

File No. 110542

Committee Item No. 1
Board Item No. 15

COMMITTEE/BOARD OF SUPERVISORS AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance FULL-Committee Date: May 18, 2011

Board of Supervisors Meeting Date: 5/24/11

Cmte Board

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Budget and Legislative Analyst Report |
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Completed by: Victor Young
Completed by: Victor Young

Date: May 13, 2011
Date: 5-19-11

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

1 [Airport Lease Agreement - J. Avery Enterprises]

2
3 **Resolution approving Amendment No. 1, retroactive to April 14, 2011, to Domestic**
4 **Terminal Food and Beverage Lease No. 03-0192 with J. Avery Enterprises, dba Klein's**
5 **Deli, and the City and County of San Francisco, acting by and through its Airport**
6 **Commission.**

7
8 WHEREAS, The Airport intends to close Boarding Area B in or around May 2011 for an
9 unknown period; and

10 WHEREAS, The Airport will close Boarding Area E for approximately one year for
11 major renovations; and

12 WHEREAS, J. Avery Enterprises operates Klein's Deli in Boarding Areas B and E
13 ("Original Premises"); and

14 WHEREAS, The closures of Boarding Areas B and E also requires the closure of the
15 Original Premises; and

16 WHEREAS, The Airport Commission approved the terms for Amendment No. 1 to the
17 Lease by Resolution No. 11-0084, which includes a change in the Premises, suspension and
18 reinstatement of the Minimum Annual Guarantee and Tenant Infrastructure Fee, an extension
19 of the Lease Term, and a reimbursement to the Tenant for unamortized cost of improvements
20 for the Original Premises; now, therefore, be it

21 **RESOLVED**, That the Board of Supervisors hereby approves Amendment No. 1,
22 retroactive to April 14, 2011, to Lease No. 03-0192 with J. Avery Enterprises, as follows:

- 23 1. The Boarding Area E Renovation Period commences on April 14, 2011 and ends
24 when the Airport Director, in his sole and absolute discretion, determines that the
25 renovations are complete.

1 2. Premises

- 2 • Expansion in Boarding Area E location from 642 square feet to 1,323 square
3 feet;
4 • Relocation of 518 square feet in Boarding Area B to 998 square feet in Boarding
5 Area F.

6 3. Replacement of the existing ten (10) year term with a new ten (10) year term, which
7 commences on the earlier of (i) the date both the Boarding Area E and Boarding
8 Area F locations are both open to the public, or (ii) airline tenants occupy the
9 majority of gates in Boarding Area E.

10 4. A reimbursement of unamortized construction costs calculated at \$136,576 for
11 Boarding Area B, and \$157,427 for Boarding Area E.

12 5. Minimum Annual Guarantee ("MAG")

- 13 • Termination of the MAG associated with Boarding Area B;
14 • Suspension of the MAG associated with Boarding Area E and its reinstatement
15 upon the first day that airline tenants reoccupy the majority of gates at Boarding
16 Area E.
17 • Commencement of the MAG for Boarding Area F on the earlier of (i) the date the
18 space opens for business, or (ii) one hundred and twenty (120) days after
19 construction commences.

20 6. Tenant Infrastructure Fee

- 21 • Termination of the Tenant Infrastructure Fee associated with Boarding Area B.
22 • Suspension of the Tenant Infrastructure Fee during the Renovation Period and
23 its reinstatement upon the first day that airline tenants reoccupy the majority of
24 gates at Boarding Area E.
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FURTHER RESOLVED, That the Airport Director shall take all steps necessary to implement such Amendment No. 1 to the Lease, including execution of the appropriate documents.

Item 1
File 11-0542

Department:
San Francisco International Airport (Airport)

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would approve Amendment No. 1 to the existing Domestic Terminal Food and Beverage Lease agreement between J. Avery Enterprises and the City and County of San Francisco, acting through its Airport Commission (Airport).

