

File No. 250021

Committee Item No. 3

Board Item No. 13

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee
Board of Supervisors Meeting

Date February 5, 2025
Date February 11, 2025

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form |
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Completed by: Brent Jalipa Date January 30, 2025
Completed by: Brent Jalipa Date February 5, 2025

1 [Lease Amendment - Lease No. 97-0081 - Rent Credit for BART's Next Generation Fare
2 Gates Replacement Project - Not to Exceed \$3,150,000]

3 **Resolution approving Amendment No. 3 to Lease No. 97-0081 Lease, Use, and**
4 **Operating Agreement for BART Station and Related Facilities and Grant of Easement at**
5 **San Francisco International for a rent credit in support of San Francisco Bay Area**
6 **Rapid Transit District's (BART) Next Generation Fare Gates Replacement Project, in an**
7 **amount not to exceed \$3,150,000 with no changes to the term of June 22, 2003, through**
8 **June 21, 2053.**

9
10 WHEREAS, On April 1, 1997, by Resolution No. 97-0081, the Airport Commission
11 awarded Lease No. 97-0081 for the Lease, Use, and Operating Agreement for the BART
12 Station and Related Facilities and Grant of Easement at San Francisco International Airport
13 (SFO or Airport), by and between the City and County of San Francisco as landlord (City), and
14 BART San Francisco Bay Area Rapid Transit District (BART), as tenant for the operation of
15 the Airport BART station (Lease); and

16 WHEREAS, On June 27, 1997, by Resolution No. 621-97, the Board of Supervisors
17 approved the Lease; and

18 WHEREAS, On May 4, 2010, by Resolution No. 10-0169, the Commission approved
19 the First Amendment to the Lease; and.

20 WHEREAS, On September 14, 2010, by Resolution No. 431-10, the Board of
21 Supervisors approved the First Amendment to Lease, a copy of which is on file with the Clerk
22 of the Board in File No. 100900; and

23 WHEREAS, On February 1, 2019, the City and BART entered into a Second Lease
24 Amendment, administratively modifying the Lease to update certain schedules to the Lease,
25 which did not require formal approval by the Commission or Board of Supervisors; and

1 WHEREAS, The Lease term is 50 years, which will expire on June 21, 2053, with a
2 current Annual Payment of \$2,500,000; and

3 WHEREAS, BART is undertaking the installation of Next Generation Fare Gates at
4 stations throughout its network (the Project); and

5 WHEREAS, The Airport supports the Project at the Airport, as it will enhance the
6 Airport passenger experience and reinforce security measures at the Airport; and

7 WHEREAS, Following up on discussions between BART Staff and Airport staff
8 regarding the Project and the desire of the parties to prioritize the installation of the Project at
9 the Airport in advance of the 2024 holiday season, on October 10, 2024, the Airport Director
10 and the General Manager of BART executed a letter of intent pursuant to which Airport staff
11 agreed to seek approval of the Commission and the Board of Supervisors for the City to enter
12 into a lease amendment providing for a rent credit to BART under the Lease for its actual
13 costs, fees and expenses incurred in connection with the Project, in the maximum not to
14 exceed amount of up to \$3,150,000; and

15 WHEREAS, The Lease Amendment provides for an abatement of BART's obligation to
16 make monthly payments of Annual Rent to the City only upon completion of the Project and
17 final review and approval by Airport Staff of all invoices, receipts and other documentation
18 evidencing the total costs and expenses of the Project, so that a final rent credit amount may
19 be determined; and

20 WHEREAS, On November 19, 2024, by Resolution No. 24-0240, the Airport
21 Commission approved Lease Amendment No. 3; and

22 WHEREAS, A copy of Lease Amendment No. 3 is on file with the Clerk of the Board of
23 Supervisors in File No. 250021, which is hereby declared to be part of this resolution as if set
24 forth fully herein; now, therefore, be it

25

1 RESOLVED, That the Board of Supervisors hereby approves Amendment No. 3 to
2 Lease No. 97-0081 Lease, Use, and Operating Agreement for BART Station and Related
3 Facilities and Grant of Easement at San Francisco International for a Rent Credit Amount Not
4 to Exceed \$3,150,000.00; and, be it

5 FURTHER RESOLVED, That within thirty (30) days of the contract being fully executed
6 by all parties, the Airport Commission shall provide a copy of the final lease amendment to the
7 Clerk of the Board for inclusion into the official file.

