

File No. 120187

Committee Item No. 15

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Rules

Date 3/29/12

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 Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form (for hearings) |
| <input 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 |
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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
| <input type="checkbox"/> | <input type="checkbox"/> | Application |
| <input type="checkbox"/> | <input type="checkbox"/> | Public Correspondence |

OTHER

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Completed by: Linda Wong

Date 3/26/12

Completed by: _____

Date _____

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

1 [Settlement of Lawsuit – Airis v. CCSF, et al. - \$7,500,000.00]

2
3 Ordinance authorizing settlement of the lawsuit filed by Airis SFO, LLC, Airis Holdings
4 LLC, and Duane Morris LLP ("Airis") against the City and County of San Francisco (the
5 "City") for \$7,500,000.00; the lawsuit was filed on July 15, 2005 in San Mateo Superior
6 Court, Case No. 448274, entitled Airis SFO, LLC, et al. v. City and County of San
7 Francisco, et al.; other material terms include a full and final release by Airis of all
8 claims for attorneys' fees, costs, and postjudgment interest.
9

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

11 Section 1. The City Attorney is hereby authorized to settle the action entitled *Airis*
12 *SFO, LLC, et al. v. City and County of San Francisco, et al.*, San Mateo County Superior
13 Court Case No. 448274, as follows:

14 1) The City will pay Airis the amount of Seven Million Five Hundred Thousand Dollars,
15 No Cents (\$7,500,000.00) in settlement of all claims, including any claims for attorneys' fees,
16 costs, and postjudgment interest.


17 2) Airis will fully and finally release the City for any and all claims arising out of or
18 relating to the subject action, including any claims for attorneys' fees, costs, and postjudgment
19 interest.

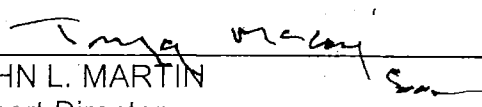
20 APPROVED AS TO FORM AND
21 RECOMMENDED:

RECOMMENDED:

22 DENNIS J. HERRERA
23 City Attorney

SAN FRANCISCO AIRPORT COMMISSION

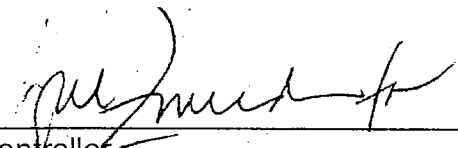
24 
25 DANNY CHOU
Supervising Deputy City Attorney


JOHN L. MARTIN
Airport Director

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FUNDS AVAILABLE:

APPROVED:



Controller



SECRETARY
SAN FRANCISCO AIRPORT COMMISSION

Index Code: AIRCITYATTNY
Sub Object: 05312

SETTLEMENT AND MUTUAL RELEASE AGREEMENT

INTRODUCTION

This Settlement and Mutual Release Agreement ("Agreement") is made and entered into by and between Plaintiffs AIRIS HOLDINGS LLC, AIRIS SFO, LLC and DUANE MORRIS, LLP, ("Airis") and Defendants the CITY AND COUNTY OF SAN FRANCISCO, and JOHN L. MARTIN IN HIS OFFICIAL CAPACITY AS DIRECTOR OF THE SAN FRANCISCO INTERNATIONAL AIRPORT (collectively, the "City"). Airis and the City shall collectively be referred to as the "Parties."

RECITALS

WHEREAS, disputes currently exist between the Parties, and such disputes were previously the subject of extended trial court proceedings in San Mateo Superior Court and multiple appeals in California Court of Appeal, First District, Division 2 and are currently the subject of a pending action in the California Superior Court, County of San Mateo, Case No. 448274 (hereafter collectively referred to as the "Airis Action"); and

WHEREAS, pursuant to a jury verdict Airis was awarded damages in the amount of \$1,050,000 resulting from the City's breach of the implied covenant of good faith and fair dealing in an Exclusive Negotiation Agreement ("ENA") dated February 12, 2003 regarding the development of a West Field Cargo Project ("Project") at the Airport, which award is reflected in the reinstated judgment of December 26, 2007; and

WHEREAS, the reinstated judgment of December 26, 2007 requires an award of "statutory costs and disbursements" in favor Airis in an amount to be determined by the Court; and