Key Points

- On December 9, 2003, the Board of Supervisors approved Resolution 775-03 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, and (b) Klein's Deli comprising 642 square feet in Terminal 3. This ten-year lease agreement became effective on February 4, 2005, upon completion of the space to be occupied by the lessee. The ten-year lease included a two-year option, which was subsequently exercised by the Airport such that the current lease extends through February 3, 2017.
- The Airport is renovating Terminal 1 and Terminal 3, requiring J. Avery Enterprises Klein's Deli concessions in each area to close and to relocate to expanded areas in Terminal 3.
- The proposed resolution would approve Amendment No. 1 to the existing lease to (a) reflect a new ten-year lease effective retroactive from April 14, 2011 through April 13, 2021, (b) permanently relocate and expand J. Avery Enterprises current Klein's Deli 518 square feet of space from Terminal 1 to 998 square feet of space in Terminal 3, (c) expand the existing 642 square feet of space in Terminal 3 to 1,323 square feet of space, (d) amend the rent to reflect both the larger amount of space for J. Avery Enterprises and suspend rent payments for the time that J. Avery Enterprises deli locations will not be able to operate due to Airport renovations, and (e) reimburse J. Avery Enterprises for its unamortized \$390,773 cost of improvements that J. Avery Enterprises invested in its current locations in Terminal 1 and Terminal 3 due to J. Avery Enterprises inability to use the space during the Airport's renovations.

Fiscal Impacts

- Under the existing lease, J. Avery Enterprises pays the Airport the greater of a Minimal Annual Guarantee (MAG), which is \$48.57 per square foot for a total of \$ 56,341, or a specified percentage of gross revenues. J. Avery Enterprises also pays the Airport a \$15 per square foot annual Infrastructure Fee (\$17,400 annually) plus a \$1 per square foot Promotional Program Fee of \$1,160 annually. Based on a percentage of gross revenues, J. Avery Enterprises paid total rent to the Airport of \$397,082 and also paid \$18,560 in fees to the Airport, for a total of \$415,642 in the FY 2009-2010. In addition, J. Avery Enterprises is required to make a Minimum Annual Investment of \$250 per square foot in their leased space.
- Because J. Avery Enterprises has temporarily closed its two locations and will be unable to utilize their prior capital investment, the Airport will also reimburse J. Avery Enterprises for its unamortized cost of improvements totaling \$390,773.

- Under the proposed lease, the MAG would increase from \$56,341 to \$112,731, an increase of \$56,390 or 100 percent. In addition, J Avery Enterprises would pay proposed Infrastructure Fees of \$9,630 plus Promotional Program Fees of \$2,321 annually.

Recommendation

- Approve the proposed resolution.

MANDATE STATEMENT / BACKGROUND

Mandate Statement

City Charter Section 9.118 (a) requires Board of Supervisors approval of any lease which would result in revenues to the City in excess of \$1,000,000 over the term of the lease.

Background

On December 9, 2003, the Board of Supervisors approved Resolution 775-03 that authorized the Airport Commission to enter into a ten-year lease with J. Avery Enterprises to provide food and beverage concessions in Terminal 1 and Terminal 3 at the Airport. This ten-year lease agreement, effective February 4, 2005, upon completion of the space to be occupied by the lessee. This ten-year lease included a two-year option to extend the lease, which was subsequently exercised by the Airport on May 22, 2009, such that the current lease extends through February 3, 2017. According to Ms. Cathy Widener, Government Affairs Officer at the Airport, the Airport exercised this lease extension in conjunction with all Domestic Food and Beverage tenants that were in "good standing" with the Airport Restaurant Employers Council.

Under the existing lease, J. Avery Enterprises leases two spaces: (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 10, 2011 and April 14, 2011, the Airport began renovations in Terminal 1 and Terminal 3, respectively, requiring the J. Avery Enterprises deli concessions, in each area, to close. While Boarding Area E in Terminal 3 is scheduled to reopen in May, 2012, Ms. Nanette Hendrickson, the Airport's Senior Principal Property Manager, has noted that the Boarding Area B in Terminal 1 remodel schedule is not yet known. As a result, the J. Avery Enterprises location in Boarding Area B in Terminal 1 will be permanently relocated to Boarding Area F in Terminal 3.