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<p>Item 3 File 25-0021</p>	<p>Department: Airport</p>
<p>EXECUTIVE SUMMARY</p>	
<p style="text-align: center;">Legislative Objectives</p> <ul style="list-style-type: none"> • The proposed resolution would approve the third amendment to the lease between the San Francisco International Airport and the San Francisco Bay Area Rapid Transit (BART) system to provide a rent credit to BART under its existing lease of airport property for its actual costs, fees, and expenses incurred in connection with the installation of new fare gates for a maximum not-to-exceed amount of \$3,150,000. <p style="text-align: center;">Key Points</p> <ul style="list-style-type: none"> • The BART system is undertaking installation of new fare gates throughout its network, including the BART station at the San Francisco Airport, to improve the customer experience, boost safety, and enhance access for people in wheelchairs and those who bring bikes and strollers on BART. • The Airport Commission approved the original lease agreement between the airport and BART in 1997, which allowed for the construction and operation of a BART station at the Airport. At the time, the Airport Commission authorized and approved up to \$220 million in bonds to finance the construction, acquisition, equipping and development of the BART station at the Airport to meet the goals of Proposition I (approved by voters in 1994) to extend BART to the airport terminal area. <p style="text-align: center;">Fiscal Impact</p> <ul style="list-style-type: none"> • The lease amendment gives BART the right to withhold all monthly payments of annual rent (totaling \$2.5 million per year) until the withheld amount equals no more than \$3,150,000—upon completion of the installation of the new fare gates (installed as of October 26, 2024). • The proposed lease amendment requires final review and approval by Airport staff of all invoices, receipts and other documentation showing the total costs and expenses of the project in order to enable a final rent credit amount to be determined. BART is in the process of finalizing its invoices, receipts, and other documentation, according to Airport staff. <p style="text-align: center;">Recommendation</p> <ul style="list-style-type: none"> • Approve the proposed resolution. 	

MANDATE STATEMENT

City Charter Section 9.118(c) states that any lease, modification, amendment, or termination of a lease that had an initial term of ten years or more, including options to extend, or that had anticipated revenues of \$1 million or more is subject to Board of Supervisors approval.

BACKGROUND

The San Francisco Bay Area Rapid Transit (BART) system is undertaking installation of Next Generation Fare Gates at stations throughout its network, including the BART station at the San Francisco Airport. According to BART's public statements, the new fare gates will reduce fare evasion due to the tall swing barriers that make it difficult to push through, jump over, or maneuver under; enhance accessibility for people in wheelchairs and those with luggage, strollers, or bikes through advanced sensors to detect these users and LED lighting to assist visually impaired riders; optimize the reliability and maintenance needs of the fare gates; and provide new payment options. The first prototype gates went into service at the West Oakland BART station in December 2023 and the San Francisco International Airport (SFO) was among the first 12 stations to get new fare gates, which were installed as of October 26, 2024, per BART's website. All 50 BART stations will be completed by the end of 2025.

In 1991, the Airport Commission authorized the issuance of revenue bonds for any lawful purpose. In 1994, voters approved Proposition I, a policy statement supporting the extension of BART to the Airport. In 1997, the Airport Commission awarded BART a lease, use, and operating agreement for the Airport BART Station and related facilities and an easement¹ at the Airport to operate the BART station. In 1997, the Airport and Board of Supervisors authorized and approved up to \$220 million in bonds to finance the construction, acquisition, equipping and development of the BART station at the Airport.

Prior Lease Amendments

The lease was first amended in 2010 to: (1) limit the BART premium fare (surcharge) for non-airline Airport employees to \$1.50 each way for the remainder of the lease; (2) remove the BART faithful performance deposit requirement; (3) permit monthly rent 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. In 2019, the lease was amended a second time to update operational and conforming insurance requirements, which did not require formal approval by the Airport Commission or Board of Supervisors. In November 2024, the Airport Commission approved the third lease amendment that provides for a rent abatement to cover BART's costs for installing the new fare gates.

