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Committee Item No	6	
Board Item No.		

# **COMMITTEE/BOARD OF SUPERVISORS**

AGENDA PACKET CONTENTS LIST

Committee:	Budget and Finance Committe	<u>ee</u> Date: October 26, 2011
Board of Su	pervisors Meeting	Date
Cmte Boa	nrd	
	Motion Resolution Ordinance Legislative Digest Budget & Legislative Analyst Ethics Form 126 Introduction Form (for hearin Department/Agency Cover Le MOU Grant Information Form Grant Budget Subcontract Budget Contract/Agreement Award Letter Application	ngs)
OTHER	(Use back side if additional s	space is needed)
•	by: Victor Young by: Victor Young	Date: October 21, 2011 Date:
Completed	by. Victor roung	Date

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

Packet Contents Checklist

5/16/01

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[Airport Concession Lease - Amendment No. 4 to Boarding Areas B and C Retail - Pacific Gateway Concessions, LLC]

Resolution approving Amendment No. 4 to Boarding Areas "B" and "C" Principal Retail Concession Lease No. 98-0228 between Pacific Gateway Concessions, LLC, and the City and County of San Francisco, acting by and through its Airport Commission.

WHEREAS, The Airport entered into the Boarding Areas "B" and "C" Principal Concession Lease (the "Lease') pursuant to Airport Commission Resolution No. 98-0228 adopted on September 15, 1998, and by Board of Supervisors Resolution No. 1005-98 adopted on December 7, 1998; and

WHEREAS, The Lease was amended by Amendment No. 1, which allowed the Airport Director to implement the Concession Support Program, pursuant to Airport Commission Resolution No. 02-0039 adopted on February 19, 2002, and by Board of Supervisors Resolution No. 552-02 adopted on August 12, 2002; and

WHEREAS, The Lease was further amended by Amendment No. 2, which adjusted the Premises, pursuant to Airport Commission Resolution No. 03-164 adopted on September 16, 2003, and by Board of Supervisors Resolution No. 65-04 adopted on February 3, 2004; and

WHEREAS, The Lease was further amended by Amendment No. 3, which authorized additional changes to the premises; decreased the Minimum Annual Guarantee, and required a refurbishment of the premises, pursuant to Airport Commission Resolution No. 09-0132 adopted on May 22, 2009, and by Board of Supervisors Resolution No. 344-09 adopted on August 11, 2009; and

WHEREAS, The Airport Commission approved Amendment No. 4 to the Lease, which authorizes an extension of the term to no later than June 17, 2016, by Commission Resolution No. 11-0151 adopted on June 30, 2011; now, therefore, be it

RESOLVED, That the Board of Supervisors hereby approves Amendment No. 4 to the Boarding Areas "B" and "C" Principal Concession Lease No. 98-0228, copies of which are contained in Board of Supervisors' File No. 110987.

Items 5, 6, and 7

Department:

Files 11-0986, 11-0987, 11-0988

San Francisco International Airport (Airport)

### **EXECUTIVE SUMMARY**

## **Legislative Objectives**

- 11-0986 Resolution approving the First Amendment to the lease between the Airport and Pacific Gateway Concessions, LLC to retroactively extend the existing lease on a month to month basis for the newsstand in Terminal 3, Boarding Area E, for one year from March 14, 2011 through March 13, 2012.
- 11-0987 Resolution approving the Fourth Amendment to the lease between the Airport and Pacific Gateway Concessions, LLC to renew the existing lease for four retail concessions in Terminal 1, Boarding Areas B and C, for two years from June 18, 2012 through June 17, 2014, with two additional one year options to extend, or through June 17, 2016.
- 11-0988 Resolution approving the Third Amendment to the lease between the Airport and Books, Inc. to extend the North Terminal Bookstore Lease in Terminal 3, adjacent to Security Checkpoint F, for 18 months from March 15, 2012 through September 14, 2013.