WHEREAS, the City tendered on November 9, 2011 a check in the amount of \$1,334,535.62 in full payment of the damages reflected in the jury verdict plus post-judgment interest on that damages award from December 26, 2007 to November 9, 2011; and

WHEREAS, the Parties' only remaining dispute involves the amount of attorneys' fees and statutory costs and entitlement to and amount of non-statutory costs and post-judgment interest the Court should award Airis for trial and appellate work, the preparation of the Airis fee and cost motions, and post-judgment interest on these sums; and

WHEREAS, in an effort to resolve these disputes the Parties participated in September 21 and November 14, 2011 JAMS mediations with the Hon. Edward A. Infante (ret.); and

WHEREAS, the Parties now desire to resolve all remaining disputes, including their disputes with regard to the amount of the costs and attorneys' fees owed pursuant to the December 26, 2007 judgment, including all trial and appellate court attorneys' fees and costs, and post-judgment interest related thereto; and

WHEREAS, the Parties wish to avoid the uncertainty, risks, and expense of further litigation, and resolve the Airis Action and all the claims by and between them;

THEREFORE, the Parties agree to fully and finally settle all their outstanding disputes and claims upon the terms of this Settlement Agreement and Mutual Release, more particularly described below.

TERMS OF SETTLEMENT AND MUTUAL RELEASE

AGREEMENTS:

1. Airis acknowledges receipt of the City's check in the amount of \$1,334,535.62 on November 9, 2011, ("Check") and acknowledges that the Check is payment in full for the damages awarded by the jury of \$1,050,000 plus post-judgment interest on that amount from December 26, 2007, specifically not including any costs or attorneys' fees due Airis, or post-judgment interest thereon. City agrees that Airis may cash the Check at any time without prejudice to its right to recover any additional costs, attorneys' fees, or post-judgment interest on costs and attorneys' fees under the Agreement or in the Airis Action.
2. In full and final settlement of the Airis Action, the City agrees to pay Airis the additional sum of \$7,500,000.00 (the "Settlement Payment"), to resolve all remaining claims including specifically all claims for costs, attorneys' fees, and post-judgment interest on costs and attorneys' fees. This settlement is expressly contingent on timely approval of the Agreement and tender of the Settlement Payment in a timely manner as provided in paragraphs 4 and 5 below.
3. The Parties will advise the San Mateo Superior Court ("Court") of the contingent settlement set forth herein and will jointly move the Court to stay the Airis Action, pending the approval of this Agreement and tender of the Settlement Payment in accordance with the Agreement.
4. This Agreement is subject to final approval by the San Francisco Board of Supervisors. If the Board of Supervisors fails to approve the Agreement on or before March 30, 2012, the pending Airis Action may be reinstated by either of the Parties, in which event either party may immediately notify the Court and request any stay be lifted and the matter returned to the active civil calendar, with the Parties ordered to submit promptly final letter briefs as directed by the Court on November 9, 2011.
5. The City shall pay the Settlement Amount to Airis within 15 days of the completion of all the following events and in any event not later than April 30, 2012:
 - a. The San Francisco Airport Commission approves and executes this Agreement;
 - b. The San Francisco Board of Supervisors passes an ordinance authorizing this Agreement on or before March 30, 2012;

- c. On or before April 15, 2012, the Mayor of San Francisco either signs the ordinance authorizing the Agreement or fails to timely veto the ordinance;
- d. The payee receiving the Settlement Payment submits a W-9 form to the City; and
- e. The Agreement is fully executed by Airis Holdings, Airis SFO, Duane Morris and the City.

Airis acknowledges that the timetable for final approval by the San Francisco Board of Supervisors is uncertain and may be subject to change at any time. If the timetable changes and the City in good faith is unable to comply with the deadlines set forth in this paragraph and in paragraph 4 of the Agreement, the City, through its counsel, will inform Airis, through its counsel, and the Parties agree to meet and confer about setting new deadlines for final approval by the San Francisco Board of Supervisors and payment of the Settlement Amount to Airis.

