit." According to Ms. Rivor, "BART is a governmental agency in good standing. Consistent with Airport business practices, deposits are not required from governmental agencies." Any rent that is not paid to the Airport when due bears interest payable by the BART to the Airport at the greater of a 1.5 percent rate per month or the maximum interest rate permitted by law.

Rent Payments: Under the proposed Amendment No. 1, BART would be required to remit advance monthly payments in the amount of \$208,333.33<sup>4</sup>, instead of one advance annual rent payment of \$2,500,000 to the Airport. According to Ms. Rivor, the revised payment schedule under the proposed Amendment No. 1 was made at BART's request and is consistent with the Airport's current business practice for tenants to remit lease payments to the Airport on a monthly basis. According to Ms. Rivor, the existing Agreement includes no increases to the \$2,500,000 annual rent over the 50-year term because the \$2,500,000 amount was calculated based on the Airport's debt service payments for the BART to the Airport Project.

Airport BART Station Advertising: Ms. Rivor advises that as part of the negotiations with BART to reduce the \$4.00 Premium Fare surcharge to \$1.50 for Airport employees, the Airport agreed to allow BART to advertise in the Airport BART Station.

Under the proposed Amendment, BART would be allowed to place additional advertisements within the fare areas, non-fare areas and agents' booths of the leased Airport BART Station and retain the additional advertising revenues. Such advertising would consist of wall-mounted dioramas, and floor and wall wraps, with a maximum of (a) 20 advertising displays permitted during the first five years, or approximately 2010 through 2015, and (b) 30 advertising displays permitted during the remaining 38 years, or approximately 2015 through 2053. Under the proposed Amendment, BART could also sell nontraditional saturation media in the BART Airport Station that might include the type of floor, wall, and advertising graphics illustrated in Attachment II, which was provided by BART to the Airport and is specified in the existing agreement between BART and Titan Outdoor, LLC, BART's current advertising contractor.

<sup>3</sup> Employees eligible for the Airport-Badged Employee Premium Fare Program include all Airport-based employees, except airline employees, who are badged by the Airport through the Airport's Security Access Office, including: City employees assigned to work at the Airport; retail, food and beverage concession employees; aviation support service providers; landside firms and all other employees, regardless of employer, who have received security clearance by the Airport's badging department and whose work location is based at the Airport.

<sup>4</sup> The monthly rent is equal to the annual rent of \$2,500,000 divided by 12 months:  $\$2,500,000 / 12 = \$208,333.33$ .

According to page 2 of Attachment No. I, the location, content, display and appearance of the BART advertisements are subject to the Airport's Advertising Standards Policy<sup>5</sup>, the Airport's Tenant's Improvement Guide<sup>6</sup> and the Airport Director's approval.

## FISCAL ANALYSIS

### Estimated Annual Savings to the Airport from Eliminating the Airport Shuttle Bus

According to Ms. Rivor, if the proposed Amendment is approved, the Airport would discontinue operating its free shuttle bus no later than 60 days from the date that the BART Premium Fare surcharge is reduced from \$4.00 to \$1.50. Ms. Rivor estimates that the Airport's cost to operate the free shuttle bus for Airport employees in FY 2010-2011 will be \$534,982. The Budget and Legislative Analyst estimates that if the Airport discontinues operating the shuttle bus as of December 1, 2010, the Airport would realize a savings for the remaining seven months of FY 2010-11 of approximately \$312,073.<sup>7</sup>

### Estimated Loss of Interest Revenues for the Airport

Under the proposed Amendment, BART would no longer pay rent to the Airport in one \$2,500,000 advance annual payment but instead would remit monthly payments of \$208,333.33, still totaling \$2,500,000 per year. According to Ms. Rivor, currently rent revenues payable by BART to the Airport are deposited into a general revenue receivables account for making Airport debt service payments. In FY 2009-10, the Airport deposited BART's rent revenues into an interest-earning account that earned an interest rate of 1.42 percent, such that the Airport earned \$16,340 in interest income, which the Airport would no longer receive under the proposed Amendment.

### Estimated Additional Operating Revenues and Costs for BART

When asked whether BART projects an increase in annual revenues from the proposed \$1.50 BART Premium Fare surcharge to be paid by Airport's employees that previously rode the Airport shuttle bus, Ms. Cathy Widener, Governmental Affairs Manager at the Airport, replied that this question addressed "the fundamental disagreement" between the Airport and BART

<sup>5</sup> The Airport Advertising Standards Policy approved by the Airport Commission on June 6, 2000 requires tenants to: (1) submit to the Director for review and approval all proposed advertising graphic designs three weeks prior to posting, (2) any advertisement that does not comply with the standards set forth by the Airport shall be rejected; (3) subject matter of all advertising is limited to commercial transactions ("Commercial transaction" does not include political or religious views); (4) advertisements may not be displayed which: a) advertise alcohol or tobacco products; b) relate to an illegal activity; c) depict violence or contain words or images that arouse anger, alarm or resentment in others; d) advertise services in direct competition with the Airport's business objectives; e) contain obscene matter or statements or words of an obscene, indecent or immoral character, or any picture or illustration of the human figure in such detail as to offend public morals or decency; f) are false, misleading or deceptive; g) relate to gambling, or h) contain material that is offensive to the ordinary person.

<sup>6</sup> Ms. Rivor advised that the Airport Tenant Improvement Guide is a basic reference for Airport staff and tenants who install improvements on Airport property.

<sup>7</sup>  $\$534,982 / 12 \text{ months} = \$44,581.83 / \text{month}$ .  $\$44,581.83 \times 7 \text{ months} = \$312,073$ .

regarding the existing \$4.00 and the proposed reduced \$1.50 Premium Fare surcharges. According to Ms. Widener, BART projects a decrease in their revenues if the proposed \$1.50 Premium Fare surcharge is approved because BART has always presumed that a number of Airport employees currently pay the \$4.00 surcharge in each direction. In contrast, the Airport maintains that BART will realize a projected increase in their revenues as Airport employees will now pay the \$1.50 Premium Fare surcharge in each direction via the Airport BART Station instead of taking the Airport's free shuttle bus to avoid paying the \$4.00 BART surcharge. Ms. Rivor stated that the Airport does not have data on the number of Airport employees that currently pay BART's \$4.00 Premium Fare surcharge to determine revenue impacts on BART.

However, based on the Airport's free shuttle bus ridership data, a total of 352,485 Airport employees rode the Airport's shuttle bus in FY 2009-10, an average of 29,374 persons per month, or 966 rides per day. Under the proposed resolution, BART would therefore realize approximately \$528,728<sup>8</sup> of additional revenues in FY 2010-11, an average of \$44,061 per month, or \$1,449 per day.

Ms. Rivor further advised, "We (the Airport) do not know if BART will add any additional service or incur any additional costs to accommodate the additional Airport employees that will ride BART after the shuttle bus service is discontinued." The Budget and Legislative Analyst notes that based on an average of 966 additional rides per day, BART is not likely to incur additional service costs from the elimination of the Airport's free shuttle bus.

#### **Estimated Additional Advertising Revenues for BART and for SFMTA**

As part of the negotiations to implement the \$1.50 Premium Fare Program, the Airport agreed to allow BART to place additional advertisements at the Airport BART Station, with BART to retain the additional advertising revenues. Table 1 below shows the Minimum Annual Guarantee (MAG) that BART is projected to receive from BART's existing advertising contractor, Titan Outdoor LLC, for advertising in the Airport BART Station from FY 2010-11 through September 20, 2018 when the BART and Titan Outdoor Agreement terminates.

