



**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.

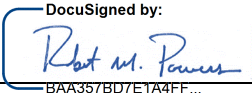
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IN WITNESS WHEREOF, the parties hereto have executed this Amendment in duplicate by their duly authorized officers the day and year first hereinabove written.

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