

File No. 150955

Committee Item No. 24

Board Item No. \_\_\_\_\_

# COMMITTEE/BOARD OF SUPERVISORS

## AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance

Date December 2, 2015

Board of Supervisors Meeting

Date \_\_\_\_\_

### Cmte Board

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| <input type="checkbox"/>            | <input type="checkbox"/> | Legislative Digest                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Budget and Legislative Analyst Report        |
| <input type="checkbox"/>            | <input type="checkbox"/> | Youth Commission Report                      |
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| <input checked="" type="checkbox"/> | <input 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                                 |
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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement                           |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Application                                  |
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Completed by: Victor Young Date November 23, 2015

Completed by: \_\_\_\_\_ Date \_\_\_\_\_

1 [Lease Amendment - Tastes on the Fly San Francisco, LLC - Airport Concession Lease]

2  
3 **Resolution approving Amendment No. 1 of the Terminal 2 Sit Down Restaurant Lease**  
4 **with Tastes on The Fly San Francisco, LLC, to revise the definition of lease year within**  
5 **the lease to correctly set the first lease year as an eight-month period rather than a**  
6 **twenty-month period.**

7  
8 WHEREAS, Pursuant to Charter, Section 9.118, and Resolution No. 158-10, adopted  
9 April 20, 2010, the Board of Supervisors approved Terminal 2 Sit Down Restaurant Lease (the  
10 "Lease") to D-Lew Enterprises, LLC, which is on file with the Clerk of the Board of Supervisors  
11 in File No. 100317; and

12 WHEREAS, By Resolution No. 10-0032, adopted February 18, 2010, the Airport  
13 Commission awarded the Terminal 2 Sit Down Restaurant Lease (the "lease") with D-Lew  
14 Enterprises, LLC; and

15 WHEREAS, By Resolution No. 11-0267, adopted November 15, 2011, the Airport  
16 Commission authorized the assignment of the Lease to Tastes On The Fly San Francisco,  
17 LLC; and

18 WHEREAS, By Resolution 11-0285, adopted December 6, 2011, the Airport  
19 Commission authorized a revision to the definition of Lease Year within the lease as  
20 warranted to correctly set the first Lease Year as an eight-month period rather than a twenty-  
21 month period; now therefore, be it

22 RESOLVED, That this Board of Supervisors hereby approves Amendment No. 1 to the  
23 Terminal 2 Sit Down Restaurant Lease with Tastes On The Fly San Francisco, LLC consisting  
24 of the revision of the definition of Lease Year in the Lease; and, be it

1           FURTHER RESOLVED, That Lease Amendment No. 1 is on file with the Clerk of the  
2 Board of Supervisors in File No. 150955, which is hereby declared to be part of this resolution  
3 as if set forth fully herein; and, be it

4           FURTHER RESOLVED, That within thirty (30) days of Amendment No. 1 being fully  
5 executed by all parties, the Airport Commission shall provide the final document to the Clerk  
6 of the Board for inclusion into the official file.

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RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO

San Francisco International Airport

August 3, 2015 ~~SEP 25~~ PM 1:29

*JLB*

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 Twelve (12) Terminal 2 Concession Leases Correcting Lease Year Definition between Tenants and the City and County of San Francisco, acting by and through its Airport Commission

Dear Ms. Calvillo:

Pursuant to Section 9.118 of the City Charter, I am forwarding for the Board of Supervisors' approval of Amendment No. 1 to the following twelve (12) Terminal 2 concessions leases between the entities listed in the table below and City and County of San Francisco, acting by and through its Airport Commission. The Airport Commission approved this Amendment No. 1 by its Resolution Nos. listed below and the corrective dates require Board approval, as well.

	<b>Concession Lease Name &amp; No.</b>	<b>Tenant</b>	<b>Airport Resolution No. Adopted on 12/6/2011</b>
1.	Terminal 2 Gourmet Market and Wine Bar Lease No. 10-0029	Tastes On The Fly San Francisco, LLC	11-0282
2.	Terminal 2 Coffee & Bakery Facilities Lease No. 10-0030	Gotham Enterprises, LLC	11-0283
3.	Terminal 2 Cocktail Lounge Lease No. 10-0031	HBF Soto JV, LLC	11-0284
4.	Terminal 2 Sit Down Restaurant Lease No. 10-0032	Tastes On The Fly San Francisco, LLC	11-0285
5.	Terminal 2 Quick Serve Lease No. 10-0033	Sankaku, Inc.	11-0286