The Budget and Legislative Analyst notes that the First Amendment to the Professional Services Agreement for Poster Advertising Franchise between BART and Titan Outdoor LLC specifically states that effective October 1, 2009, the MAG payable by Titan Outdoor to BART shall be, "Subject to all necessary approvals being obtained by BART, \$3.0 million for the addition of rights to the San Francisco International Airport BART station, to be prorated across the remaining years of the agreement by mutual written consent based on the date of installation of the new advertising begins." Based on total MAG payments of \$3,000,000, as shown in Table 1 below, BART would receive an average of \$333,333 per year from Titan Outdoor for advertising in the Airport BART Station over the next nine years.<sup>9</sup>

<sup>8</sup> 352,485 rides x \$1.50/ ride = \$528,728 per year/ 12 months = \$44,061 per month; / 365 days = \$1,449 per day

<sup>9</sup> According to Mr. Lewis Martin, Principal Marketing Representative at BART, MAG payments attributable to advertisements in the BART Airport Station will be pro-rated to reflect the SFO-BART agreement start date.

<b>Fiscal Year</b>	
2010-11	\$64,000
2011-12	\$272,000
2012-13	\$287,000
2013-14	\$318,000
2014-15	\$333,000
2015-16	\$350,000
2016-17	\$432,000
2017-18	\$457,000
2018-19	\$487,000
<b>AVERAGE</b>	<b>\$333,333</b>
<b>TOTAL</b>	<b>\$3,000,000</b>

Source: BART

As noted above, the existing Agreement between the Airport and BART would extend through June 21, 2053, such that additional annual advertising revenues would be realized by BART, although the amount of future additional annual revenues is not known at this time.

Under the terms of the existing advertising agreement between BART and the SFMTA, BART would pay 15.58 percent of the revenues from advertising in the BART Airport Station to the SFMTA, the same percentage of revenues that SFMTA receives from advertising in all BART Stations. Based on the above-noted minimum payment of \$3,000,000 over the next nine years, the SFMTA will receive a minimum total of \$467,400 from BART through September 30, 2018.

## **POLICY ANALYSIS**

### **Proposed Premium Fare Program Represents Costs and Benefits to Airport Employees**

Approval of the proposed resolution would require Airport employees to resume paying a reduced \$1.50 BART surcharge instead of the current higher \$4.00 surcharge to access or depart from the Airport BART Station. Airport employees previously paid the \$1.50 reduced fare prior to July 2009 when the fare increased to \$4.00 and the Airport began operating the free shuttle bus service. While the \$1.50 surcharge represents a higher cost to Airport employees as compared to using the Airport's free shuttle bus, riding BART directly to work at the Airport also results in a faster commute.

Commuting to Work Via BART versus Using Privately Owned Vehicles: Airport employees that currently drive to work pay the Airport's FY 2010-11 Parking Rates and Charges, as shown in Table 2 below.

<b>Table 2 : Parking Rates for Airport Employees</b>	
Permits are sold throughout the quarter in which they are valid.	
<b>Terminal Parking Permits: Domestic and International Terminal Garages</b>	
Period	Rate
Over 2 months, up to full calendar quarter	\$336
Over 1 month, up to 2 full months	224
Up to 1 full month	112
<b>Non-Terminal Parking Permits: Lot C, Lot D, West Field Garage, and all Airport controlled parking areas, including cargo facilities and maintenance hangars.</b>	
<b>Parking Rate at Facility with Bus Service</b>	
Period Remaining	Rate
Over 2 months, up to full calendar quarter	225
Over 1 month, up to 2 full months	150
Up to 1 full month	75
<b>Parking Rate at Facility <i>without</i> Bus Service</b>	
Period	Rate
Over 2 months, up to full calendar quarter	204
Over 1 month, up to 2 full months	136
Up to 1 full month	68
Source: San Francisco International Airport	

Based on a daily commute cost of \$11.20 for commuters that do not cross the Bay when traveling to and from work<sup>10</sup>, the cost for a full-time Airport employee to commute via BART with the \$1.50 reduced BART surcharge fare for one quarter of a year, or three months, would be approximately \$672<sup>11</sup>, which is \$336 or exactly twice as much as the \$336 cost to Airport employees of driving to work using privately owned vehicles and parking in the Airport's employee parking lot closest to the terminals for one quarter of a year. This comparison does not include the additional costs associated with commuting to work by driving such as the cost of fuel, tolls, vehicle maintenance and insurance.

Proposed Premium Fare Program for Airport Employees versus 25 Percent BART Discount for Airline Employees: The existing Agreement states that BART will provide a 25 percent discount for Airline employees who purchase prepaid, multi-use passes. As discussed above, BART

<sup>10</sup> Daily commute calculation is based on the \$4.10 fare from the Embarcadero Station in San Francisco to the BART Airport Station and \$1.50 surcharge in each direction:  $\$4.10 + \$1.50 = \$5.60 \times 2 \text{ rides per day} = \$11.20$ .

<sup>11</sup>  $\$11.20 \text{ per day} \times 20 \text{ days} \times 3 \text{ months} = \$672 \text{ per quarter}$ .

commute costs, for Airport employees living in San Francisco are estimated to be \$11.20 per day. In comparison, Airline employees pay \$12.15 per day with the 25 percent discount, or \$.95 more than Airport employees given the proposed \$1.50 surcharge.<sup>12</sup>

### **New Advertising in Airport BART Station**

The existing Agreement does not permit BART to display paid advertisements in the Airport BART Station, with the exception of limited paid advertisements on the electronic destination signs. The proposed Amendment would allow BART to place additional advertisements within the fare areas, non-fare areas and agents' booths of the leased Airport BART Station, and to retain the additional advertising revenues with no provisions for the Airport to share in these additional advertising revenues. This provision raises questions about (a) altering the aesthetics of public transit space, and (b) permitting BART to advertise in the leased Airport BART Station without sharing any advertising revenues with the Airport for the remaining 43 years of the Agreement, which ends on June 21, 2053.

According to Mr. Lewis Martin, Principal Marketing Representative at BART, revenue obligations associated with advertising in BART/ SFMTA stations in San Francisco are detailed in a separate agreement between BART and their contractor Titan Outdoor LLC. Mr. Martin advised that the San Francisco Municipal Transportation Agency (SFMTA) receives 16.4 percent of the total advertising revenue from advertisements in all BART Stations less an administrative fee equal to five percent of the 16.4 percent, or a net fee of 15.58 percent, payable to SFMTA by BART<sup>13</sup>. SFMTA does not contract for any advertising in stations used by SFMTA and BART.

The Budget and Legislative Analyst notes that under the proposed Amendment No. 1, the Airport would not receive any advertising or additional rental revenues from BART. However, SFMTA would receive additional revenues associated with advertisements in the BART Airport Station because BART pays SFMTA a percentage of revenues from advertising in all BART Stations. Advertising revenues that BART would receive from Titan Outdoors are projected to increase over time, from an estimated \$64,000 in FY 2010-11 to an estimated \$487,000 in FY 2018-19, as shown in Table 1. Thus, based on the fact that the SFMTA will receive 15.58 percent of these revenues, SFMTA's share of revenues from advertising in the BART Airport Station will increase from an estimated \$9,971 in FY 2010-11 to an estimated \$75,875 in FY 2018-19.

## **RECOMMENDATION**

Approval of the proposed resolution is a policy matter for the Board of Supervisors.

<sup>12</sup> Daily commute calculation is based on the \$8.10 full fare in each direction from the Embarcadero Station in San Francisco to the Airport BART Station, less a 25 percent discount applied to the total fare:  $\$8.10 \times 2 \text{ rides per day} = \$16.20$  less 25 percent = \$12.15.