¹ A nonpossessory right to use and/or enter onto the real property of another without possessing it.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve the third amendment to the lease, use, and operating agreement between the San Francisco International Airport and BART. The amendment would provide a rent credit to BART for its actual costs, fees, and expenses incurred in connection with the installation of the new fare gates for a maximum not-to-exceed amount of \$3,150,000. The amendment does not change the 50-year lease term of June 22, 2003 through June 21, 2053.

Lease Agreement

The lease outlines the terms between the San Francisco Airport Commission and BART for the use and operation of a BART station and related facilities at the Airport. The Airport Commission approved the agreement in 1997, which allowed for the construction and operation of a BART station at the Airport, with operation beginning on June 22, 2003. Under the lease, BART pays the Airport \$2,500,000 per year.

Exhibit 1: Key Terms of Existing Lease

Lease Term	50 years, June 22, 2003 through June 21, 2053
Premises	Airport terminal area
Annual Rent	\$2,500,000 (no escalation)
Utilities and Repairs	BART is responsible for utility costs and repair/maintenance for power and mechanical, train control, track and structures, plant support, communications and fare collection.
Janitorial services	Maintained by City with 50% of costs shared by BART.
Capital Improvements	BART maintains obligations for BART operating systems, including the initial City-owned systems (traction power system, train control systems, etc.); City maintains obligations for certain areas, such as escalators, fire extinguishers, and lighting.
Taxes	BART pays all applicable property taxes.
Insurance	BART to maintain workers' compensation insurance, commercial general liability insurance, business automobile liability insurance, and property insurance.

Source: Lease Agreement

Proposed Lease Amendment

The proposed lease amendment provides for a rent credit for BART's costs to install the new fare gates at the Airport BART station, up to \$3,150,000, which was completed as of October 26, 2024. According to the proposed lease, the Airport is paying for the project because it believes it will add to Airport security and the passenger experience.

FISCAL IMPACT

The annual rent abatement for the actual cost of the new fare gates would only apply to BART's obligation to make monthly payments of annual rent (totaling \$2.5 million per year) and would

not apply to BART's obligation to make other payments, such as taxes. The lease amendment gives BART the right to withhold all monthly payments of annual rent until the withheld amount equals \$3,150,000 upon completion of the installation of the new fare gates. According to Airport staff, \$1 million is for labor and \$2.15 million is for materials and services. The proposed lease amendment requires final review and approval by Airport staff of all invoices, receipts and other documentation showing the total costs and expenses of the project in order to enable a final rent credit amount to be determined. BART is in the process of finalizing its invoices, receipts, and other documentation, according to Airport staff.

RECOMMENDATION

Approve the proposed resolution.



**THIRD AMENDMENT 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 THIRD LEASE AMENDMENT TO LEASE, USE, AND OPERATING AGREEMENT FOR BART STATION AND RELATED FACILITIES AND GRANT OF EASEMENT AT SAN FRANCISCO INTERNATIONAL AIRPORT (this **Amendment**) is made and entered into as of the Effective Date (as defined below) by and between the City and County of San Francisco, acting by and through its Airport Commission, as landlord (**City**), and the San Francisco Bay Area Rapid Transit District, as tenant (**BART**).

RECITALS

A. City owns the San Francisco International Airport (**SFO** or **Airport**) located in the County of San Mateo, State of California, which Airport is operated by and through its Airport Commission (**Commission**), the chief executive officer of which is the Airport Director (**Director**).

B. On April 1, 1997, by Resolution No. 97-0081, the Commission awarded to BART that certain Lease, Use, and Operating Agreement for BART Station and Related Facilities and Grant of Easement at San Francisco International Airport, L97-0081 for the purposes of BART conducting transportation services to the public to and from the Airport, with a Reference Date of April 8, 1997 (as amended, the **Original Lease**). On June 27, 1997, by Resolution No. 621- 97, the San Francisco Board of Supervisors (**Board of Supervisors**) approved the Lease pursuant to Section 9.118 of the Charter of the City and County of San Francisco (**Charter**).