As a result of J. Avery's inability to operate its two business locations during the Airport's renovations, the Airport is requesting approval to amend the existing lease agreement with J. Avery Enterprises.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve Amendment No. 1 to the existing lease between the Airport and J. Avery Enterprises in order to (a) amend the term of the lease to reflect a new ten-year lease effective retroactive from April 14, 2011 through April 13, 2021, (b) permanently

relocate and expand J. Avery Enterprises current Klein's Deli 518 square feet of space from Terminal 1 to 998 square feet of space in Terminal 3, (c) expand the existing 642 square feet of space in Terminal 3 to 1,323 square feet of space, (d) amend the rent to reflect both the larger amount of space for J. Avery Enterprises and suspend rent payments for the time that J. Avery Enterprises deli locations will not be able to operate due to Airport renovations, which has already begun and is projected to end in May, 2012, and (e) reimburse J. Avery Enterprises for its \$390,773 unamortized cost of improvements that J. Avery Enterprises invested in its current two locations in Terminal 1 and Terminal 3 due to J. Avery Enterprises inability to use the space during the Airport's renovations.

The Table below summarizes the major provisions in both the existing lease as well as the proposed amended lease in the proposed resolution.

| Comparison of the Existing Lease between the Airport and J. Avery Enterprises and the Proposed Amended Ten-Year Lease | | |
|--|---|---|
| | Existing Lease | Proposed Amendment No. 1 |
| Premises | 2 locations for total of 1,160 square feet, including Terminal 1 (518 square feet) and Terminal 3 (642 square feet) | 2 locations for total of 2,321 square feet, including Terminal 3 (1,323 square feet) and Terminal 3 (998 square feet) |
| Term | 12 Years (including exercised two year option); Expires: 2/3/2017 | Ten Year Lease Retroactive from 4/14/11 through 4/13/21 |
| MAG | \$56,341 (\$48.57 x 1,160 sq ft) | \$112,731 (\$48.57 x 2,321 sq ft) |
| Percentage Rent | Greater of the MAG or Percentage of Gross Revenues: <ul style="list-style-type: none"> • 6% of Gross Revenues up to and including \$600,000; plus • 8% of Gross Revenues from \$600,001 up to and including \$1,000,000; plus • 10% of Gross Revenues over \$1,000,000 | Same as existing lease |
| Infrastructure Fees¹ | \$15 per square foot or \$17,400 annually (\$15 x 1,160 sq ft) | \$15 per square foot or \$9,630 annually (\$15 x 642 sq ft) |
| Promotional Program Fee | \$1 per square foot or \$1,160 per year | \$1 per square foot or \$2,321 per year |
| Minimum Annual Investment by Lessee | \$250 per square foot annually invested by tenant in the leased space | Airport will repay lessee \$390,773 for the unamortized cost of prior lessee improvements; subsequently, lessee will make an investment of \$350 per square foot annually for the 2,321 square feet of leased space |

¹ Under the proposed Amendment No. 1, J. Avery Enterprises would be required to fund all of its new infrastructure and capital construction needs. This capital investment for tenants is typically provided by the Airport, and then the Airport includes the repayment of this investment as a prorated amount in each year of the tenant's lease as the "Infrastructure Fee". As a result, J. Avery Enterprises will not be responsible for repaying the Airport this capital repayment and will pay decreased Infrastructure Fees based on 642 square feet of space, instead of the actual 2,321 square feet of space, as shown in the Table above.

J Avery Enterprises currently pays the Airport the greater of the (a) MAG, based on a rate of \$48.57 per square foot and 1,160 square feet of space or a total of \$56,341 annually, or (b) percentage rent, as identified in the Table above. Under the proposed Amendment No. 1, J. Avery Enterprises would continue to pay the Airport an annual rent of either the greater of the MAG or the percentage of gross revenue rent based on a total of 2,321 square feet of space, an increase of 1,161 square feet, resulting in a 100 percent increase of space. Therefore, under Amendment No. 1 the MAG will increase from \$56,341 by \$56,390, to \$112,731, based on the same rate of \$48.57 per square foot and 2,321 square feet of space.