<sup>13</sup> According to the existing Agreement between the BART and Titan Outdoor, Titan Outdoor pays BART a minimum of \$7,200,000 for advertising in all BART Stations in FY 2009-10. Therefore the minimum payment to the SFMTA was  $\$7,200,000 \times 15.58\%$  or \$1,121,760.



San Francisco International Airport

MEMORANDUM

May 4, 2010

P.O. Box 8097  
San Francisco, CA 94128  
Tel 650.821.5000  
Fax 650.821.5005  
www.flysfo.com

**TO:** AIRPORT COMMISSION  
Hon. Larry Mazzola, President  
Hon. Linda S. Crayton, Vice President  
Hon. Caryl Ito  
Hon. Eleanor Johns  
Hon. Richard J. Guggenhime

**FROM:** Airport Director

**SUBJECT:** Approval of Amendment No. 1 to Lease, Use and Operating Agreement for BART Station and Related Facilities and Grant of Easement at San Francisco International Airport, Lease No. L97-0081.

AIRPORT  
COMMISSION  
CITY AND COUNTY  
OF SAN FRANCISCO

GAVIN NEWSOM  
MAYOR

LARRY MAZZOLA  
PRESIDENT

LINDA S. CRAYTON  
VICE PRESIDENT

CARYL ITO

ELEANOR JOHNS

RICHARD J. GUGGENHIME

JOHN L. MARTIN  
AIRPORT DIRECTOR

**DIRECTOR'S RECOMMENDATION:** ADOPT THE ACCOMPANYING RESOLUTION APPROVING AMENDMENT NO. 1 TO LEASE NO. L97-0081 TO (1) LIMIT BART PREMIUM FARE (SURCHARGE) FOR NON-AIRLINE AIRPORT EMPLOYEES TO \$1.50 EACH WAY FOR THE REMAINDER OF THE LEASE; (2) REMOVE BART FAITHFUL PERFORMANCE DEPOSIT REQUIREMENT; (3) PERMIT MONTHLY PAYMENT BY BART OF THE ANNUAL RENT IN LIEU OF ADVANCE ANNUAL PAYMENT; (4) ALLOW ADVERTISING BY BART IN THE AIRPORT-BART STATION; AND (5) INCLUDE ADMINISTRATIVE UPDATES TO THE LEASE.

Executive Summary

On July 1, 2009, San Francisco Bay Area Rapid Transit District ("BART") increased the surcharge portion of the fare ("Premium Fare") from \$1.50 to \$4.00 each way for all persons accessing BART from the Airport-BART Station. At that time the Airport commenced a daily shuttle bus operation to the Millbrae-BART station for employees to avoid the Premium Fare. The Airport and BART have agreed to amend the Lease, Use and Operating Agreement for BART Station and Related Facilities and Grant of Easement at San Francisco International Airport, Lease No. L97-0081 ("Lease") to limit the Premium Fare to \$1.50 each way for non-airline Airport employees at the Airport for the remainder of the Lease which expires on June 21, 2053.

Background

In 1997, the City and County of San Francisco, acting by and through its Airport Commission ("City") and BART entered into a Lease authorized by Airport Commission Resolution No. 97-0081 and Board of Supervisors Resolution No. 621-97.

THIS PRINT COVERS CALENDAR ITEM NO. 7

Members, Airport Commission  
May 4, 2010  
Page 2

The Lease governs BART's use and occupancy of Airport premises to maintain and operate a BART station and appurtenant facilities and, among other things, provides that BART may set the Premium Fare for BART passengers accessing the Airport-BART Station. On July 1, 2009, in addition to system-wide fare increases, BART drastically increased the Premium Fare from \$1.50 to \$4.00 each way for all persons accessing the Airport-BART Station. Airport employees accessing the Airport-BART Station were particularly affected by these increases on a daily basis.

The Airport, in an effort to help alleviate the increase to affected Airport employees requested, but BART declined to restore the Premium Fare back to \$1.50 each way. In an effort to assist Airport employees and encourage BART to revisit the Premium Fare increase, the Airport continued in its communications with BART to find viable alternatives while simultaneously commencing interim operations of a daily shuttle bus service transporting Airport employees to and from the Airport and the Millbrae-BART Station. BART currently provides a 25% discount fare to airline employees under the Lease, and this lease amendment will not affect the airline employee discount.

#### Proposal

Following lengthy discussions, the City and BART have agreed to:

1. Limit the Premium Fare to \$1.50 each way for non-airline Airport badged employees for the remaining duration of this Lease, expiring June 21, 2053.
2. Upon reinstatement of the Premium Fare, the Airport has agreed to discontinue operating the shuttle bus service to the Millbrae-BART Station, which will result in a net savings of \$47,000 per month and to amend the Lease as follows:
  - a. Faithful Performance Deposit. In light of BART's continuous demonstration of timely payments to the Airport, BART is excused from providing the City with an annual deposit;
  - b. Annual Rent. Consistent with the Airport's current business practice, BART will be permitted to remit monthly, in lieu of annually, BART's \$2.5 million dollar Annual Rent; and
  - c. Advertising. BART will be permitted to advertise and retain all advertising revenues within the Fare Areas, Non-Fare Areas and the Agents' Booths of the Leased Premises. Advertising will consist of both wall-mounted dioramas and floor and wall wraps. A maximum of twenty (20) dioramas will be permitted during the first five (5) years of the Lease Amendment and a maximum of thirty (30) dioramas will be permitted throughout the remaining term of the Lease. The location, content, display and appearance of advertisements are subject to the Airport's Advertising Standards Policy, the Airport's TI Guide and the Director's approval.



Members, Airport Commission  
May 4, 2010  
Page 3

The Airport and BART have also reached agreement to administratively update the Lease to include current contact details and applicable City and other governmental provisions enacted since the execution of the original Lease.

**Recommendation**

I recommend adoption of the accompanying Resolution to approve Amendment No. 1 to the Lease to: (1) limit to \$1.50 each way the Premium Fare for non-airline Airport employees for the remainder of the Lease; (2) remove BART's Faithful Performance Deposit requirement; (3) permit monthly payment of Annual Rent in lieu of advance annual payment; (4) allow advertising by BART in the BART Station in accordance with the Lease provisions; and (5) include administrative updating of the Lease. The Commission Secretary is further directed to request Board of Supervisors' approval of the lease amendment in accordance with City Charter Section 9.118.



John L. Martin  
Airport Director

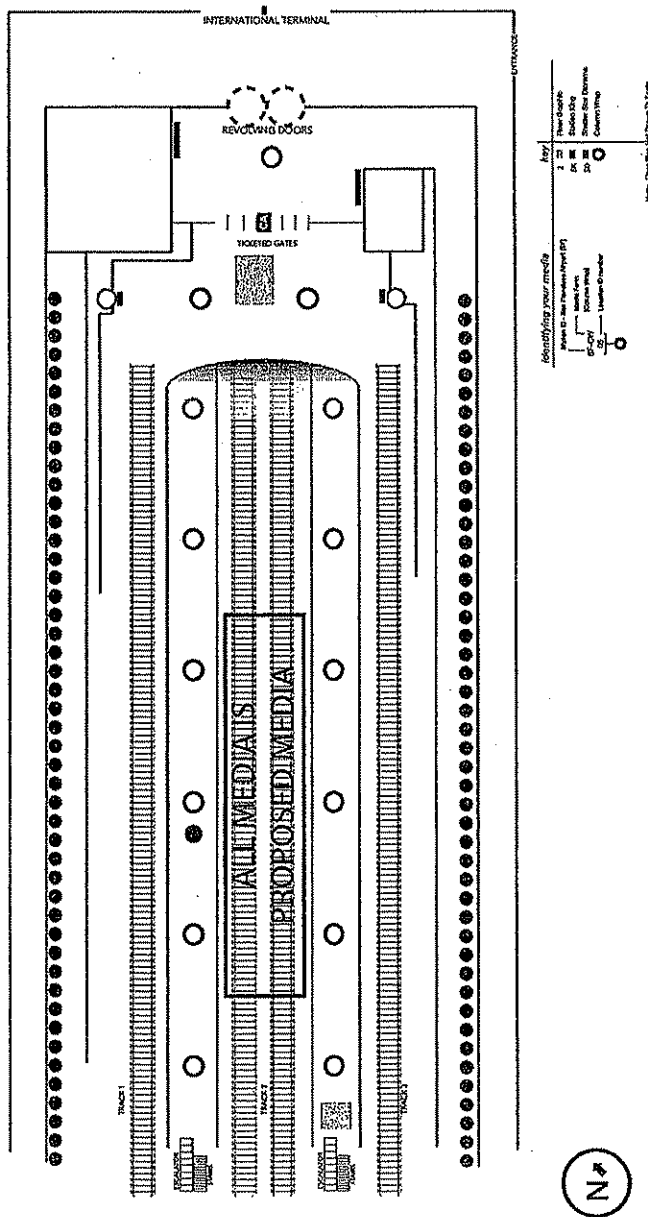
Prepared by: Leo Fermin  
Deputy Airport Director  
Business and Finance