C. The parties entered into that certain First Amendment to Lease Agreement dated October 1, 2010 (**First Amendment**), authorized by Commission Resolution No. 10-0169 on May 4, 2010 and by Resolution No. 431-10 of the Board of Supervisors on September 14, 2010. The parties entered into that certain Second Amendment to Lease Agreement dated February 1, 2019, which only modified Schedule 1 of the Lease by mutual agreement of the parties (**Second Amendment**, and together with the First Amendment and the Original Lease, collectively, the **Lease**).

D. BART is undertaking the installation of Next Generation Fare Gates at stations throughout its network, including the BART station at SFO (the **Project**). City is supportive of the Project, as it will enhance the airport passenger experience and reinforce security measures at the Airport. To demonstrate their mutual commitment to the Project, City and BART entered into that certain letter of intent dated October 10, 2024 (**Project LOI**) that provided for the City to seek approval of the Commission and the Board of Supervisors to enter into a lease amendment providing

for a rent credit to BART under the Lease for its actual costs, fees, and expenses incurred in connection with the Project in the maximum not-to-exceed amount of up to \$3,150,000. The Project LOI authorized BART to commence the Project in October 2024 in accordance with the terms and conditions of the Lease, with an anticipated completion date of November 20, 2024.

E. City and BART now desire to enter into this Amendment pursuant to the Project LOI to memorialize the final obligations of the parties with respect to the Project. On November 19, 2024, by Resolution No. 24-_____, the Commission approved this Amendment, and on _____, 2024, by Resolution No. _____, the Board of Supervisors approved this Amendment pursuant to the Charter (collectively, **Required City Approvals**).

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. Recitals; Capitalized Terms. The foregoing recitals are true and correct and are incorporated herein by this reference as if fully set forth in this Amendment. All capitalized terms not otherwise defined in this Amendment shall have the meaning provided in the Lease.

2. Effective Date. This Amendment shall be effective upon the receipt of all Required City Approvals and the execution of this Amendment by City (the **Effective Date**), as set forth below:

Effective Date: _____ (to be inserted by City upon execution)

3. Annual Rent Abatement. In consideration for BART's performance of the Project at the Airport, City agrees to provide an abatement of BART's obligation to make monthly payments of Annual Rent, on and subject to the following terms and conditions:

(a) Commencing upon the first calendar day of the month immediately following the later to occur of (i) the final lien-free completion of the Project, as reasonably determined by the Director, and (ii) City's review and written approval of all of BART's direct costs, fees, and expenses actually incurred in connection with the Project, and not to include any overhead or administrative costs, pursuant to Section 3(b) below (**Total Project Expenses**), BART shall have the right to withhold all monthly payments of Annual Rent until such withheld amounts equal the Total Project Expenses, as approved by City, or the amount of \$3,150,000, whichever is less (the **Annual Rent Abatement**).

(b) Upon completion of the Project, and prior to BART withholding any payments of Annual Rent, BART shall submit to City for its review and approval all invoices, receipts, and other documentation evidencing the Total Project Expenses in a form reasonably acceptable to City, in the discretion of the Director. City shall use all commercially reasonable efforts to expedite such review and approval. Notwithstanding anything herein to the contrary, the Annual

Rent Abatement shall not commence, and BART shall not have the right to withhold any payments of Annual Rent, until City shall have reviewed and approved the Total Project Expenses and provided such written approval of the same to BART, which such approval shall not be unreasonably withheld, conditioned or delayed.

(c) The Annual Rent Abatement shall apply only to BART's obligation to make monthly payments of Annual Rent and shall not apply to BART's obligation to make any and all other payments under the Lease, including, without limitation, BART Monetary Obligations (excluding Annual Rent) pursuant to Section 6.2 of the Lease.

(d) Notwithstanding the foregoing, upon the occurrence and during the continuance of any Event of Default under the Lease, BART's right to the Annual Rent Abatement shall be suspended and of no force or effect until such Event of Default is fully cured to the reasonable satisfaction of the Director. In addition to the foregoing, City shall retain all other rights and remedies under the Lease and at law or in equity for any Events of Default, including, without limitation, City's Setoff Rights pursuant to Section 18.7 of the Lease.