# **Key Points**

- The Airport is requesting short term extension of two leases and renewal of one lease due to the planned remodel of terminal boarding areas and a security checkpoint adjacent to the lease locations. The short term extensions and lease renewal would give the Airport flexibility to terminate the leases at the beginning of needed construction in each of the terminal boarding areas and the security checkpoint.
- The Airport intends to begin seismic remodeling in Terminal 3, Boarding Area E, adjacent to the existing newsstand space leased by Pacific Gateway Concessions, LLC in the Spring of 2012. The proposed one-year extension of the existing lease between the Airport and Pacific Gateway Concessions, LLC, would be retroactive from March 14, 2011 through March 13, 2012 and would terminate at the time that the seismic remodeling is scheduled to begin. Mr. John Reeb, Airport Senior Property Manager, states that the proposed lease extension, which was approved by the Airport Commission on June 30, 2011, is retroactive due to the time required to complete the lease extension negotiations (File 11-0986).
- The Airport intends to begin seismic remodeling in Terminal 1, Boarding Area B, adjacent to four retail concession spaces leased by Pacific Gateway Concessions, LLC, in approximately 2016. The proposed two-year lease renewal, with two one-year options to extend, between the Airport and Pacific Gateway Concessions, LLC, would terminate in approximately June 2016, if the options to extend are exercised, which is the estimated date that the seismic remodeling would begin (File 11-0987).
- The Airport intends to remove Security Checkpoint F in Terminal 3, adjacent to the North Terminal Bookstore, in approximately FY 2013-14. The proposed 18-month lease extension between the Airport and Books, Inc., from March 15, 2012 to September 14, 2013, would terminate at approximately the estimated start date of the construction to remove Security Checkpoint F in 2013 (File 11-0988).

### **Fiscal Impacts**

• The rental rates in the three leases are based on the higher of percentage rents or the Minimum Annual Guarantee (MAG). Under the proposed resolutions, the rental rates in the two proposed lease extensions and the one proposed lease renewal are the same rental rates as are paid under the existing leases. According to Mr. Reeb, the Airport is not proposing increases in rental rates because the percentage rents are comparable to other Airport concession leases. Mr. Reeb notes that the MAGs are subject to annual Consumer Price Index (CPI) adjustments.

• Mr. Reeb estimates total lease revenues for the three subject leases during the extended lease terms would be \$6,490,985.

### Recommendations

- Amend File 11-0986 to specify that the proposed lease extension is retroactive to March 14, 2011.
- Approve File 11-0986, as amended.
- Approve Files 11-0987 and 11-0988.

# MANDATE STATEMENT / BACKGROUND

### **Mandate Statement**

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

# DETAILS OF PROPOSED LEGISLATION

The Airport is planning to seismically remodel Terminal 3, Boarding Area E, and Terminal 1, Boarding Area B, and to remove the existing Security Checkpoint F in Terminal 3. The Airport has three existing leases for concessions located adjacent to these locations. The Airport is proposing short term extensions of two leases and renewal of one lease, which were previously awarded through a competitive process, to allow the Airport to reduce or terminate the leases prior to the planned needed seismic remodels and removal of the security checkpoint. According to Mr. John Reeb, Senior Property Manager at the Airport, the Airport typically enters into leases of 5 to 10 years. The Airport is proposing extension or renewal of the three existing concession leases for shorter terms as follows:

File 11-0986. The existing lease between the Airport and Pacific Gateway Concessions LLC, is for two newsstand locations in Terminal 3: Space A in Boarding Area F and Space B in Boarding Area E. Due to the Airport's anticipated closure of Boarding Area E for seismic remodeling, currently scheduled to begin in the Spring of 2012, the Airport and Pacific Gateway Concessions, LLC entered into a 12 month hold-over extension of the existing lease from March 14, 2010 through March 13, 2011. In April 2011, the Airport revised the lease agreement to remove the newsstand located in Space B in Boarding Area E. Because seismic remodeling of Boarding Area E will impact the remaining newsstand located in Space A in Boarding Area F, the Airport proposes extending the existing lease for one year on a month-to-month basis with the expected termination of the lease in March 2012, which is the approximate date that the seismic remodeling is scheduled to begin. The proposed resolution would approve the First Amendment to the existing lease on a month-to-month basis for one year retroactive to March 14, 2011, through March 13, 2012. Mr. Reeb states that the proposed lease extension, which was approved by the Airport Commission on June 30, 2011, is retroactive due to the time required to complete the lease extension negotiations.