Attachment

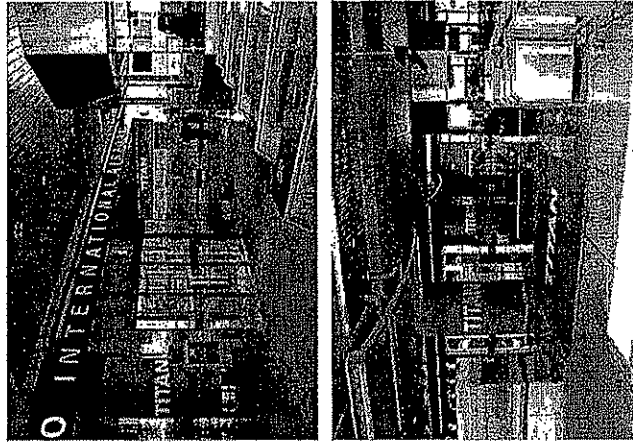


*sf airport // platform*

map



mock up(s)



proposed  
new media

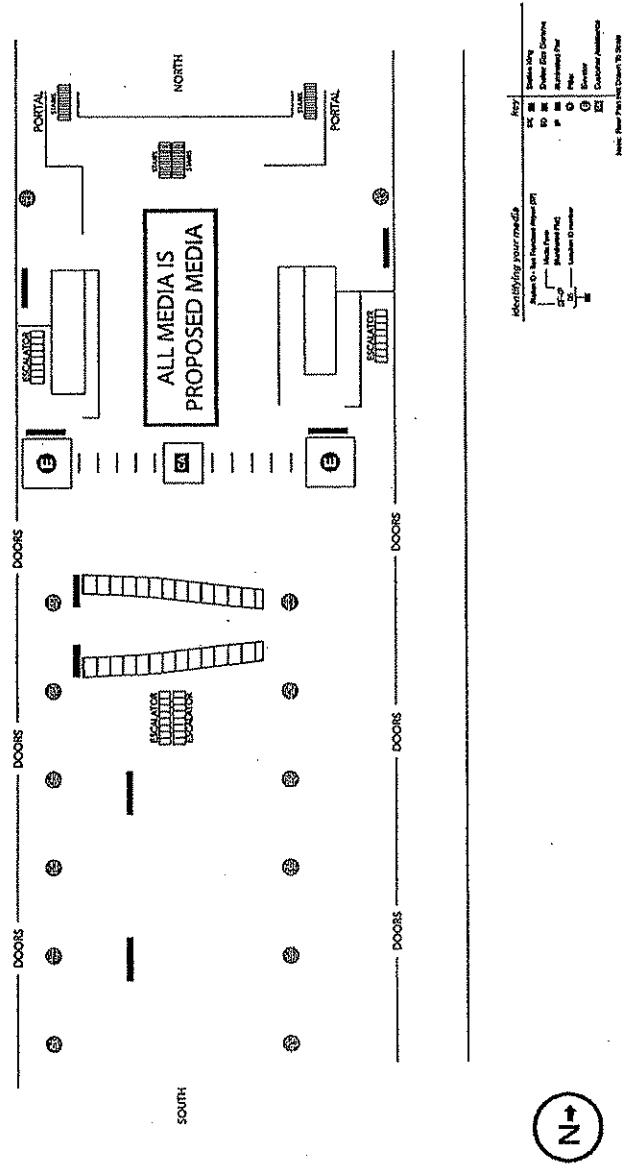
- 2 x Shelter-Size Dioramas
- 2 x Station Kings
- 15 x Column Wraps
- 2 x Floor Graphics

incremental  
annual revenue  
@ 70% occupancy

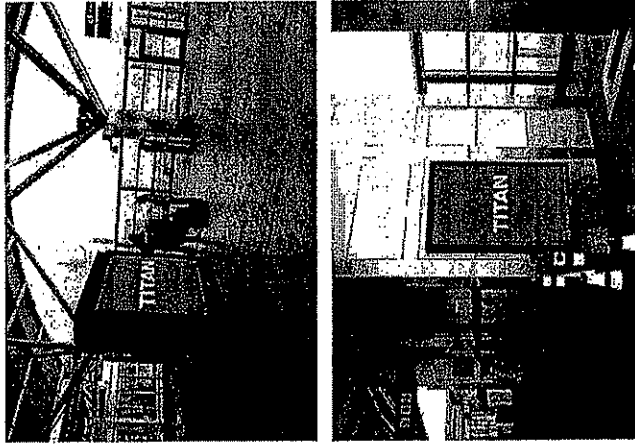
**\$283,500**

**sf airport // mezzanine**

map



mock up(s)



proposed  
new media

4 x Shelter-Size Dioramas  
2 x Station Kings  
2 x Illuminated Piers

incremental  
annual revenue  
@ 70% occupancy

see prior page

AIRPORT COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 10-0169

**RESOLUTION APPROVING AMENDMENT NO. 1 TO LEASE, USE, AND OPERATING AGREEMENT FOR BART STATION AND RELATED FACILITIES AND GRANT OF EASEMENT AT SAN FRANCISCO INTERNATIONAL AIRPORT, LEASE NO. L97-0081.**

**WHEREAS,** the City and County of San Francisco, acting by and through its Airport Commission ("City") and San Francisco Bay Area Rapid Transit District ("BART") are parties to a Lease, Use and Operating Agreement for BART Station and Related Facilities and Grant of Easement dated April 8, 1997, authorized by Airport Commission Resolution No. 97-0081 and Board of Supervisors Resolution No. 621-97 (the "Lease"); and

**WHEREAS,** on July 1, 2009, BART increased the surcharge portion of the fare ("Premium Fare") from \$1.50 to \$4.00 each way for all persons accessing BART from the Airport-BART Station; and

**WHEREAS,** the Airport desires to alleviate the increase in the Premium Fare to non-airline Airport badged employees accessing the Airport-BART Station by limiting the Premium Fare to \$1.50 each way for the remainder of the Lease; and

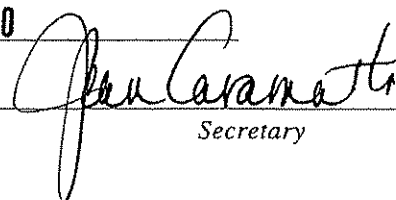
**WHEREAS,** in consideration of BART's agreement to this request, City and BART desire to amend the Lease to (1) limit the Premium Fare to \$1.50 each way for non-airline Airport employees; (2) remove BART's Faithful Performance Deposit; (3) permit monthly rent payments in lieu of advance annual payment; (4) allow BART advertising in the Airport-BART Station; and (5) include contact details and applicable City and other governmental provisions; now, therefore, be it

**RESOLVED,** that this Commission hereby approves and authorizes the Director to execute an Amendment of the Lease to: (1) limit the Premium Fare to \$1.50 each way for non-airline Airport badged employees for the remainder of the Lease; (2) remove BART's Faithful Performance Deposit requirement; (3) permit monthly payments in lieu of advance annual payment; (4) allow advertising by BART in the Airport-BART Station; and (5) include contact details and applicable City and other governmental provisions; and be it further

**RESOLVED,** that the Commission Secretary is hereby directed to request approval of the Amendment of the Lease by resolution of the Board of Supervisors pursuant to Section 9.118 of the Charter of the City and County of San Francisco.