The Airport also charges lessees a Promotional Program Fee of \$1 per square foot to lessees which allows the Airport to recover a portion of the costs to advertise and promote the retail stores in the Airport. Under the existing lease, J. Avery Enterprises, with 1,160 square feet of space, paid the Airport \$1,160 annually. Under the proposed Amendment No. 1, with an expansion to 2,321 square feet, J. Avery Enterprises would pay the Airport \$2,321 annually in Promotional Program Fees.

In addition to these fees, J. Avery Enterprises is currently required to make a Minimum Annual Investment of \$250 per square foot into the leased space. Because J. Avery Enterprises will be required to temporarily close its two locations, and will be unable to utilize their prior capital investment, the Airport will reimburse J. Avery Enterprises for its unamortized cost of improvements totaling \$390,773.

FISCAL IMPACT

Under its existing lease with the Airport, which was previously awarded under a competitive Request for Proposals process, J. Avery Enterprises pays the Airport the greater of a Minimal Annual Guarantee of \$56,341, or a percentage of gross revenues as specified in the Table above. In FY 2009-2010, J. Avery Enterprises actually paid a total rent of \$397,082 to the Airport based on a percentage of gross revenues for the two locations comprising a total of 1,160 square feet, plus \$18,560 in fees to the Airport, for a total of \$415,642 in the FY 2009-2010.

The Airport has not made projections pertaining to the gross revenues J. Avery Enterprises would realize under the proposed amended lease. However, the MAG, as reflected in the Table above, would increase from \$56,341 to \$112,731, an increase of \$56,390 or 100 percent. In addition, as shown in the Table above, J Avery Enterprises would pay the Airport Infrastructure Fees of \$9,630 plus Promotional Program Fees of \$2,321 annually.

Under the Airport's Lease and Use Agreement, 15 percent of all concession and Airport parking revenues generated at the Airport is paid by the Airport to the City's General Fund as part of the Annual Service Payment. As a result, of the \$397,082 in rent plus \$18,560 in fees payable to the Airport, or a total of \$415,642 paid by J. Avery Enterprises to the Airport in FY 2009-2010, 15 percent, or \$62,346, was transferred from the Airport to the City's General Fund. Fifteen percent of any future revenues from J. Avery Enterprises will similarly be transferred by the Airport to the City's General Fund.

Although under the proposed Amendment No. 1 rent payments and fees will be suspended while the Airport's space is renovated, and a reimbursement by the Airport to J. Avery Enterprises for J. Avery Enterprises \$390,773 of related unamortized cost of improvements would occur, any

revenue reduction would not directly impact the Airport's budget due to the Airport's residual rate setting methodology (break-even policy). Under the Airport's residual rate setting methodology, any decreases in non-airline revenues (including concession lease revenues and parking revenues) are automatically offset by increasing the total rent payable by the airlines operating at the Airport, through the Airport's formula specified in each airline's lease that recalculates the rental rates, landing fees, and related fees charged to airlines. This break-even policy of the Airport requires that the total revenues paid to the Airport by all airlines in the upcoming year are sufficient to balance the Airport's budget.

RECOMMENDATION

Approve the proposed resolution.



San Francisco International Airport

April 18, 2011

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

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2011 APR 19 PM 1:29
BY [Signature]

Subject: Approval of the Amendment No. 1 to Domestic Terminal Food and Beverage Lease No. 03-0192, between J. Avery Enterprises dba Klein's Deli 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 Domestic Terminal Food and Beverage Lease No. 03-0192, between J. Avery Enterprises dba Klein's Deli and the City and County of San Francisco, acting by and through its Airport Commission. The Airport Commission has approved the terms of this Amendment No. 1 by adopting Airport Commission Resolution No. 11-0084 on April 5, 2011.

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

- Board of Supervisors Resolution;
- Approved Airport Commission Resolution No. 11-0084;
- Copy of Amendment No. 1 to Domestic Terminal Food and Beverage Lease No. 03-0192 with approval from the City Attorney's Office;
- Ethics Form SFEC-126 for the Board of Supervisors; and
- Ethics Form SFEC-126 for the Mayor's Office.