File 11-0987. The existing lease between the Airport and Pacific Gateway Concessions, LLC is for four locations in Terminal 1, Boarding Areas B and C, which provide magazines, specialty books, gifts, candy, souvenirs, and other concessions. The future seismic remodel of Terminal 1,

Boarding Area B, tentatively scheduled to begin in 2015 or 2016, will impact the four locations in Boarding Areas B and C. The proposed resolution would approve renewal of a two-year lease from June 18, 2012 through June 17, 2014, with two one-year extensions through June 17, 2016, in order to give the Airport maximum flexibility to adjust the construction schedule for the seismic remodel and terminate the leases prior to the beginning of the needed construction.

File 11-0988. The existing lease between the Airport and Books, Inc. is for the North Terminal Bookstore adjacent to Security Checkpoint F in Terminal 3. The existing lease is currently on a month-to-month holdover through March 15, 2012. The proposed resolution would approve an extension to existing lease for an additional 18 months on a month-to-month basis, from March 15, 2012 through September 14, 2013 due to the future removal of the current Security Checkpoint F, tentatively scheduled to begin in FY 2013-14.

According to Mr. Reeb, the Airport will conduct a new competitive process for the concession locations, currently covered by the three subject leases, once construction is completed at these locations.

### **FISCAL IMPACTS**

The rental rates in the three leases are based on the higher of percentage rents or the Minimum Annual Guarantee (MAG). Under the proposed resolutions, the rental rates in the two proposed lease extensions and the one proposed lease renewal are the same rental rates as are paid under the existing leases. According to Mr. Reeb, the Airport is not proposing increases in rental rates because the percentage rents are comparable to other Airport concession leases. Mr. Reeb notes that the MAGs are subject to annual Consumer Price Index (CPI) adjustments. Mr. Reeb estimates total lease revenues for the three subject leases during the extended lease terms would be \$6,490,985, as follows:

					Expected Total Rental Revenue to be Paid to the
File	Vendor	Percentage Rent	MAG	Term	Airport
	Pacific	12% of gross revenue up to \$500,000			1
	Gateway	14% of gross revenue \$500,000 to \$1,000,000		12	
11-0986	Concessions	16% of gross revenue greater than \$1,000,000	None	months	\$90,985
	Pacific	12% of gross revenue up to \$500,000			
	Gateway	14% of gross revenue \$500,000 to \$1,000,000	•	48	7
11-0987	Concessions	16% of gross revenue greater than \$1,000,000	\$1,450,000	months	\$5,800,000
	* .	8% of gross revenues up to \$2,000,000		18	-
11-0988	Books, Inc.	10% of gross revenues greater than \$2,000,000	\$400,000	months	\$600,000
				Total	\$6,490,985

# RECOMMENDATIONS

- 1. Amend File 11-0986 to specify that the proposed lease extension is retroactive to March 14, 2011.
- 2. Approve File 11-0986, as amended.
- 3. Approve Files 11-0987 and 11-0988.