*I hereby certify that the foregoing resolution was adopted by the Airport Commission*

at its meeting of MAY 04 2010

  
Secretary



San Francisco International Airport

MEMORANDUM

May 4, 2010

P.O. Box 8097
San Francisco, CA 94128
Tel 650.821.5000
Fax 650.821.5005
www.flysfo.com

TO: AIRPORT COMMISSION
Hon. Larry Mazzola, President
Hon. Linda S. Crayton, Vice President
Hon. Caryl Ito
Hon. Eleanor Johns
Hon. Richard J. Guggenhime

FROM: Airport Director

SUBJECT: Approval of Amendment No. 1 to Lease, Use and Operating Agreement for BART Station and Related Facilities and Grant of Easement at San Francisco International Airport, Lease No. L97-0081.

AIRPORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO
GAVIN NEWSOM
MAYOR

LARRY MAZZOLA
PRESIDENT

LINDA S. CRAYTON
VICE PRESIDENT

CARYL ITO

ELEANOR JOHNS

RICHARD J. GUGGENHIME

JOHN L. MARTIN
AIRPORT DIRECTOR

DIRECTOR'S RECOMMENDATION: ADOPT THE ACCOMPANYING RESOLUTION APPROVING AMENDMENT NO. 1 TO LEASE NO. L97-0081 TO (1) LIMIT BART PREMIUM FARE (SURCHARGE) FOR NON-AIRLINE AIRPORT EMPLOYEES TO \$1.50 EACH WAY FOR THE REMAINDER OF THE LEASE; (2) REMOVE BART FAITHFUL PERFORMANCE DEPOSIT REQUIREMENT; (3) PERMIT MONTHLY PAYMENT BY BART OF THE ANNUAL RENT IN LIEU OF ADVANCE ANNUAL PAYMENT; (4) ALLOW ADVERTISING BY BART IN THE AIRPORT-BART STATION; AND (5) INCLUDE ADMINISTRATIVE UPDATES TO THE LEASE.

Executive Summary

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Background

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The Lease governs BART's use and occupancy of Airport premises to maintain and operate a BART station and appurtenant facilities and, among other things, provides that BART may set the Premium Fare for BART passengers accessing the Airport-BART Station. On July 1, 2009, in addition to system-wide fare increases, BART drastically increased the Premium Fare from \$1.50 to \$4.00 each way for all persons accessing the Airport-BART Station. Airport employees accessing the Airport-BART Station were particularly affected by these increases on a daily basis.

The Airport, in an effort to help alleviate the increase to affected Airport employees requested, but BART declined to restore the Premium Fare back to \$1.50 each way. In an effort to assist Airport employees and encourage BART to revisit the Premium Fare increase, the Airport continued in its communications with BART to find viable alternatives while simultaneously commencing interim operations of a daily shuttle bus service transporting Airport employees to and from the Airport and the Millbrae-BART Station. BART currently provides a 25% discount fare to airline employees under the Lease, and this lease amendment will not affect the airline employee discount.

### Proposal

Following lengthy discussions, the City and BART have agreed to:

1. Limit the Premium Fare to \$1.50 each way for non-airline Airport badged employees for the remaining duration of this Lease, expiring June 21, 2053.
2. Upon reinstatement of the Premium Fare, the Airport has agreed to discontinue operating the shuttle bus service to the Millbrae-BART Station, which will result in a net savings of \$47,000 per month and to amend the Lease as follows:
  - a. Faithful Performance Deposit. In light of BART's continuous demonstration of timely payments to the Airport, BART is excused from providing the City with an annual deposit;
  - b. Annual Rent. Consistent with the Airport's current business practice, BART will be permitted to remit monthly, in lieu of annually, BART's \$2.5 million dollar Annual Rent; and
  - c. Advertising. BART will be permitted to advertise and retain all advertising revenues within the Fare Areas, Non-Fare Areas and the Agents' Booths of the Leased Premises. Advertising will consist of both wall-mounted dioramas and floor and wall wraps. A maximum of twenty (20) dioramas will be permitted during the first five (5) years of the Lease Amendment and a maximum of thirty (30) dioramas will be permitted throughout the remaining term of the Lease. The location, content, display and appearance of advertisements are subject to the Airport's Advertising Standards Policy, the Airport's TI Guide and the Director's approval.

The Airport and BART have also reached agreement to administratively update the Lease to include current contact details and applicable City and other governmental provisions enacted since the execution of the original Lease.

**Recommendation**

I recommend adoption of the accompanying Resolution to approve Amendment No. 1 to the Lease to: (1) limit to \$1.50 each way the Premium Fare for non-airline Airport employees for the remainder of the Lease; (2) remove BART's Faithful Performance Deposit requirement; (3) permit monthly payment of Annual Rent in lieu of advance annual payment; (4) allow advertising by BART in the BART Station in accordance with the Lease provisions; and (5) include administrative updating of the Lease. The Commission Secretary is further directed to request Board of Supervisors' approval of the lease amendment in accordance with City Charter Section 9.118.



John L. Martin  
Airport Director

Prepared by: Leo Fermin  
Deputy Airport Director  
Business and Finance

Attachment



LEASE AMENDMENT

AMENDMENT NO.1 TO LEASE, USE, AND OPERATING AGREEMENT FOR BART  
STATION AND RELATED FACILITIES AND GRANT OF EASEMENT AT  
SAN FRANCISCO INTERNATIONAL AIRPORT

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

LEASE NO. L97-0081

THIS Lease Amendment ("Amendment") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2010, by and between the City and County of San Francisco acting by and through its Airport Commission ("City"), as landlord, and San Francisco Bay Area Rapid Transit District ("BART"), as tenant.

RECITALS

A. The City and BART have entered into that certain Lease, Use, and Operating Agreement for BART Station and Related Facilities and Grant of Easement at San Francisco International Airport, L97-0081, ("Lease"), a 50 year leasehold, which commenced on June 22, 2003 and will expire on June 21, 2053.

B. The City and BART desire to modify the Lease to provide non-airline airport badged employees ("**Airport-Badged Employees**") with the option of participating in the BART SFO Airport-Badged Employee Premium Fare Program whereby the SFO Premium Fare that will be collected from participating Airport Badged-Employees will equal \$1.50 each way for trips to or from the SFO BART Station for the remainder of the Lease term.