If any of the above events are not completed by the date specified, or the Settlement Payment has not been made by April 30, 2012, then after fulfilling the meet and confer requirement in this section, this Agreement shall be null and void, and the Parties may again pursue the Airis Action as provided in paragraph 4 above.

6. All City personnel participating in the JAMS mediation of the Airis Action support the Agreement and the City Attorney's Office will recommend approval of this Agreement to the San Francisco Board of Supervisors. John Martin, Director of the San Francisco International Airport, and the San Francisco City Attorney, support this Agreement and, through their staff, will recommend its final approval by the San Francisco Board of Supervisors.
7. All Airis and Duane Morris personnel participating in the JAMS mediation of the Airis Action will fully support and recommend approval of the Agreement with all City officials and with the San Francisco Board of Supervisors.
8. The Parties agree and acknowledge that this Agreement is made in compromise of disputed claims and contentions, and none of the consideration exchanged in this settlement shall be construed as an admission of liability by the Parties or of the validity of any particular claim or contention in their dispute.
9. In any subsequent competition or negotiation for City contracts, the City agrees to apply the same criteria in evaluating bids or proposals submitted by Airis that the City applies to bids or proposals submitted by others. The City further agrees that nothing which transpired in the Airis Action, or this Agreement shall adversely impact the City's evaluation of bids or proposals received from Airis.

MUTUAL RELEASES:

10. Except for any obligations imposed by this Agreement, the Parties hereby fully and forever release and discharge each other, and their respective assigns, successors, predecessors, partners, agents, attorneys, representatives, insurers, affiliated entities,

officers, directors, trustees, beneficiaries, heirs and employees, and each of them, from any and all claims, demands, debts, losses, damages, obligations, warranties, costs, expenses, actions, rights of action, causes of action, suits and liabilities of any kind or nature whatsoever, whether based on contract, tort, statute or other theory of recovery, legal, equitable, or otherwise, past or present, whether now known or not presently known, suspected or unsuspected, existing or claimed to exist, which arise out of or relate to any of the facts, circumstances, and/or events which relate to the Airis Action or are asserted in the Airis Action, the commencement, prosecution, or defense of the Airis Action, or the negotiation and documentation of this Agreement.

WAIVER OF UNKNOWN CLAIMS:

11. Each party acknowledges that it may later discover facts in addition to or different from those which such party now knows or believes to be true with respect to the subject matter of this Agreement and arising out of the Airis project or Airis Action and that it is such party's intention notwithstanding, fully, finally and forever to settle and release all of the claims released by this Agreement, known or unknown, suspected or unsuspected, which now exist, may exist or previously existed between the Parties except as specifically reserved above or herein. In furtherance of such intention, the releases given in this Agreement shall be and shall remain in effect as a full and completed release, notwithstanding the discovery or existence of any such additional or different facts. The Parties further accept and assume the risk that such facts may turn out to be different from the facts now known or believed to be true by the Parties and agree that the releases given in this Agreement shall remain in all respects effective and shall not be subject to termination or rescission by reason of any such difference in fact.

WAIVER OF CIVIL CODE SECTION 1542:

12. In giving this release, the Parties each waive the benefit of Section 1542 of the California Civil Code of the State of California, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

WARRANTIES:

13. The Parties warrant that they, and no others, have all the exclusive rights, titles, obligations, and interests to any and all claims which are being settled and released by this Agreement. Each of the Parties warrants that they have not sold, assigned, or encumbered any rights or obligations related to or arising from their dispute to any other person or entity.
14. The Parties acknowledge that they have read this Agreement and that they understand it to be a complete and final release of matters set forth herein. Each of the Parties has chosen freely to execute it after the opportunity to consult with counsel of its choosing.

The Parties further agree that each of the Parties has participated in the drafting of this Agreement, with the assistance of counsel, and therefore the wording of this Agreement shall not be construed against any party hereto as the drafter. This Agreement may be executed in counterparts, which taken together shall constitute a binding Agreement. A copy, or facsimile, of a party's designated representative(s)' executed signature page of the Agreement shall be deemed to have the same force and effect as an originally executed signature.