### AIRPORT COMMISSION

#### CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 11-U151

# APPROVAL OF AMENDMENT NO. 4 TO PACIFIC GATEWAY CONCESSIONS, L.L.C.'s BOARDING AREAS "B" AND "C" PRINCIPAL CONCESSION RETAIL LEASE NO. 98-0228

- WHEREAS, by Resolution No. 98-0228 adopted September 15, 1998, the Airport Commission ("Commission") awarded the Boarding Areas "B" and "C" Principal Concession Retail Lease (the "Original Lease") to DeLaVe, Inc.; and
- WHEREAS, by Resolution No. 05-0150 adopted August 12, 2005, the Commission consented to assignment of the Original Lease to Pacific Gateway Concession, L.L.C ("PGC, LLC"); and
- WHEREAS, the Original Lease was subsequently amended by Amendment No. 1 by Resolution No. 02-0039 adopted February 19, 2002 (authorizing the Airport Director to implement the Airport Concession Support Program); by Amendment No. 2 pursuant to Resolution No. 03-0164 adopted September 16, 2003 (authorizing the change in premises); and by Amendment No. 3 pursuant to Resolution No. 09-0132 adopted May 22, 2009 (authorizing additional changes to the Premises, extending the term, decreasing the Minimum Annual Guarantee, and requiring a refurbishment of the premises) (the Original Lease, Amendments No. 1, No. 2, and No. 3 shall be referred to herein as the "Lease"); and
- WHEREAS, staff has negotiated the terms and conditions for Amendment No. 4 to the Lease with PGC, LLC; now, therefore, be it
- RESOLVED, that this Commission hereby approves Amendment No. 4 to Boarding Areas "B" and "C"

  Principal Concession Retail Lease No. 98-0228 for one two-year extension, commencing on

  June 18, 2012, and two one-year extensions, the last of which shall expire no later than June 17,

  2016, exercisable at the Airport Commission's sole and absolute discretion under the terms

  specified in the Director's memorandum; and, be it further
- **RESOLVED,** that the Commission Secretary is hereby directed to request approval of the same by Resolution from the Board of Supervisors pursuant to Section 9.118 of the City Charter.

at its meeting of	IUN 3 0 2011
at its meeting of _	May Con with.
	Secretary



### San Francisco International Airport

### September 20, 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

Subject: Approval of Amendment No. 4 to Boarding Areas "B" and "C" Principal Retail Concession Lease No. 98-0228, between Pacific Gateway Concessions LLC 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 Amendment No. 4 to Boarding Areas "B" and "C" Principal Retail Concession Lease No. 98-0228 between Pacific Gateway Concessions LLC and City and County of San Francisco, acting by and through its Airport Commission. The Airport Commission approved this Amendment 4 by its Resolution No. 11-0151 adopted on June 30, 2011.

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

- Board of Supervisors Resolution:
- Approved Airport Commission Resolution No. 11-0151;
- Ethics Forms SFEC-126; and
- Copy of Amendment No. 4 to Boarding Areas "B" and "C" Principal Retail Concession Lease No. 98-0228.

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

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**Enclosures** 

Cheryl Nashir CC:

MAYOR

# AMENDMENT NO. 4 TO BOARDING AREAS "B" AND "C" PRINCIPAL CONCESSION RETAIL LEASE NO. 98-0228 AT SAN FRANCISCO INTERNATIONAL AIRPORT

THIS AMENDMENT NO. 4 TO BOARDING AREAS "B" AND	"C" PRINCIPAL
CONCESSION RETAIL LEASE NO. 98-0228 AT THE SAN FR	ANCISCO AIRPORT
("Amendment No. 4"), dated as of	_, for reference purposes only,
is entered by and between the between the CITY AND COUNTY	OF SAN FRANCISCO, a
municipal corporation (the "City"), acting by and through the SAI	N FRANCISCO AIRPORT
COMMISSION (the "Airport"), as landlord, and PACIFIC GATE	WAY CONCESSIONS, LLC,
as tenant ("Tenant").	