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants set forth herein, and other good and valuable consideration, receipt of which is hereby acknowledged, the parties do mutually agree that the Lease will be amended as follows:

1. **Major Lease Term Summary:** The following sections of the Summary are amended, and incorporated into the Major Lease Term Summary (revised 2010), attached to this Lease Amendment No. 1.

a. **BART's Address** is hereby amended to provide its current address:

San Francisco Bay Area Rapid Transit District  
300 Lakeside Drive, 23<sup>rd</sup> Floor  
Oakland, CA 94612  
Att'n: General Manager  
Fax No. (510) 464-6009  
Tel. No. (510) 464-6060

- b. **City's Address** is hereby amended to provide current telephone and fax numbers:

San Francisco International Airport  
International Terminal, 5<sup>th</sup> Floor  
P.O. Box 8097  
San Francisco, CA 94128  
Att'n: Airport Director  
Fax No. (650) 821-5005  
Tel. No. (650) 821-5000

- c. **Easement Area (§1.2)** is hereby amended to read as follows:

The surface of the property more particularly described on the attached *Exhibit A-7 "Amended"* as executed on November 13, 2008.

- d. **Commencement Date (§3)** is hereby amended, in part, to specify the actual commencement date and read as follows:

Actual Commencement Date: June 22, 2003

- e. **Expiration Date (§3)** is hereby amended to read as follows:

11:59 pm on the day immediately preceding the fiftieth (50<sup>th</sup>) anniversary of the actual Commencement Date of June 22, 2003 or upon earlier termination of this Lease as provided herein.

- f. **Annual Rent (§6)** is hereby amended to include the monthly payment amount to read as follows:

Two Million Five Hundred Thousand Dollars (\$2,500,000) per year. Annual rent to be paid in monthly payments in the amount of Two Hundred Eight Thousand, Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$208,333.33).

- g. **Rent Commencement Date (§6)** is hereby amended to include the actual Rent Commencement Date and Rent Expiration Date to read as follows:

July 1, 2001, or the year in which Airport debt service for the BART project commences, whichever is later. The "Rent Commencement Date" includes any commencement of the "License Period Rent" pursuant to the Development Agreement. The actual Rent Commencement Date is July 1, 2001. The Rent Expiration Date is June 30, 2051.

- h. **Faithful Performance Deposit Amount (§15)** is hereby deleted in its entirety and the section reserved.

- i. **BART Representative (§4)** is hereby amended in its entirety to read as follows:

Lease Contact:  
Laura Giraud  
Manager, BART Real Estate Department  
Tel No. (510) 464-7582

24/7 Emergency Contact:  
BART Operations Control Center Manager  
Tel No. (510) 834-1297

- j. **Exhibits** are hereby amended to delete and reserve Exhibit E and add Exhibit F to read as follows:

- A – Premises Description
- B – BART Zone Descriptions
- C – Description of Initial City-Owned Systems
- D – Description of Subsystems and Useful Life
- E – Reserved
- F – Airport Advertising Standards Policy

All such exhibits are incorporated into this Lease and made a part hereof.

2. **Section 1. Premises** is hereby amended by referencing amended Exhibit A-7 and replacing Section 1.2. Grant of Easement with the following:

1.2. Grant of Easement. On the terms and conditions herein, and subject to City's reservations of rights herein, City hereby grants to BART a non-exclusive, in-gross, easement over, across, in, and upon the surface of the property owned by City more particularly described as the West End of Concourse H to East Side of Highway 101 and shown on the attached *Exhibit A-7 "Amended"* as executed on November 13, 2008 (the "**Easement Area**") pursuant to the "Memorandum of Easement for On-Airport BART Improvements at SFIA" (attached). Except as may be expressly provided herein, BART shall have no right whatsoever to possess, use, or operate any City facilities, on the Easement Area, or otherwise. As used herein, the term "Premises" shall mean the Leased Premises and the Easement Area, collectively.

3. **Section 4. Use and Operation** is hereby amended as follows:

- a. **Section 4.6. Representative of BART** is hereby replaced in its entirety to read as follows:

4.6. Representative of BART. The Airport shall contact BART representatives as follows: (a) for this Lease, the BART Representative shall be the BART Real Estate Department Manager; and (b) for 24/7 Emergencies, the BART Representative shall be BART Operations Control Center Manager.

- b. Section 4.12. Fares; Passengers is hereby amended to provide for the SFO Premium Fare and to add Sections 4.12.1(a) and (b) to read as follows:

4.12.1(a). The SFO Premium Fare is a portion of the one-way fares that BART charges for trips to or from the Airport BART Station. BART agrees that the SFO Premium Fare that will be collected from Airport-Badged Employees participating in the BART SFO Airport-Badged Employee Premium Fare Program (“**Program**”) will equal \$1.50 each way for trips to or from the Airport BART Station for the remaining duration of the Lease term. As used in this Lease, Airport-Badged Employees shall mean all SFO-based employees, except airline employees, who are badged by the Airport through the Airport’s Security Access Office, or any successor office with airport-identification badging responsibilities, and shall include but not be limited to the following: City employees assigned to work at the Airport; retail, food and beverage concession employees; aviation support service providers; landside firms and all other employees, regardless of employer, who have received security clearance by the Airport’s badging department and whose work location is based at the Airport. This subsection 4.12.1(a) shall take effect upon the completion of the implementation procedures described in subsection 4.12.1(b).

4.12.1(b). City and BART will develop procedures to facilitate and implement the Program.

4. Section 6. Annual Rent; BART Monetary Obligations. Section 6 is amended to provide for monthly payment of the annual rent as follows:

- a. Section 6.1.1 is replaced in its entirety to read as follows:

6.1.1. Subject to Section 6.3 hereof, as rent for the Leased Premises, BART shall be obligated to pay to City rent (“**Annual Rent**”) in the amount of Two Million Five Hundred Thousand Dollars (\$2,500,000) per year. BART shall pay such Annual Rent in monthly payments in the amount of Two Hundred Eight Thousand, Three Hundred Thirty Three Dollars and Thirty Three Cents (\$208,333.33), in advance, on or before the first (1<sup>st</sup>) day of each calendar month but in no event later than the tenth (10<sup>th</sup>) day of the month in which the monthly payment is due. Commencing on the Rent Commencement Date, BART shall pay to City the Annual Rent for fifty

(50) consecutive years (the “**Rent Expiration Date**”). In the event the Rent Commencement Date occurs prior to the Commencement Date, BART shall remain obligated to pay the Annual Rent, but such obligation as to the period prior to the Commencement Date shall be pursuant to the Development Agreement pursuant to “License Period Rent.” In such event, once the Commencement Date occurs, then BART’s obligation to pay Annual Rent shall continue hereunder. No Annual Rent shall be payable after BART shall have paid Annual Rent for fifty (50) consecutive years.

- b. Section 6.2. BART Monetary Obligations is amended to include a prepayment requirement in the event of delinquent payment of BART Monetary Obligations to read as follows:

6.2. BART Monetary Obligations. The parties acknowledge that, in addition to BART’s obligation to pay Annual Rent, BART shall be obligated to make payment to City for, among other things, utility costs (to the extent not paid directly by BART), fines, and BART’s Repair Contribution as defined in and pursuant to the Repair Requirements. All payment obligations required of BART hereunder, including Annual Rent, utility costs, fines, and BART’s Repair Contribution, and additional charges, are collectively referred to herein as “**BART Monetary Obligations**.” All BART Monetary Obligations shall be paid in lawful money of the United States, free from all claims, demands, setoffs, or counterclaims of any kind. Any BART Monetary Obligations not paid when due shall bear interest at the lesser of the rate of one and one-half percent (1½%) per month, and the maximum rate permitted by law. In addition, City may fine and require that BART prepay the monthly BART Monetary Obligations in the event of delinquent payment as provided in this Section 6.2. Upon written notice from the Director, BART shall pay all BART Monetary Obligations due in advance of the month during which the same shall accrue. Acceptance of any interest charge, fine or prepayment of monthly BART Monetary Obligations shall not constitute a waiver of BART’s default on the overdue amount or prevent City from exercising any of the other rights and remedies available to City.