You may contact Cheryl Nashir of Airport Revenue Development and Management at (650) 821-4500 regarding this matter.

Very truly yours,

Jean Caramatti
Jean Caramatti
Commission Secretary

Enclosures

cc: Cheryl Nashir

110542

AIRPORT COMMISSION CITY AND COUNTY OF SAN FRANCISCO

EDWIN M. LEE
MAYOR

LARRY MAZZOLA
PRESIDENT

LINDA S. CRAYTON
VICE PRESIDENT

ELEANOR JOHNS

RICHARD J. GÜGGENHIME

PETER A. STERN

JOHN L. MARTIN
AIRPORT DIRECTOR

AIRPORT COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 11-0084

APPROVAL OF AMENDMENT NO 1 TO J. AVERY ENTERPRISES DBA KLEIN'S DELI DOMESTIC FOOD AND BEVERAGE LEASE NO. 03-0192 DIRECTING THE COMMISSION SECRETARY TO SEEK APPROVAL OF THE BOARD OF SUPERVISORS

WHEREAS, Pursuant to Resolution 03-0192, adopted September 29, 2003, the Airport Commission ("Commission") awarded Domestic Food and Beverage Lease 03-0192 ("Lease") to J. Avery Enterprises dba Klein's Deli ("Tenant"); and

WHEREAS, Pursuant to Resolution 09-0123, adopted May 26, 2009, the Commission approved an early exercise of the option term of the Lease; and

WHEREAS, The Airport intends to close Terminal 3, Boarding Area E, in or around May 2011 for a period of approximately one year and Terminal 1, Boarding Area B in or around April 2011 for an unknown period; and

WHEREAS, J. Avery Enterprises dba Klein's Deli's Domestic Food and Beverage Lease No. 03-0192 Premises include one location in Boarding Area E and one location in Boarding Area B; and

WHEREAS, staff has negotiated the terms and conditions for Amendment No. 1 to the Lease with Tenant including: Suspension of the Minimum Annual Guarantee ("MAG") and Suspension of Food and Beverage Infrastructure during the renovation period; relocation of the Premises from Boarding Area B to Boarding Area F, Reimbursement of Unamortized Construction Costs of \$390,773, and replacement of the term with a new ten (10) year term commencing on the earlier to occur of both new locations being open or airline tenants reoccupying the majority of gates at Boarding Area E, now, therefore, be it

RESOLVED, that this Commission hereby approves of Amendment No. 1 to the Domestic Food and Beverage Lease 03-0192 with J. Avery Enterprises dba Klein's Deli, on the terms and conditions specified on Attachment 1; and, be it further

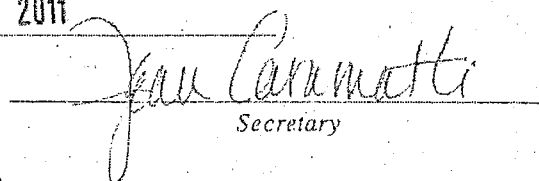
RESOLVED, that this Commission authorizes the Airport Director to enter into any modifications to the Lease that the Airport Director determines, in consultation with the City Attorney, are in the best interests of the City and County of San Francisco ("City"), do not otherwise materially increase the obligations or liabilities of the City, are necessary or advisable to effectuate the purposes of the Lease or this Resolution, and are in compliance with all applicable laws, including the City's Charter; and, be it further

RESOLVED, that this Commission hereby directs the Commission Secretary to seek approval of this Lease Amendment No. 1 from the Board of Supervisors.

