

File No. 111289

Committee Item No. 3

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

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee

Date: January 4, 2012

Board of Supervisors Meeting

Date \_\_\_\_\_

#### Cmte Board

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Resolution                                   |
| <input type="checkbox"/>            | <input type="checkbox"/> | Ordinance                                    |
| <input type="checkbox"/>            | <input type="checkbox"/> | Legislative Digest                           |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Budget & Legislative Analyst Report          |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Ethics Form 126                              |
| <input type="checkbox"/>            | <input type="checkbox"/> | Introduction Form (for hearings)             |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/>            | <input type="checkbox"/> | MOU  |
| <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                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Application                                  |

#### OTHER

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Completed by: Victor Young

Date: December 30, 2011

Completed by: Victor Young

Date: \_\_\_\_\_

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

1 [Airport Concession Lease Amendment - Boarding Area F Principal Retail - Pacific Gateway  
2 Concessions, LLC]

3  
4 **Resolution approving Amendment No. 1 to Boarding Area "F" Principal Retail**  
5 **Concession Lease No. 04-0139 between Pacific Gateway Concessions, LLC, and the**  
6 **City and County of San Francisco, acting by and through its Airport Commission.**

7  
8 WHEREAS, Per Resolution No. 11-0189, the Airport Commission approved  
9 Amendment No. 1 to the Boarding Areas "F" Principal Concession Lease No. 04-0139; and

10 WHEREAS, On July 20, 2004, the Airport Commission (the "Commission") adopted  
11 Resolution No. 04-0139, awarding the Boarding Area "F" Newsstand Lease ("Lease No. 04-  
12 0139") to Soto & Sanchez Investments, Inc., for 1,050 square feet in Terminal 3, Boarding  
13 Area "F" ("Space No. F.2.055"), and a term of five years, which commenced on March 1,  
14 2005, with one option to extend the term for an additional two years; and

15 WHEREAS, On August 2, 2005, the Commission adopted Resolution No. 05-0150,  
16 assigning Lease No. 04-0139 to Pacific Gateway Concessions, LLC ("PGC, LLC"); and

17 WHEREAS, On August 18, 2009, the Commission adopted Resolution No. 09-0201  
18 exercising the one two-year option under the Lease, which now expires on February 28, 2012;  
19 and

20 WHEREAS, On September 23, 2003, the Commission adopted Resolution No. 03-  
21 0192, awarding a Domestic Terminal Food and Beverage Lease ("Lease No. 03-0192") to J.  
22 Avery Enterprises ("Klein's Deli") for a term of ten years with one option to extend the term for  
23 two years, and premises consisting of approximately 518 square feet in Terminal 1, Boarding  
24 Area "B" ("Space No. B.2.030") and approximately 642 square feet in Terminal 3, Boarding  
25 Area "E" ("Space No. E.2.021"); and

1           WHEREAS, On April 5, 2011, the Commission adopted Resolution No. 11-0084  
2 amending Lease No. 03-0192 by Amendment No. 1, which includes a relocation of Space No.  
3 B.2.030 to Boarding Area "F"; and

4           WHEREAS, Staff has identified Space No. F.2.055 as replacement premises for Klein's  
5 Deli's Space No. B.2.030; and

6           WHEREAS, The Airport Commission approved the early termination of Pacific  
7 Gateway Concessions, LLC's Boarding Area "F" Newsstand Lease No. 04-0139 to a date to  
8 be determined by the Airport Director, which shall not be earlier than November 1, 2011; now,  
9 therefore, be it

10          RESOLVED, That the Board of Supervisors hereby approves Amendment No. 1 to the  
11 Boarding Areas "F" Principal Concession Lease No. 04-0139, copies of which are contained in  
12 Board of Supervisors' file number 111289.

**Items 3**  
**Files 11-1289**

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

## EXECUTIVE SUMMARY

### Legislative Objectives

- The proposed resolution would approve the First Amendment to the Boarding Area F Newsstand Lease between the Airport and Pacific Gateway Concessions, LLC that would result in the early termination of the subject lease.

### Key Points

- On November 23, 2004, the Board of Supervisors approved a resolution (File 04-1452) awarding the Boarding Area "F" Newsstand Lease to Soto and Sanchez, later to become part of Pacific Gateway Concessions, LLC. On August 18, 2009, the Airport Commission adopted resolution 09-0201, exercising the one two-year option under the lease, which is currently set to expire on February 28, 2012.
- On May 24, 2011, the Board of Supervisors approved the amendment of a separate lease between the Airport and J. Avery Enterprises for the premises known as Klein's Deli to relocate their two locations due to Airport construction (File 11-0542).

### Policy Consideration

- According to Mr. Matt McCormick, Principal Property Manager at the Airport, the earliest that Pacific Gateway Concessions could vacate the premises for Klein's Deli (J. Avery Enterprises) to take over the space would be the end of January, 2012. Given that the existing lease with Pacific Gateway Concessions expires on February 28, 2012, which is only one month later, the Airport requests that the proposed resolution be tabled.