AIRPORT COMMISSION CITY AND COUNTY OF SAN FRANCISCO

EDWIN M. LEE  
MAYOR

LARRY MAZZOLA  
PRESIDENT

LINDA S. CRAYTON  
VICE PRESIDENT

ELEANOR JOHNS

RICHARD J. GUGGENHIME

PETER A. STERN

JOHN L. MARTIN  
AIRPORT DIRECTOR

Ms. Angela Calvillo  
Clerk of the Board  
August 3, 2015  
Page Two


	<b>Concession Lease Name &amp; No.</b>	<b>Tenant</b>	<b>Airport Resolution No. Adopted on 12/6/2011</b>
6.	Terminal 2 Quick Serve Lease No. 10-0034	Andale Management Group, Inc.	11-0287
7.	Terminal 2 Quick Serve Lease No. 10-0035	BJ Annex, LLC	11-0288
8.	Terminal 2 Quick Serve Lease No. 10-0036	HBF Soto JV, LLC	11-0289
9.	Terminal 2 Book Store Lease No. 10-0037	Books, Inc.	11-0290
10.	Terminals 2 and 3 Electronics and Technology Lease No. 10-0038	Edge 1 Cellular, L.P.	11-0291
11.	Terminals 2 and 3 Spa Lease No. 10-0041	Xpresspa International San Francisco, LLC	11-0294
12.	Terminal 2 Newsstands, Coffee and Specialty Store Lease No. 10-0232	Host International, Inc.	11-0296

The following is a list of accompanying documents:

- Board of Supervisors Resolutions;
- Approved Airport Commission Resolutions referenced
- Approval as to form of Lease from City Attorney's Office;
- Ethics Forms SFEC-126; and
- Copies of Amendment No. 1 to the subject leases.

You may contact Cathy Widener of Airport Governmental Affairs with any questions at (650) 821-5023 regarding this matter.

Very truly yours,

  
Jean Caramatti  
Commission Secretary

**AMENDMENT NO. 1 TO  
TERMINAL 2 SIT DOWN RESTAURANT LEASE NO. 10-0032  
AT SAN FRANCISCO INTERNATIONAL AIRPORT**

THIS AMENDMENT NO. 1 TO TERMINAL 2 SIT DOWN RESTAURANT LEASE (“Amendment No. 1”) AT THE SAN FRANCISCO INTERNATIONAL AIRPORT, dated as of \_\_\_\_\_ 2012 for reference purposes only, is entered by and between the between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“City”), acting by and through the SAN FRANCISCO AIRPORT COMMISSION (“Airport”), as landlord, Tastes On The Fly San Francisco, LLC, as tenant (“Tenant”).

**RECITALS**

A. The Airport Commission awarded Lease No. 10-0032, (“Lease”) for certain concession spaces located at the Airport in Terminal 2 to D-Lew Enterprises, LLC on February 18, 2010.

B. The Airport Commission authorized the assignment of Lease to Tastes On The Fly, LLC, pursuant to Resolution No. 11-0267, on November 15, 2011.

C. Airport and Tenant have agreed to modify the definition Lease Year pursuant to Lease Section 4, adjust the Lease Summary accordingly and other related provisions, on the terms and conditions set forth below.

D. All capitalized terms not otherwise defined herein shall have the same meaning given to them in the Lease.

NOW, THEREFORE, in consideration of the foregoing and for valuable consideration the sufficiency of which is hereby acknowledged, City and Tenant hereby agree to amend the Lease as follows:

**AGREEMENT**

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference as if fully set forth herein.
2. **Effective Date.** The effective date of this Amendment No. 1 and the modifications to the Lease contained in this Amendment No. 1 shall be the date upon which the Tenant and Airport Director signs this Amendment 1.
3. **Lease Summary.** Lease Year is written as follows: “The period commencing on the Rent Commencement Date and terminating on December 31 of the year in which the Rent Commencement Date occurs, and each subsequent 12-month period except that the final Lease Year is less than 12 months.”

4. **Article 4.3, Rent, Adjustments to Minimum Annual Guarantee.** The second paragraph is rewritten as follows: "Notwithstanding anything to the contrary herein, in no event will the Minimum Annual Guarantee for any Lease Year of the Term be lower than the Minimum Annual Guarantee with respect to the prior Lease Year. The first MAG Adjustment Date shall occur on January 1<sup>st</sup> of the year following the year in which the Rent Commencement Date is. For example: If the Rent Commencement Date occurs on March 1, 2010, the first MAG Adjustment Date shall occur on January 1, 2011. Subsequent MAG adjustments shall occur every January 1<sup>st</sup> of each year thereafter."
  