ATTORNEYS' FEES:

15. All Parties shall be responsible for their own attorneys' fees and costs for preparation for and participation in the September 21, 2011 and November 14, 2011 mediations preceding this Agreement and the preparation and implementation of the Agreement. In the event that there is any continuation of the Airis Action, Airis shall remain entitled to recover other attorneys' fees and costs pursuant to the terms of the ENA.

INTEGRATION:

16. This entire Agreement represents the complete understanding of the Parties with respect to the matters set forth herein, and there are no promises, terms, conditions or obligations other than those contained herein. All prior negotiations, understandings, conversations and communications are merged into this Agreement and have no force and effect other than expressed herein. Should any of the provisions of this Agreement be determined to be invalid by any court, agency, or by any other tribunal of competent jurisdiction, such determination shall not affect the enforceability of the other provisions herein, and the provisions of this Agreement are declared to be severable.

NO MODIFICATION:

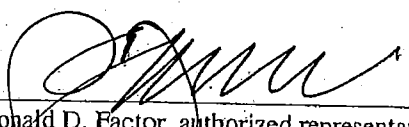
17. No change or modification of this Agreement shall be valid unless it is made in writing and signed by the Parties.

GOVERNING LAW:

18. This Agreement is intended to be enforceable and binding. This Agreement shall be governed by and shall be construed in accordance with the laws of California, and shall be enforceable under Code of Civil Procedure section 664.6.

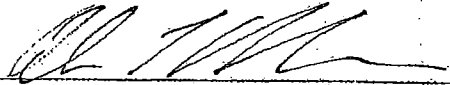
IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized representatives.

Dated: 3 Feb 2012

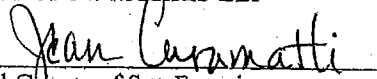


Ronald D. Factor, authorized representative for
Plaintiffs Airis SFO, LLC and Airis Holdings, LLC

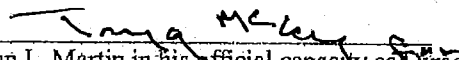
Dated: Jan. 19, 2012


Oliver L. Holmes, authorized representative for
Plaintiff DUANE MORRIS LLP

Dated: Dec 6, 2011
RESO - No. 11-0298

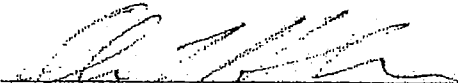

City and County of San Francisco
(Airport Commission of the City and County
of San Francisco)

Dated: 2-13-12

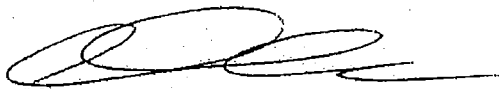

John L. Martin in his official capacity as Director of
San Francisco International Airport

APPROVED AS TO FORM

Dated: Jan. 19, 2012


Oliver L. Holmes
DUANE MORRIS LLP, Attorneys for Plaintiffs
AIRIS SFO, LLC and Airis Holdings, LLC
and Duane Morris LLP

Dated: Jan. 19, 2012


CITY AND COUNTY OF SAN FRANCISCO
(City Attorneys' Office)

FIRST AMENDMENT TO SETTLEMENT AND MUTUAL RELEASE AGREEMENT

INTRODUCTION

This First Amendment ("Amendment") hereby amends the Settlement and Mutual Release Agreement entered into by and between Plaintiffs AIRIS HOLDINGS LLC, AIRIS SFO, LLC and DUANE MORRIS, LLP, ("Airis") and Defendants the CITY AND COUNTY OF SAN FRANCISCO, and JOHN L. MARTIN IN HIS OFFICIAL CAPACITY AS DIRECTOR OF THE SAN FRANCISCO INTERNATIONAL AIRPORT ("City"). For purposes of this Amendment, Airis and the City shall be referred to collectively as the "Parties." The Settlement and Mutual Release Agreement ("Agreement") is attached hereto as Exhibit A for reference.