### Recommendation

- Table the proposed resolution, as requested by the Airport.

## MANDATE STATEMENT / BACKGROUND

### Mandate Statement

In accordance with City Charter Section 9.118(c), any lease exceeding ten years and/or having anticipated revenue of \$1,000,000 or greater is subject to the Board of Supervisors approval.

### Background

#### *Pacific Gateway Concessions*

On November 23, 2004, the Board of Supervisors approved awarding the Boarding Area "F" Newsstand Lease to Soto and Sanchez, later to become part of Pacific Gateway Concessions, LLC (File 04-1452). This lease consisted of 1,050 square feet of space in Terminal 3, Boarding Area F and extended through February 28, 2010 with one option to extend the lease for an additional two years, or through February 28, 2012.

On August 18, 2009, the Airport Commission and Pacific Gateway Concessions exercised the option to extend the lease for two additional years (Airport Resolution 09-0201), or through February 28, 2012.

#### *Klein's Deli*

On December 9, 2003, the Board of Supervisors approved a resolution (File 03-1710) authorizing the Airport to enter into a ten-year lease with J. Avery Enterprises for two concessions (a) Klein's Deli comprising 518 square feet in Terminal 1, Boarding Area B, and (b) Klein's Deli comprising 642 square feet in Terminal 3, Boarding Area E. On May 24, 2011, due to construction at the Airport, the Board of Supervisors approved an amendment to the lease between the Airport and J. Avery Enterprises to relocate both of Klein's Delis (File 11-0542). However, the Airport later identified the space currently occupied by Pacific Gateway Concession as a better potential space for one of Klein's Delis.

### **DETAILS OF PROPOSED LEGISLATION**

The proposed resolution would allow the Airport to terminate the lease of Boarding Area "F" Newsstand Lease with Pacific Gateway Concessions as of a date to be determined by the Airport Director to allow the space to be renovated and leased to J. Avery Enterprises for a proposed new Klein's Deli.

### **POLICY CONSIDERATION**

According to Mr. Matt McCormick, Principal Property Manager at the Airport, given various delays, the earliest that Pacific Gateway Concessions could vacate their subject space would be January 31, 2012. However, as noted above, the proposed lease with Pacific Gateway Concessions currently expires on February 28, 2012, or only one month later. Therefore, the Airport requests that the subject resolution be tabled.

### **RECOMMENDATION**

Table the proposed resolution, as requested by the Airport.

AIRPORT COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 11-0139

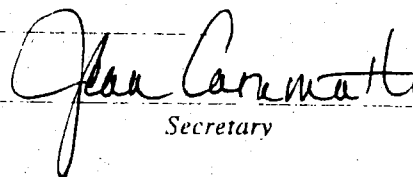
**EARLY TERMINATION OF BOARDING AREA "F" NEWSSTAND LEASE  
NO. 04-0139 WITH PACIFIC GATEWAY CONCESSIONS, LLC**

- WHEREAS, on July 20, 2004, the Airport Commission (the "Commission") adopted Resolution No. 04-0139, awarding the Boarding Area "F" Newsstand Lease ("Lease No. 04-0139") to Soto & Sanchez Investments, Inc., for 1,050 square feet in Terminal 3, Boarding Area "F" ("Space No. F.2.055"), and a term of five years, which was set to expire on February 28, 2010, with one option to extend the term for an additional two years; and
- WHEREAS, on August 2, 2005, the Commission adopted Resolution No. 05-0150, assigning Lease No. 04-0139 to Pacific Gateway Concessions, LLC ("PGC, LLC"); and
- WHEREAS, on August 18, 2009, the Commission adopted Resolution No. 09-0201 exercising the one two-year option under the Lease, which now expires on February 28, 2012; and
- WHEREAS, on September 23, 2003, the Commission adopted Resolution No. 03-0192, awarding a Domestic Terminal Food and Beverage Lease ("Lease No. 03-0192") to J. Avery Enterprises ("Klein's Deli") for a term of ten years with one option to extend the term for two years, and premises consisting of approximately 518 square feet in Terminal 1, Boarding Area "B" ("Space No. B.2.030") and approximately 642 square feet in Terminal 3, Boarding Area "E" ("Space No. E.2.021"); and
- WHEREAS, on April 5, 2011, the Commission adopted Resolution No. 11-0084, amending Lease No. 03-0192 by Amendment No. 1, which includes a relocation of Space No. B.2.030 to Boarding Area "F"; and
- WHEREAS, staff has identified Space No. F.2.055 as replacement premises for Klein's Deli's Space No. B.2.030; now, therefore, be it
- RESOLVED, that this Commission approves the early termination of Pacific Gateway Concessions, LLC's Boarding Area "F" Newsstand Lease No. 04-0139 to a date to be determined by the Airport Director, which shall not be earlier than November 1, 2011.