5. **Entire Agreement.** This Amendment No. 1 contains all of the representations and the entire agreement between the parties with respect to the subject matter of this agreement. Any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to the subject matter of the Amendment No. 1 are superseded in their entirety by this Amendment No. 1. No prior drafts of this Amendment No. 1 or changes between those drafts and the executed version of this Amendment No. 1 shall be introduced as evidence in any litigation or other dispute resolution proceeding by any party or other person, and no court or other body should consider such drafts in interpreting this Amendment No. 1.
  
6. **Miscellaneous.** This Amendment No. 1 shall bind, and shall inure to the benefit of, the successors and assigns of the parties hereto. This Amendment No. 1 is made for the purpose of setting forth certain rights and obligations of Tenant and the Airport, and no other person shall have any rights hereunder or by reason hereof as a third party beneficiary of otherwise.
  - a. Each party hereto shall execute, acknowledge, and deliver to each other party all documents, and shall take all actions, reasonably requested by such other party from time to time to confirm or effect the matters set forth herein, or otherwise to carry out the purposes of this Amendment No. 1. This Amendment No. 1 may be executed in counterparts with the same force and effect as if the parties had executed one instrument, and each such counterpart shall constitute an original hereof. No provision of this Amendment No. 1 that is held to be inoperative, unenforceable or invalid shall affect the remaining provisions, and to this end all provisions hereof are hereby declared to be severable. Time is of the essence of this Amendment No. 1. This Amendment No. 1 shall be governed by the laws of the State of California. Neither this Amendment No. 1 nor any of the terms hereof may be amended or modified except by a written instrument signed by all the parties hereto.
  
7. **Full Force and Effect.** Except as specifically amended herein, the terms and conditions of the Lease shall remain in full force and effect.

///

IN WITNESS WHEREOF, the Airport and the Tenant execute this Amendment No. 1 to the Lease as of the last date set forth below.

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

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

cf cd

**TENANT:** Tastes On The Fly, LLC,  
a Limited Liability Company

By: \_\_\_\_\_  
Name: MICHAEL LEWINE  
Title: COO

AUTHORIZED BY AIRPORT  
COMMISSION

Resolution No. 11-0285  
Adopted: Dec. 6, 2011

Attest:

\_\_\_\_\_  
Secretary  
Airport Commission

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

By:

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



**AIRPORT COMMISSION**

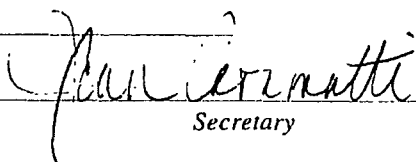
**CITY AND COUNTY OF SAN FRANCISCO**

**RESOLUTION NO. 11-0267**

**ASSIGNMENT OF TERMINAL 2 SIT DOWN RESTAURANT LEASE NO. 10-0032  
FROM D-LEW ENTERPRISES, LLC TO TASTES ON THE FLY SAN FRANCISCO,  
LLC**

- WHEREAS,** pursuant to Resolution No. 10-0032, adopted February 18, 2010 the Airport Commission ("Commission") awarded the Terminal 2 Sit-Down Restaurant Lease to D-Lew Enterprises, LLC ("Tenant"); and
- WHEREAS,** Tenant's ownership structure is 24% by Michael Levine, 26% by Darren Lewis, 25% by Scott Rodrick, and 25% by Carmen Mayo; and
- WHEREAS,** Tenant desires to assign Lease to Tastes on the Fly San Francisco, LLC with a change in ownership to 20% by Michael Levine, 20% by Darren Lewis, 20% by Scott Roderick, 20% Carmen Mayo and 20% by Larry Garnick; and
- WHEREAS,** such Lease assignment is subject to Commission approval; and
- WHEREAS,** Airport staff has reviewed Tenant's financial position including Larry Garnick's personal financials and assignment agreement, and found them to be satisfactory; and
- WHEREAS,** Tastes on the Fly San Francisco, LLC will remain subject to all existing terms covenants, and conditions of the Lease; now, therefore, be it
- RESOLVED,** that this Commission hereby consents to the assignment of the Terminal 2 Sit Down Restaurant Lease No. 10-0032 from D-Lew Enterprises, LLC to Tastes on the Fly San Francisco, LLC, a California corporation, under the existing terms and conditions.