RECITALS

WHEREAS, the Agreement entered into by the Parties contemplates completion of certain actions by certain specified dates and the Parties agree that those specified dates should be extended;

WHEREAS, this Amendment is not intended to and does not amend or modify any other provisions of the Agreement;

THEREFORE, the Parties agree to extend the dates specified below as follows:

AMENDMENTS

1. Paragraph 4. of the Terms of the Agreement is amended to change the date March 30, 2012 to April 30, 2012 and shall now read:

4. This Agreement is subject to final approval by the San Francisco Board of Supervisors. If the Board of Supervisors fails to approve the Agreement on or before April 30, 2012, the pending Airis Action may be reinstated by either of the Parties, in which event either party may immediately notify the Court and request any stay be lifted and the matter returned to the active civil calendar, with the Parties ordered to submit promptly final letter briefs as directed by the Court on November 9, 2011.

2. Paragraph 5. of the Terms of the Agreement is amended to change the date reflected in the first sentence from April 30, 2012 to May 30, 2012; to change the date reflected in paragraph 5.b. from March 30, 2012 to April 30, 2012; to change the date reflected in paragraph 5.c. from April 15, 2012 to May 15, 2012 and to change the date reflected in the last paragraph from April 30, 2012 to May 30, 2012, all as set forth below and shall now read:

5. The City shall pay the Settlement Amount to Airis within 15 days of the completion of all the following events and in any event not later than May 30, 2012:

- a. The San Francisco Airport Commission approves and executes this Agreement;
- b. The San Francisco Board of Supervisors passes an ordinance authorizing this Agreement on or before April 30, 2012;

- c. On or before May 15, 2012, the Mayor of San Francisco either signs the ordinance authorizing the Agreement or fails to timely veto the ordinance;
- d. The payee receiving the Settlement Payment submits a W-9 form to the City; and
- e. The Agreement is fully executed by Airis Holdings, Airis SFO, Duane Morris and the City.

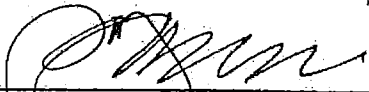
Airis acknowledges that the timetable for final approval by the San Francisco Board of Supervisors is uncertain and may be subject to change at any time. If the timetable changes and the City in good faith is unable to comply with the deadlines set forth in this paragraph and in paragraph 4 of the Agreement, the City, through its counsel, will inform Airis, through its counsel, and the Parties agree to meet and confer about setting new deadlines for final approval by the San Francisco Board of Supervisors and payment of the Settlement Amount to Airis.

If any of the above events are not completed by the date specified, or the Settlement Payment has not been made by May 30, 2012, then after fulfilling the meet and confer requirement in this section, this Agreement shall be null and void, and the Parties may again pursue the Airis Action as provided in paragraph 4 above.


3. There are no further amendments, modifications or changes to the Agreement, and all other terms, agreements and releases set forth in the Agreement shall remain the same and in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Amendment by their duly authorized representatives.

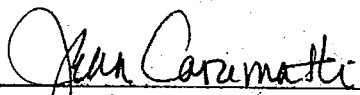
Dated: 9 Feb 2012


 Ronald D. Factor, authorized representative for
 Plaintiffs Airis SFO, LLC and Airis Holdings, LLC

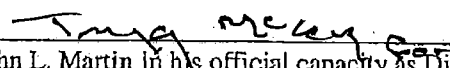
Dated: Feb 9, 2012


 Oliver L. Holmes, authorized representative for
 Plaintiff DUANE MORRIS LLP

Dated: Dec 9, 2011
 Res. No. 11-0298

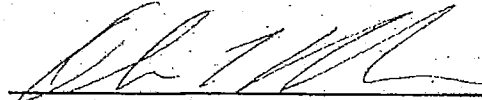

 City and County of San Francisco
 (Airport Commission of the City and County
 of San Francisco)

Dated: 2-13-12


 John L. Martin in his official capacity as Director of
 San Francisco International Airport

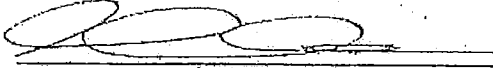
APPROVED AS TO FORM

Dated: Feb 7, 2012



Oliver L. Holmes
DUANE MORRIS LLP, Attorneys for Plaintiffs
AIRIS SFO, LLC and Airis Holdings, LLC
and Duane Morris LLP

Dated: Feb. 9, 2012



CITY AND COUNTY OF SAN FRANCISCO
(City Attorneys' Office)