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

at its meeting of _____

APR 05 2011


Secretary

Gina Priest

From: David Serrano-Sewell [David.Serrano-Sewell@sfgov.org]
Sent: Thursday, April 14, 2011 10:38 AM
To: Gina Priest
Subject: Re: Amendment 1 to Klein's Deli

looks good

David Serrano Sewell, Deputy City Attorney
San Francisco City Attorney's Office
San Francisco International Airport
International Terminal, 5th Floor
P.O. Box 8097
San Francisco, CA 94128

Phone: 650.821.5075
Fax: 650.821.5086

-----Gina Priest <Gina.Priest@flysfo.com> wrote: -----

To: David <Serrano-Sewell@sfgov.org>
From: Gina Priest <Gina.Priest@flysfo.com>
Date: 04/13/2011 12:11PM
Cc: Nanette Hendrickson <Nanette.Hendrickson@flysfo.com>
Subject: Amendment 1 to Klein's Deli

David – Please review and approve as to form the attached Amendment No. 1 for Klein's Deli (J. Avery Enterprises). It's different from the amendments for BAE closures.



Gina R. Priest

Executive Secretary, Revenue Development and Management

POB 8097, San Francisco, CA 94128 | 575 N. McDonnell Road
T 650.821-4500 | F 650.821.4519 | www.flysfo.com

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[attachment "Kleins Amendment No. 1.doc" removed by David Serrano-Sewell/CTYATT]

**AMENDMENT NO. 1 TO
DOMESTIC FOOD AND BEVERAGE LEASE NO. 03-0192
AT SAN FRANCISCO INTERNATIONAL AIRPORT**

THIS AMENDMENT NO. 1 TO DOMESTIC FOOD AND BEVERAGE LEASE AT THE SAN FRANCISCO AIRPORT LEASE NO. 03-0192("Amendment No. 1"), dated as of April 5, 2011 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 J. AVERY ENTERPRISES DBA KLEIN'S DELI, as tenant (the "Tenant").

RECITALS

A. The Airport and Tenant entered into Lease No. 03-0192, dated as of March 26, 2004 (the "Lease") for that certain food and beverages space located at the Airport in Terminal 1 and Terminal 3 (the "Original Premises"). The Lease was previously approved by the Airport Commission pursuant to Resolution Number 03-0192 and by the Board of Supervisors pursuant to Resolution Number 775-03.

B. Airport and Tenant have agreed to modify the premises pursuant to Lease Section 1, adjust the rent accordingly, and other related provisions, on the terms and conditions set forth below.

C. 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 in shall be the date upon which the Tenant and Airport Director signs this Amendment 1.
3. **Premises.** Exhibit A is hereby deleted in its entirety and replaced with the following:

"Exhibit A - Premises. A total of two facilities, comprising approximately 998 square feet of concession space located Terminal 3 Boarding Area F, specifically referenced as F.2.055, and 1,323 square feet of concession space located in Terminal 3 Boarding Area E, specifically referenced as E.2.021, as shown on the attached drawing."

- 1 -

4. **Term.** Section 2 of the Lease is hereby amended to reflect the new Rent Commencement Date as the earlier date to occur in which Premises are open to the public or airline tenants reoccupy the majority of gates at Boarding Area E and the Expiration Date ten years after the new Rent Commencement Date.

5. **Rent.** Section 4.14 Boarding Area E Renovation is hereby included as part of the Lease and shall read as follows:

4.14 Boarding Area E Renovation. Boarding Area E in Terminal 3 will undergo major renovations which require the closure of Tenant's operation.

(a) Boarding Area E Renovation Period shall commence in or around on April 14, 2011, continue for approximately one calendar year and shall end when the Airport Director, in his sole and absolute discretion, determines that the renovations are complete and the airlines have reoccupied a majority of gates on Boarding Area E..

(b) MAG and Other Fees. During the Renovation Period, the MAG and Tenant Infrastructure Fee shall be temporarily suspended.

(c) MAG Reinstatement. At the end of the Renovation Period, the MAG shall be reinstated and calculated at Forty-Eight Dollars and Fifty Seven (\$48.57) per square foot. The MAG shall be subject to annual adjustments as specified in Lease Section 4.

(d) Tenant Infrastructure Fee Reinstatement. At the end of the Renovation Period, the Tenant Infrastructure Fee shall be reinstated and calculated at Fifteen Dollars (\$15.00) per square foot of the original Boarding Area E square footage of 642 square feet.