*I hereby certify that the foregoing resolution was adopted by the Airport Commission  
at its meeting of* NOV 15 2011

  
Secretary

**AIRPORT COMMISSION**

CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 11-0285

**AMENDMENT OF THE TERMINAL 2 SIT DOWN RESTAURANT LEASE WITH TASTES ON THE FLY SAN FRANCISCO, LLC**

WHEREAS, by Resolution No. 10-0032, adopted February 18, 2010, the Commission awarded the Terminal 2 Sit-Down Restaurant Lease (the "Lease") to D-Lew Enterprises, LLC; and

WHEREAS, by Resolution No. 11-0267, adopted November 15, 2011, the Commission authorized the assignment of the Lease to Tastes On The Fly San Francisco, LLC; and

WHEREAS, a revision to the definition of Lease Year within the Lease is warranted to correctly set the first Lease Year as an eight-month period rather than a twenty-month period; now therefore, be it

RESOLVED, that this Commission hereby amends the Terminal 2 Sit-Down Restaurant Lease with Tastes On The Fly San Francisco, LLC, under the conditions set forth in the staff memorandum on file with the Commission Secretary consisting of the revision of the definition of Lease Year in the Lease Summary and in Article 4.1(h) in the Lease; and be it further

RESOLVED, that this Commission Secretary is hereby directed to request approval of the Lease Amendment 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 DEC 06 2011

*Jean Caramazza*

Secretary

AIRPORT COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

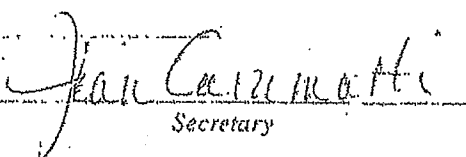
RESOLUTION NO. 10-0032

AWARD OF THE TERMINAL 2 SIT DOWN RESTAURANT TO D-LEW ENTERPRISES, LLC

- WHEREAS, by Resolution No. 09-0216, adopted September 15, 2009 the Commission authorized staff to commence the competitive selection process for the Sit Down Restaurant Lease (the "Lease") through Request for Proposals ("RFPs"); and
- WHEREAS, by Resolution No. 09-0258, adopted November 24, 2009, the Commission authorized staff to accept proposals for the eight (8) Terminal 2 Food & Beverage Concession Leases; and
- WHEREAS, on January 6, 2010, staff received five (5) proposals for the Sit Down Restaurant Lease, from D-Lew Enterprises, LLC, Host International, Inc., Mission Yogurt, Inc., OTG Management West, LLC, and SFBVC II, LLC; and
- WHEREAS, proposal from Mission Yogurt, Inc. was deemed not qualified for it did not meet the minimum qualification requirement; and
- WHEREAS, a six-member panel reviewed the qualifying proposals and determined D-Lew Enterprises, LLC to be the highest ranking, responsive, and responsible proposer; now therefore, be it
- RESOLVED, that this Commission hereby awards the Terminal 2 Sit Down Restaurant Lease to D-Lew Enterprises, LLC, under the conditions set forth in the staff memorandum on file with the Commission Secretary, including, but not limited to a term of twelve (12) years with one two (2) year option exercisable at the sole and absolute discretion of the Airport Commission, and a Minimum Annual Guarantee of \$189,984.00 for the first year of the Lease, and subject to its compliance with the Nondiscrimination in Employment Program and Equal Benefits Ordinance; and be it further
- RESOLVED, that this Commission Secretary is hereby directed to request approval 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 \_\_\_\_\_

FEB 18 2010

  
Secretary

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

<b>City Elective Officer Information</b> <i>(Please print clearly.)</i>	
Name of City elective officer(s):  Members, SF Board of Supervisors	City elective office(s) held:  Members, SF Board of Supervisors
<b>Contractor Information</b> <i>(Please print clearly.)</i>	
Name of contractor: <b>Tastes on The Fly San Francisco, LLC</b>	
<i>Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.</i>	
20% by Michael Levine, Managing Member 20% by Scott Rodrick, Managing Member 20% by Larry Garnick, Managing Member	20% by Darren Lewis, Managing Member 20% by Carmen Mayo, Managing Member
Contractor address: 411 Borel Avenue, Suite 606, San Mateo, Ca 94402	
Date that contract was approved:	Amount of contract: \$819,984.00 (current MAG)
Describe the nature of the contract that was approved: Principal concessionaire for Terminal 2 Sit Down Restaurant Lease.	
Comments: Awarded through a Request for Proposal process.	

This contract was approved by (check applicable):

the City elective officer(s) identified on this form

a board on which the City elective officer(s) serves San Francisco Board of Supervisors

Print Name of Board

the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

<b>Filer Information</b> <i>(Please print clearly.)</i>	
Name of filer: Angela Calvillo, Clerk of the Board of Supervisors	Contact telephone number: (415) 554-5184
Address: 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102-4689	E-mail: Board.of.Supervisors@sfgov.org

\_\_\_\_\_  
Signature of City Elective Officer (if submitted by City elective officer)

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

\_\_\_\_\_  
Date Signed