(e) BART acknowledges and agrees that the performance of the Project constitutes "Systems Alterations" and not "trade fixtures" for purposes of the Lease, and such Systems Alterations shall be subject to Article 19 of the Lease upon the end of the Term of the Lease.

4. Accessibility Disclosure. The following is added as a new Section 12.4 of the Original Lease:

"12.4 Accessibility Disclosure. California Civil Code Section 1938 requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist (**CASp**) to determine whether the property meets all applicable construction-related accessibility requirements. The law does not require landlords to have the inspections performed. BART is hereby advised that the Premises have not been inspected by a CASp. Pursuant to California Civil Code Section 1938(e), City provides the following disclosure to BART: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of

the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.” In the event BART elects to obtain a CASp inspection of the Premises, BART shall provide notice of such to City, and BART agrees that BART shall bear the cost of the inspection and any necessary repairs within the Premises.”

5. City and Other Governmental Provisions

The following provision is added as a new Section 24.18 of the Original Lease:

“24.18 Pertinent Non-Discrimination Authorities. During the performance of this Lease, Tenant, for itself, its assignees, and successors-in-interest (hereinafter referred to as the “contractor” in this section) agrees to comply with the following non-discrimination statutes and authorities, including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC §2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation-Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 USC §4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 USC. §794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR §27;
- The Age Discrimination Act of 1975, as amended (42 USC §6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC §471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub- recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §12131 - 12189) as implemented by

- Department of Transportation regulations at 49 CFR §37 and 38 and the Department of Justice regulations at 28 CFR, parts 35 and 36;
- The Federal Aviation Administration’s Non-discrimination statute (49 USC §47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 CFR at 74087 to 74100); and
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC §1681 et seq.).”

6. Miscellaneous

(a) No Other Modifications. Except as expressly changed by this Amendment, all of the terms and conditions of the Lease shall remain unchanged and in full force and effect.

(b) Counterparts and Electronic Signatures. This Amendment may be executed in multiple counterparts, each of which shall be deemed an original agreement and both of which shall constitute one and the same agreement. The counterparts of this Amendment may be executed and delivered by electronic signature (including portable document format) by either of the parties and the receiving party may rely on the receipt of such document so executed and delivered electronically or by facsimile as if the original had been received.

(c) Entire Agreement. This Amendment, together with the Lease, contains all of the representations and the entire agreement between the parties with respect to the subject matter of this Amendment. Any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to the subject matter of this Amendment, including, without limitation, the Project LOI, are superseded in their entirety by this Amendment. No prior drafts of this Amendment or changes between those drafts and the executed version of this Amendment 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.

(d) Board of Supervisors Approval. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AMENDMENT, TENANT ACKNOWLEDGES AND AGREES THAT NO CITY OFFICER OR EMPLOYEE HAS AUTHORITY TO COMMIT CITY TO THIS AMENDMENT UNLESS AND UNTIL CITY'S BOARD OF SUPERVISORS HAS DULY ADOPTED A RESOLUTION APPROVING THIS AMENDMENT AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY CITY OBLIGATIONS OR LIABILITIES UNDER THIS AMENDMENT ARE CONTINGENT ON ADOPTION OF A RESOLUTION, AND THIS AMENDMENT WILL BE NULL AND VOID IF CITY'S MAYOR AND THE BOARD OF SUPERVISORS DO NOT APPROVE THIS AMENDMENT, IN THEIR RESPECTIVE SOLE DISCRETION. APPROVAL OF THIS AMENDMENT BY ANY CITY DEPARTMENT, COMMISSION, OR AGENCY WILL NOT BE DEEMED TO IMPLY THAT A BOARD RESOLUTION WILL BE ADOPTED, AND NO APPROVAL WILL CREATE ANY BINDING CITY OBLIGATIONS.

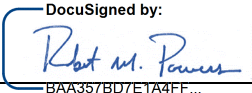
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IN WITNESS WHEREOF, the parties hereto have executed this Amendment in duplicate by their duly authorized officers the day and year first hereinabove written.