6. The City shall reimburse the Tenant for unamortized cost of improvements to the original premises for an amount of Three Hundred Ninety Thousand Seven Hundred and Seventy Three Dollars (\$390,773).

7. **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.

8. **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.

9. **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

TENANT: J. Avery Enterprises dba Klein's Deli,
a _____

By: _____

Name: Avery McGinn

Title: President and Owner

AUTHORIZED BY AIRPORT
COMMISSION

Resolution No. 11-0084
Adopted: April 5, 2011

Attest: _____

Secretary
Airport Commission

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

By: _____

Deputy City Attorney

04.11.10
\\sfshare\sfo\Commission\RDM\TENANTSJ Avery Ent_Klein's\Agreements\Working Docs\Amendment No. 1.doc

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

| | |
|---|---|
| City Elective Officer Information (Please print clearly.) | |
| Name of City elective officer(s): Members, SF Board of Supervisors | City elective office(s) held: Members, SF Board of Supervisors |
| Contractor Information (Please print clearly.) | |
| Name of contractor: J. Avery Enterprises dba Klein's Deli | |
| 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. | |
| Avery McGinn, President | |
| Contractor address: 2339 Third Street Suite 16, San Francisco, CA 94107 | |
| Date that contract was approved: Award approved by Airport Commission on 9/29/2003 by Res. No. 03-0192, and by BoS 12/9/2003 by Res. No. 775-03; Amendment 1 approved on byA/C on 4/5/2011 by Res. No. 11-0084 | Amount of contract: Current MAG \$1,127,310.00 |
| Describe the nature of the contract that was approved: Lease awarded through an RFP process. Amendment 1 precipitated by closure of Boarding Area B and Boarding Area E in which the premises are located. | |
| Comments: Airport Commission Approved Amendment No. 1 extending Lease, modifying premises and modifying certain fees. | |

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

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| Filer Information (Please print clearly.) | |
| 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

San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102
Phone: (415) 252-3100
Fax: (415) 252-3112
Email: ethics.commission@sfgov.org
Web: www.sfgov.org/ethics



For SFEC use

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

a. Instructions:

Each City elective officer who approves a contract that has a value of \$50,000 or more in a fiscal year must file this form with the Ethics Commission within five business days of approval. This filing requirement applies if the contract is approved by:

- the City elective officer,
- any board on which the City elective officer serves, or
- the board of any state agency on which an appointee of the City elective officer serves, as described in (d) below.

b. Who files this notice?

The City elective officer who approved the contract, whose board approved the contract, or who has an appointee on the board of a state agency that approved the contract, must file this form. However, the City elective officer is not required to file this form if the clerk or secretary of the board on which the officer or appointee serves has filed this form on behalf of the board.

c. Who is a City elective officer?

A City Elective Officer is any of the following: Mayor, member of the Board of Supervisors, City Attorney, District Attorney, Treasurer, Sheriff, Assessor, Public Defender, member of the Board of Education of the San Francisco Unified School District, or member of the Governing Board of the San Francisco Community College District.

d. What is a "board of a state agency" that is covered by this filing requirement?

For the purposes of this report, the board of a state agency on which an appointee of a City elective officer serves is limited to the following agencies: Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority, and Local Workforce Investment Board.

e. Is this form required for all contracts?

No. This form is required if the contract has a total anticipated or actual value of \$50,000 or more, or a combination or series of such contracts, amendments or modifications approved by the same City elective officer or board has a value of \$50,000 or more in a fiscal year.

f. What happens after this form is filed?

For a period of six months after the contract is approved, neither the City elective officer nor any political committee that he or she controls may solicit or accept a campaign contribution from the following persons or entities: the party whose contract was approved; the party's board of directors; the party's chairperson, chief executive officer, chief financial officer, or chief operating officer; any person with an ownership interest of more than 20 percent in the party; any subcontractor listed in the bid or contract; or any political committee sponsored or controlled by the contracting party. Nor may any of these persons make a campaign contribution to the City elective officer, a candidate for the office held by such officer, or a political committee controlled by such officer or candidate.