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

*at its meeting of* \_\_\_\_\_

AUG 16 2011

  
Secretary

**AMENDMENT NO. 1 TO  
BOARDING AREA "F" NEWSSTAND LEASE NO. 04-0139  
AT SAN FRANCISCO INTERNATIONAL AIRPORT**

THIS AMENDMENT NO. 1 TO BOARDING AREA "F" NEWSSTAND LEASE NO. 04-0139 AT THE SAN FRANCISCO AIRPORT ("Amendment No. 1"), dated as of 0C1 3 1 \_\_\_\_\_, for reference purposes only, is entered by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "City"), acting by and through the SAN FRANCISCO AIRPORT COMMISSION (the "Airport"), as landlord, and PACIFIC GATEWAY CONCESSIONS, LLC, as tenant ("Tenant").

**RECITALS**

A. The Airport and Soto & Sanchez Investments, Inc. entered into Lease No. 04-0139, dated July 20, 2004 (the "Lease") for those certain retail spaces located at the Airport in Terminal 3, Boarding Area F (the "Premises"). The Lease was previously approved by the Airport Commission pursuant to Resolution No. 04-0139, and by the Board of Supervisors pursuant to Resolution No. 711-04.

B. The premises is comprised of one location measuring approximately 1,050 square feet after the security checkpoint of Boarding Area "F".

C. The Airport Commission approved the assignment of the Lease to Pacific Gateway Concessions, LLC by Resolution No. 05-0150, adopted August 2, 2005.

D. The base term of the Lease expired on February 28, 2010.

E. The Airport on August 18, 2009, adopted Commission Resolution No. 09-0201 exercising the one two-year option under the Lease, which now expires on February 28, 2012.

F. On September 23, 2003, the Airport Commission adopted Resolution No. 03-0192, awarding a Domestic Terminal Food and Beverage Lease ("Lease No. 03-0192") to J. Avery Enterprises ("Klein's Deli") for a term of ten years with one option to extend the term for two years, and premises consisting of approximately 518 square feet in Terminal 1, Boarding Area "B" ("Space No. B.2.030") and approximately 642 square feet in Terminal 3, Boarding Area "E" ("Space No. E.2.021").

G. On April 5, 2011, the Airport Commission adopted Resolution No. 11-0084 by amending Lease No. 03-0192 by Amendment No. 1, which includes a relocation of Space No. B.2.030 to Boarding Area "F".

H. Airport staff has identified Space No. F.2.055 as replacement premises for Klein's Deli's Space No. B.2.030.

I. By Resolution No. 11-0189 the Airport Commission approved the early termination of Pacific Gateway Concessions, LLC's Boarding Area "F" Newsstand Lease No.

04-0139 to a date to be determined by the Airport Director, which shall not be earlier than November 1, 2011.

J. 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 the modifications to the Lease contained herein shall be November 1, 2011.
3. **Premises.** Exhibit A of the Lease is hereby amended to delete the premises in Boarding Area "F", referred to as Space No. F.2.055.
4. **Minimum Annual Guarantee.** The Minimum Annual Guarantee shall be terminated to reflect the early termination of the Lease.
5. **Annual Promotional Charge.** Effective upon the date the space reverts to the Airport, the Promotional Charge will cease to reflect the early termination.
6. **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.
7. **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.

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.

8. **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 parties have executed this Agreement as of the Effective Date.

**TENANT:** Pacific Gateway Concessions, LLC,  
a limited liability company

By: Manuel F. Soto III

Name: Manuel F. Soto III  
(type or print)

Title: MANAGING PARTNER

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



John L. Martin *CJ LF*  
Airport Director

AUTHORIZED BY AIRPORT  
COMMISSION

Resolution No. 11-0189  
Adopted: August 16, 2011

Attest: Jean Caramatti  
Jean Caramatti  
Secretary, Airport Commission

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

By: Dennis J. Herrera  
Deputy City Attorney

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

<b>City Elective Officer Information</b> (Please print clearly.)	
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> (Please print clearly.)	
Name of contractor: Pacific Gateway Concessions, LLC (company comprised of Soto & Sanchez and Delave, Inc.)	
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 by controlled by the contractor. Use additional pages as necessary.  Patricia Lee, President, Soto & Sanchez Debbie Seanez, Vice President, Soto & Sanchez Manuel Soto, CFO, Soto & Sanchez Frank de la Cruz, Delave, Inc. Managing Member Javier Vega, Founder, Delave, Inc.	
Contractor address: 13701 Cimarron Avenue, Gardena, CA 90249-2463	
Date that contract was approved: July 20, 2004	Amount of contract: \$ 577,700 current MAG
Describe the nature of the contract that was approved: Principal concessionaire for retail facility in Boarding Areas "F"	
Comments: Lease 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) services 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> (Please print clearly.)	
Name of filer: Clerk of the SF Board of Supervisors , Angela Calvillo	Contact telephone number: (415) 554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., SF, CA 94102	E-mail: bos.legislation@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