CITY
AIRPORT COMMISSION,
CITY AND COUNTY OF
SAN FRANCISCO

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

By: _____
Ivar C. Satero
Airport Director

By:  _____
Robert M. Powers
General Manager

AUTHORIZED BY AIRPORT COMMISSION

Resolution No. 24- _____

Adopted: _____

Attest: _____
Kantrice Ogletree
Commission Secretary

APPROVED AS TO FORM:
David Chiu,
City Attorney

By: _____
Christopher W. Stuart
Deputy City Attorney

AIRPORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO
RESOLUTION NO. 24-0240

APPROVAL OF AMENDMENT NO. 3 TO LEASE NO. 97-0081 LEASE, USE, AND OPERATING AGREEMENT FOR BART STATION AND RELATED FACILITIES AND GRANT OF EASEMENT AT SAN FRANCISCO INTERNATIONAL AIRPORT

WHEREAS, on April 1, 1997, by Resolution No. 97-0081, the Airport Commission awarded to the San Francisco Bay Area Rapid Transit District (BART) Lease No. 97-0081 for the Lease, Use, and Operating Agreement for the BART Station and Related Facilities and Grant of Easement at San Francisco International Airport (SFO or Airport), by and between the City and County of San Francisco, as landlord (City), and BART, as tenant, for the operation of the Airport BART station (Lease), and on June 27, 1997, by Resolution No. 621-97, the San Francisco Board of Supervisors approved the Lease; and

WHEREAS, on October 1, 2010, BART and the City entered into a First Lease Amendment, and on February 1, 2019, a Second Lease Amendment; and

WHEREAS, the Lease term is 50 years, which commenced on June 22, 2003 and will expire on June 21, 2053; and

WHEREAS, BART is undertaking the installation of Next Generation Fare Gates at stations throughout its network, including the Airport BART station (Project); and

WHEREAS, Airport staff is supportive of the Project at the Airport as it will enhance the Airport passenger experience and reinforce security measures at the Airport; and

WHEREAS, following up on discussions between BART staff and Airport staff regarding the Project and the desire of the parties to prioritize the installation of the Project at the Airport in advance of the 2024 holiday season, on October 10, 2024, the Airport Director and the General Manager of BART executed a letter of intent pursuant to which Airport staff agreed to seek approval of the Commission and the Board of Supervisors for the City to enter into a lease amendment providing for a rent credit to BART under the Lease for its actual costs, fees, and expenses incurred in connection with the Project, in the maximum not-to-exceed amount of up to \$3,150,000; and

WHEREAS, the Lease has a current Annual Rent of \$2,500,000; and

AIRPORT COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 24-1240

WHEREAS, the Lease Amendment provides for an abatement of BART's obligation to make monthly payments of Annual Rent to the City, only upon completion of the Project and Airport staff review and approval of all invoices, receipts and other documentation evidencing the total costs and expenses of the Project, so that a final rent credit amount may be determined; now, therefore, be it

RESOLVED, that this Commission hereby (i) approves Amendment No. 3 to Lease No. 97-0081 Lease, Use, and Operating Agreement for the BART Station and Related Facilities and Grant of Easement at San Francisco International Airport, as summarized above and in the Director's memorandum accompanying this Resolution, and (ii) directs the Commission Secretary to forward Amendment No. 3 to the Board of Supervisors for approval pursuant to Section 9.118 of the Charter of the City and County of San Francisco.

Page 2 of 2

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


Secretary



MEMORANDUM
November 19, 2024

TO: AIRPORT COMMISSION
Hon. Malcolm Yeung, President
Hon. Jane Natoli, Vice President
Hon. Jose F. Almanza
Hon. Mark Buell

24-0240

NOV 19 2024

FROM: Airport Director

SUBJECT: Approval of Amendment No. 3 to Lease No. 97-0081 Lease, Use, and Operating Agreement for BART Station and Related Facilities and Grant of Easement at San Francisco International Airport

DIRECTOR'S RECOMMENDATION: APPROVE AMENDMENT NO. 3 TO LEASE NO. 97-0081 LEASE, USE, AND OPERATING AGREEMENT FOR BART STATION AND RELATED FACILITIES AND GRANT EASEMENT AT SAN FRANCISCO INTERNATIONAL AIRPORT TO PROVIDE RENT CREDIT TO BART IN A MAXIMUM NOT-TO-EXCEED AMOUNT OF \$3,150,000 IN SUPPORT OF BART'S NEXT GENERATION FARE GATES PROJECT, AND DIRECT THE COMMISSION SECRETARY TO SEEK APPROVAL FROM THE BOARD OF SUPERVISORS UNDER SECTION 9.118 OF THE CHARTER OF THE CITY AND COUNTY OF SAN FRANCISCO.