- c. Section 6.3.3 is amended to provide for monthly rent and reads as follows:

6.3.3. Notwithstanding Section 6.3.1, in the event (a) BART is permanently unable to operate at the Airport BART Station; (b) such permanent inability to operate is the result of a default by BART; and (c) the Lease is terminated, then BART shall have the option to (i) continue to pay the Annual Rent on a monthly basis as provided in this Section 6 until City shall have received an amount equal to Two Million Five Hundred Thousand Dollars (\$2,500,000) per year for fifty (50) years, or (ii) pay to City the Termination Amount (as defined below). As used herein, the “**Termination Amount**” means an amount adequate to retire all outstanding financings, including bonds, issued by City in connection with its construction of the Fixed Facilities and its procurement and installation of the Initial City-Owned Systems, and to pay any prepayment fees, and associated costs.

5. **Section 13. Signs and Advertising** is amended to permit advertising in specified portions of the Leased Premises, and is replaced in its entirety with the following new Section 13:

### **13. SIGNS AND ADVERTISING**

13.1. Displays. BART may, at its own expense, install, and operate on the Leased Premises electronic destination signs and other forms of electronic information displays consistent with other BART stations (collectively, “**Displays**”) provided that all such Displays are for BART information and public information. BART may include on the Displays some amount of paid advertising, provided such paid advertising is consistent with the level and type of paid advertising in other BART stations. BART shall be solely responsible for maintaining, repairing, and replacing all Displays. No Displays shall be permitted in the Easement Area.

13.2. Information. BART may deploy maps, signage, digital information, newsletters, bulletins, and other BART information within the Leased Premises at its own expense consistent with information provided at other BART stations, subject to the approval of Director, not to be unreasonably withheld, as to the number, size, height, location, color and general type and design. No signage shall be permitted on the Easement Area other than signs related to safety or security issues.

13.2.1. All identification and information signs, including BART maps, fare signs and related BART information signs (collectively, “**Non-Electronic Signage**”) on the Leased Premises shall be located in glass-enclosed cases purchased and installed by BART. City shall be responsible for cleaning all such glass-enclosed cases. BART shall be responsible for the repair and replacement of such glass-enclosed cases.

13.2.2. Airport Signage. City will install adequate and appropriate signage in the Airport directing patrons to the BART Station. Such signage will be integrated into City’s comprehensive signage program. If desired by Director and BART, City and BART may form a committee to review and consider signage and public information issues, as appropriate.

13.3. Advertising. BART may place and sell advertising within the Fare Areas, the Non-Fare Areas, and the Agents’ Booths of the Leased Premises (as defined in Section 1.1 of the Lease Agreement), including floor and wall graphics, framed posters, electronic displays, and advertising wraps. In no event shall any advertising content be in the form of pamphlets, circulars, brochures, or otherwise in a format requiring distribution by persons. Advertising booths are prohibited. City and BART shall decide and agree upon the number and location of BART framed poster and electronic advertising displays within the Fare Areas, the Non-Fare Areas, and the Agents’ Booths of the Leased Premises, with the understanding that starting from the effective date of this Amendment, the total combined number of framed posters and electronic advertising displays permitted shall be up to twenty (20) displays during the first five

(5) year period. At the end of the first five (5) year period, and for the remainder of the Lease term, the total combined number of framed posters and electronic advertising displays permitted shall be up to thirty (30) displays. In addition to the aforementioned framed posters and electronic advertising displays, BART may place and sell nontraditional station saturation media. Such nontraditional media shall include, but not be limited to the following: floor graphics, wall graphics, and advertising wraps. BART reserves the right, at its sole discretion, to select and negotiate all terms and conditions of any advertising agreements with third-party advertising operators. BART shall be responsible for maintaining, repairing, and replacing all advertising displays. BART shall have the right to all revenues accrued from such advertising.

- 13.3.1. The layout, design, location and installation of the advertising equipment shall conform to the Airport's Advertising Standards Policy (attached hereto as Exhibit F) and Section 10 of this Lease.
- 13.3.2. The content of all advertising must satisfy the requirements of the Airport's Advertising Standards Policy, as the same may be amended from time to time. Any advertising that does not satisfy such policy shall be subject to removal and replacement upon notification of the Director as set forth in **Exhibit F**. BART will remove, at its cost, within 24 hours of any notice or direction given by the Director any advertising displayed by BART that the Director determines does not comply with the standards set forth in Airport's Advertising Standards Policy. In no event will there be permitted any advertising of cigarettes or tobacco products.
- 13.3.3. Prohibition of Tobacco Sales and Advertising. BART shall not permit any advertising of cigarettes or tobacco products. This advertising prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of cigarettes and tobacco products, or (ii) encourage people not to smoke or to stop smoking.
- 13.3.4. Prohibition of Alcoholic Beverage Advertising. BART shall not permit any advertising of alcoholic beverages. For purposes of this Section, "alcoholic beverage" shall be defined as set forth in California Business and Professions Code Section 23004, and shall not include cleaning solutions, medical supplies and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing, selling or distributing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product. This advertising prohibition does not apply to any advertisement

sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of alcoholic beverages, (ii) encourage people not to drink alcohol or to stop drinking alcohol, or (iii) provide or publicize drug or alcohol treatment or rehabilitation services.

13.3.5. All electrically powered advertising equipment and advertising content must be suitably illuminated at all times.

13.3.6. BART or its third-party designee shall furnish, mount, install, and continuously maintain in a clean and first class condition during the entire term, all advertising panels, frames, mountings, lighted displays, and any other materials or equipment necessary for proper advertising displays.

13.3.7. BART shall, at BART's sole cost and expense, keep all advertisement equipment in good condition and repair. In the event BART fails to keep the advertisement equipment in good condition and repair, the City shall provide written notification to BART. If BART fails to fix any disrepair within 72 hours after receipt of such written notification, the City shall have the right to do so, at BART's expense.

13.4. City's Advertising Rights. Nothing herein shall limit City's right to place and sell advertising in the areas outside the Fare Areas, the Non-Fare Areas, and the Agents' Booths of the Lease Premises, pursuant to an Airport-wide advertising plan, if one is implemented, as the same may be modified thereafter; provided, however, that any such City advertising shall not violate established BART policies regarding the content of advertising in BART stations. City's rights pursuant to this Section 13.4 shall be subject to any applicable restrictions in Section 4.10 [Limitations on City's Actions].

13.5. Relationship to Basic Agreement. The Parties acknowledge and agree that they intend that this Lease supersede the Basic Agreement with respect to the advertising issues described in the Basic Agreement. Accordingly, notwithstanding the Basic Agreement Principle set forth in Section 25.3 [Entire Agreement], the terms of this Lease, including this Section 13, shall supersede the provisions of Section 4.E.2 of the Basic Agreement.

6. **Section 15. Faithful Performance Deposit** is hereby deleted in its entirety and the section reserved.

7. **Section 18. Default; Remedies** is hereby amended as follows:

a. **Section 18.1.1.** is hereby replaced with the following Section 18.1.1:

18.1.1. BART shall fail duly and punctually to pay any BART Monetary Obligation or monthly prepayment of the BART Monetary Obligations, when due to City, and such failure shall continue for a



period of more than thirty (30) days after delivery by Director of notice of such breach or default; or

b. **Section 18.1.9.** (requiring the payment of a performance deposit) is hereby deleted in its entirety and the section reserved.

c. **Section 18.6. Fines** is hereby amended by adding penalties for violation of advertising provisions and for failure to pay monetary obligations, to read as follows:

Violation	Section	Fine	Fine Cure Period
Violation of Advertising Provisions	13	\$300	24 hours after notice from Director
Failure to pay BART Monetary Obligations	6.2	\$300	10 days after notice from Director

d. **Section 18.7.4** is hereby amended to delete the reference to the Faithful Performance Deposit, and reads as follows:

18.7.4. City's rights to exercise the setoff rights in this Section 18.7 shall be in addition to and not in lieu of its rights at law or in equity, and its rights under this Lease.