Executive Summary

San Francisco Bay Area Rapid Transit District (BART) is undertaking the installation of Next Generation Fare Gates at stations throughout its network, including the BART station (the Project) serving San Francisco International Airport (Airport or SFO). Airport staff is supportive of the Project as it will enhancing the Airport passenger experience and reinforce security measures at the Airport.

In support of the Project, Staff seeks approval for the lease amendment which provides a rent credit to BART under its lease for the BART station, in a maximum not-to-exceed amount of up to \$3,150,000, to reimburse BART for the costs and expenses of the Project.

Background

On April 1, 1997, by Resolution No. 97-0081, the Airport Commission awarded to BART a Lease, Use, and Operating Agreement for BART Station and Related Facilities and Grant of Easement at San Francisco International Airport, by and between the City and County of San Francisco, as landlord (City), and BART, as tenant, for the operation of the Airport BART station (Lease). On June 27, 1997, by Resolution No. 621-97, the San Francisco Board of Supervisors (Board of Supervisors) approved the Lease. On October 1, 2010, BART and the City entered into a First Lease Amendment, and on February 1, 2019, a Second Lease Amendment. The Lease term is 50 years, which commenced on June 22, 2003, and will expire on June 21, 2053.

THIS PRINT COVERS CALENDAR ITEM NO. 6

AIRPORT COMMISSION CITY AND COUNTY OF SAN FRANCISCO

LONDON N. BREED
MAYOR

MALCOLM YEUNG
PRESIDENT

JANE NATOLI
VICE PRESIDENT

JOSE F. ALMANZA

MARK BUELL

IVAR C. SATERO
AIRPORT DIRECTOR

Members, Airport Commission

-2-

November 19, 2024

Following up on discussions between BART staff and Airport staff regarding the Project and the desire of the parties to prioritize the installation of the Project at the Airport in advance of the 2024 holiday season, on October 10, 2024, the Airport Director and the General Manager of BART executed a letter of intent pursuant to which Airport staff agreed to seek approval of the Commission and the Board of Supervisors for the City to enter into a lease amendment providing for a rent credit to BART under the Lease for its actual costs, fees and expenses incurred in connection with the Project, in the maximum not-to-exceed amount of up to \$3,150,000 (Lease Amendment).

The Lease has a current annual base rent of \$2,500,000, and the rent credit will be provided to BART as an abatement of BART's obligation to make monthly payments of Annual Rent to the City. Upon completion of the Project, and prior to BART withholding any payments of Annual Rent, BART must submit to City for its review and approval all invoices, receipts, and other documentation evidencing the total qualifying Project costs so that a total final rent credit amount may be determined.

Recommendation

I recommend the Commission adopt the accompanying Resolution (1) approving Amendment No. 3 to Lease No. 97-0081 Lease, Use, and Operating Agreement for BART Station and Related Facilities and Grant of Easement at San Francisco International Airport to provide a rent credit in the amount not-to-exceed \$3,150,000 in support of BART's Next Generation Fare Gates Project, and (2) directing the Commission Secretary to request approval of the Amendment No. 3 from the Board of Supervisors pursuant to Section 9.118 of the Charter of the City and County of San Francisco.



Ivar C. Satero
Airport Director

Prepared by: Kevin Bumen
Chief Financial and Commercial Officer

Attachment

December 20, 2024

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: Amendment No. 3 to Lease No. 97-0081 Lease, Use, and Operating Agreement for BART Station and Related Facilities and Grant of Easement at San Francisco International Airport between Bay Area Rapid Transit 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 the proposed Resolution, which approves Amendment No. 3 to Lease No. 97-0081 Lease, Use, and Operating Agreement for BART Station and Related Facilities and Grant of Easement at San Francisco International Airport between Bay Area Rapid Transit ("BART") and the City and County of San Francisco, acting by and through its Airport Commission (the "Lease").

BART is undertaking the installation of Next Generation Fare Gates at stations throughout its network, including the Airport BART Station (the "Project"). This Amendment No. 3 provides a rent credit to BART under the Lease for its actual costs, fees, and expenses incurred in connection with the Project, in the maximum not-to-exceed amount of up to \$3,150,000.

The following is a list of accompanying documents:

- Board of Supervisors Resolution;
- Approved Airport Commission Resolution No. 24-0240;
- Memorandum accompanying Airport Commission Resolution No. 24-0240;
- Copy of Amendment No. 3 to Lease No. 97-0081 Lease, Use, and Operating Agreement for BART Station and Related Facilities and Grant of Easement at San Francisco International Airport;
- Copy of Amendment No. 2 to Lease No. 97-0081 Lease, Use, and Operating Agreement for BART Station and Related Facilities and Grant of Easement at San Francisco International Airport; and
- Copy of Lease No. 97-0081 Lease, Use, and Operating Agreement for BART Station and Related Facilities and Grant of Easement at San Francisco International Airport.

Amendment No. 3 to BART Lease No. 97-0081

January 6, 2025

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The following person may be contacted regarding this matter:

Diana Chow
Senior Property Manager
(650) 821-4525
Diana.Chow@flysfo.com

Very truly yours,

Kantrice Ogletree /s/

Kantrice Ogletree
Commission Secretary

Enclosures

cc: Diana Chow, SFO Aviation Management
Dyanna Volek, SFO Government Affairs

From: [Karen Ng \(AIR\)](#)
To: [BOS Legislation, \(BOS\)](#)
Cc: [Kantrice Ogletree \(AIR\)](#); [Carolyn Jayin \(AIR\)](#); [Dyanna Volek \(AIR\)](#); [Cathy Widener \(AIR\)](#)
Subject: BOS E-FILE SUBMITTAL: Amendment No. 3 to BART Lease No. 97-0081
Date: Friday, December 20, 2024 4:48:21 PM
Attachments: [BOS Cover Letter - Amendment No. 3 to BART Lease No. 97-0081 KO signed.docx](#)
[BART Amend #3 - Resolution CWS.docx](#)
[24-0240 APPROVAL of Amendment No. 3 Lease 97-0081.pdf](#)
[SFO - BART Lease Agreement - Third Amendment 11.05.2024.pdf](#)
[image002.png](#)

CITY AND COUNTY OF SAN FRANCISCO
AIRPORT COMMISSION
BOARD OF SUPERVISORS LEGISLATION

To: BOS Legislation

Date: December 20, 2024

RE: Amendment No. 3 to Lease No. 97-0081 Lease, Use, and Operating Agreement for BART Station and Related Facilities and Grant of Easement at San Francisco International Airport between Bay Area Rapid Transit and the City and County of San Francisco, acting by and through its Airport Commission

Attached is proposed legislation concerning approval of Amendment No. 3 to Lease No. 97-0081 Lease, Use, and Operating Agreement for BART Station and Related Facilities and Grant of Easement at San Francisco International Airport between Bay Area Rapid Transit and the City and County of San Francisco, acting by and through its Airport Commission.

The Airport Commission approved Lease Amendment No. 3 by adopting Resolution No. 24-0240 on November 19, 2024.

The attachments for the Lease are listed below:

- Board of Supervisors Resolution;
- Approved Airport Commission Resolution No. 24-0240;
- Memorandum accompanying Airport Commission Resolution No. 24-0240; and
- Copy of Amendment No. 3 to Lease No. 97-0081 Lease, Use, and Operating Agreement for BART Station and Related Facilities and Grant of Easement at San Francisco International Airport.

Contacts:

Dyanna Volek, Government Affairs
650-821-4005

Diana Chow, Aviation Management
650-821-4525

Thank you.



Karen Ng

Executive Secretary | External Affairs

San Francisco International Airport | P.O. Box 8097 | San Francisco, CA 94128

Office: 650.821.5126 | flysfo.com

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