8. **Section 22. Consultation and Approval Process** is hereby amended by updating the appropriate contact personnel for Consultation in Section 22.1. Consultation as follows:

22.1. Consultation.

<u>BART</u>	<u>CITY</u>
Department Manager, Real Estate	Airport Property Manager
Executive Manager	Associate Deputy Airport Director, Aviation and Parking Management
Deputy General Manager	Deputy Airport Director, Business & Finance
General Manager	Airport Director

9. **Section 23. Dispute Resolution** is hereby amended, in part, for administrative purposes to reflect appropriate contact personnel at each stage of the Dispute Resolution process as follows:

a. Section 23.3.1(a). First Level.

	<u>Title</u>	<u>Currently</u>
BART	Department Manager, Real Estate	Laura Giraud
City	Airport Property Manager	Teresa Rivor

b. Section 23.3.2(a). Second Level.

	<u>Title</u>	<u>Currently</u>
BART	Executive Manager	Theresa E. Murphy
City	Associate Deputy Airport Director, Aviation and Parking Management	Gary Franzella

c. Section 23.3.2(c). "Review Persons" are as follows:

	<u>Title</u>	<u>Currently</u>
BART	Deputy General Manager	Marcia deVaughn
City	Deputy Airport Director, Business & Finance	Leo Fermin

d. Section 23.3.3(a). Third Level.

	<u>Title</u>	<u>Currently</u>
BART	General Manager	Dorothy W. Dugger
City	Airport Director	John L. Martin

**10. Section 24. City and Other Governmental Provisions** is hereby amended by adding the following provisions to Section 24:

a. Section 24.18. Pesticide Prohibition. BART shall comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the "**Pesticide Ordinance**") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage and (iii) require BART to submit to the Airport an integrated pest management ("**IPM**") plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that BART may need to

apply to the Premises during the terms of this Lease, (b) describes the steps BART will take to meet the City's IPM Policy described in Section 300 of the Pesticide Ordinance and (c) identifies, by name, title, address and telephone number, an individual to act as BART's primary IPM contact person with the City. In addition, BART shall comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance.

b. Section 24.19. Drug-Free Workplace. BART acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City premises. Any violation of this prohibition by BART or any BART Entity shall constitute a default hereunder.

c. Section 24.20. MacBride Principles – Northern Ireland. Pursuant to San Francisco Administrative Code §12.F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of BART acknowledges that he or she has read and understood this section.

d. Section 24.21. Notification of Limitations on Contributions. San Francisco Campaign and Governmental Conduct Code (the "Conduct Code") Section 1.126 prohibits any person who contracts with the City for selling or leasing any land or building to or from the City whenever such transaction would require the approval by a City elective officer or the board on which that City elective officer serves, from making a contribution to such an officer, or candidate for such an office, or committee controlled by such officer or candidate at any time from the commencement of negotiations for such contract until the termination of negotiations for such contract or three months has elapsed from the date the contract is approved by the City elective officer, or the board on which that City elective officer serves. San Francisco Ethics Commission Regulation 1.126-1 provides that negotiations are commenced when a prospective contractor first communicates with a City officer or employee about the possibility of obtaining a specific contract. This communication may occur in person, by telephone or in writing, and may be initiated by the prospective contractor or a City officer or employee. Negotiations are completed when a contract is finalized and signed by the City and the contractor. Negotiations are terminated when the City and/or the prospective contractor end the negotiation process before a final decision is made to award the contract. Through its execution of this Lease, BART acknowledges that it is familiar with the provisions of Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and sections 87100 et seq. and sections 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions and agrees that if it becomes aware of any such fact during the term of this Lease it shall immediately notify City.

e. Section 24.22. Food Service Waste Reduction Requirements. BART agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Lease as though fully set forth. This provision is a

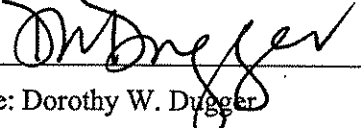
material term of this Lease. By entering into this Lease, BART agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, BART agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Lease was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by City because of BART's failure to comply with this provision.

f. Section 24.33. Airport Intellectual Property. Pursuant to Resolution No. 01-0118, adopted by the Airport Commission on April 18, 2001, the Airport Commission affirmed that it will not tolerate the unauthorized use of its intellectual property, including the SFO logo, CADD designs, and copyrighted publications. All proposers, bidders, contractors, operators, permittees, and others doing business with or at the Airport (including subcontractors and sub-operators may not use the Airport intellectual property, or any intellectual property confusingly similar to the Airport intellectual property, without the Airport Director's prior consent.

As amended hereby, each and every one of the terms, conditions, and covenants in the Lease shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment in duplicate by their duly authorized officers the day and year first hereinabove written.

BART: SAN FRANCISCO BAY AREA RAPID  
TRANSIT DISTRICT,  
A rapid transit district

By:   
Name: Dorothy W. Dugger  
Title: General Manager

AUTHORIZED BY AIRPORT  
COMMISSION

Resolution No. \_\_\_\_\_

Adopted: \_\_\_\_\_

Attest: \_\_\_\_\_

Secretary  
Airport Commission

CITY: CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation,  
acting by and through its Airport Commission

\_\_\_\_\_  
John L. Martin  
Airport Director

Approved by Board of Supervisors on  
\_\_\_\_\_, pursuant to  
Resolution No. \_\_\_\_\_.

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

By \_\_\_\_\_  
Deputy City Attorney



San Francisco International Airport

June 10, 2010

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www.flysfo.com

Ms. Angela Calvillo, Clerk of the Board  
Board of Supervisors  
City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102-4689

**Subject: Approval of Amendment No. 1 to Lease, Use and Operating Agreement for BART Station and Related Facilities and Grant of Easement at San Francisco International Airport, Lease No. L97-0081**

AIRPORT  
COMMISSION  
CITY AND COUNTY  
OF SAN FRANCISCO

GAVIN NEWSOM  
MAYOR

LARRY MAZZOLA  
PRESIDENT

LINDA S. CRAYTON  
VICE PRESIDENT

CARYL ITO

ELEANOR JOHNS

RICHARD J. GUGGENHIME

JOHN L. MARTIN  
AIRPORT DIRECTOR

Dear Ms. Calvillo:

Pursuant to Section 9.118 of the City Charter, I am forwarding for the Board of Supervisors' approval Amendment No. 1 (the "Amendment") to Lease, Use and Operating Agreement for BART Station and Related Facilities and Grant of Easement at San Francisco International Airport, Lease No. L97-0081 (the "Lease") between the City and County of San Francisco, acting by and through its Airport Commission, and San Francisco Bay Area Rapid Transit District ("BART") to: (1) limit BART Premium Fare (surcharge) for non-airline airport employees to \$1.50 each way for the remainder of the Lease; (2) remove BART Faithful Performance Deposit requirement; (3) permit monthly payment by BART of the annual rent in lieu of advance annual payment; (4) allow advertising by BART in the Airport-BART Station; and (5) include administrative updates to the Lease.

The following is a list of accompanying documents (five sets):

- Board of Supervisors Resolution;
- Approved Airport Commission Resolution No.10-0169;
- Commission Memorandum; and
- Amendment No. 1 to the Lease ;

You may contact Gary Franzella of the Airport Aviation Management Department at (650) 821-4525 regarding this matter.

Very truly yours,

Jean Caramatti  
Commission Secretary

Enclosures