### RECITALS

- A. The Airport and Tenant entered into Lease No. 98-0228, dated September 15, 1998 (the "Lease") for those certain retail spaces located at the Airport in Boarding Area "B" and Boarding Area "C" of Terminal 1 (the "Premises"). The Lease was previously approved by the Airport Commission pursuant to Resolution No. 98-0228 adopted on September 15, 1998, and by Board of Supervisors Resolution No. 1005-98 adopted on December 7, 1998.
- B. The Lease was subsequently amended pursuant to Amendment No. 1 approved by Airport Commission Resolution No. 02-0039 adopted February 19, 2002, and by Board of Supervisors Resolution No. 552-02 adopted on August 12, 2002, which authorized the Director to implement the Concession Support Program ("CSP") giving Tenant one option to extend the Lease term by five (5) years ("CSP Option Term"). Tenant exercised the CSP Option Term, which expired on June 17, 2009.
- C. The Lease was further amended pursuant to Amendment No. 2 approved by Airport Commission Resolution No. 03-0164 adopted on September 16, 2003, and by Board of Supervisors Resolution No. 65-04 adopted on February 3, 2004, which adjusted the Premises.
- D. The Lease was further amended pursuant to Amendment No. 3 approved by Airport Commission Resolution No. 09-0132 adopted May 22, 2009, and by Board of Supervisors Resolution No. 344-09 adopted on August 11, 2009, which extended the Lease to June 17, 2012, adjusted the Minimum Annual Guarantee ("MAG"), and required a refurbishment of the premises.
- E. The phasing schedule for the renovation of Terminal 1 is slated between mid-2015 and mid-2016, and the interim plan for gate usage by airlines in Boarding Area B is not yet defined. The Airport and Tenant wishes to maintain the high level of service in Terminal 1 until the Terminal 1 renovation plan is settled.
- F. The Airport and Tenant have agreed to modify certain terms of the Lease during the holdover period, as approved by Airport Commission Resolution No. 11-0151 adopted on June 30, 2011, as set forth below.

G. 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. <u>Recitals</u>. The foregoing recitals are true and correct and are incorporated herein by this reference as if fully set forth herein.
- 2. <u>Effective Date</u>. The effective date of the modifications to the Lease contained in shall be June 18, 2012.
- 3. <u>Term</u>. The Airport Commission, in its sole and absolute discretion, shall have one option to extend the term by two years, commencing on June 18, 2012, with two one-year extensions thereafter. This Lease extension shall expire no later than June 17, 2016. Either party may terminate the Lease at the end of the first option upon advance written notice to the other of no less than sixty (60) days.
- 4. <u>Entire Agreement</u>. This Amendment No. 4 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. 4 are superseded in their entirety by this Amendment No. 4. No prior drafts of this Amendment No. 4 or changes between those drafts and the executed version of this Amendment No. 4 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. 4.
- 5. <u>Miscellaneous</u>. This Amendment No. 4 shall bind, and shall inure to the benefit of, the successors and assigns of the parties hereto. This Amendment No. 4 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. 4. This Amendment No. 4 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. 4 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. 4. This Amendment No. 4 shall be governed by the laws of the State of California. Neither this Amendment No. 4 nor any of the terms hereof may be amended or modified except by a written instrument signed by all the parties hereto.

6. <u>Full Force and Effect</u>. Except as specifically amended herein, the terms and conditions of the Lease shall remain in full force and effect.

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

IENANI	a limited liability company		
	By:		
	Name:		
	(type or print)		
	Title:		
CITY	CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through its Airport Commission		
	John L. Martin Airport Director		
AUTHORIZED BY AIRPORT COMMISSION			
Resolution No. 11-0151 Adopted: June 30, 2011			
Attest:			
Secretary Airport Commission			
APPROVED AS TO FORM:			
DENNIS J. HERRERA,			
City Attorney			
By: Mars a			
Deputy City Attorney			

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# 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):	City elective office(	s) held:		
Members, SF Board of Supervisors	Members, SF Bo	ard of Supervisors		
	· · · · · · · · · · · · · · · · · · ·			
Contractor Information (Please print clearly.)		<u> </u>		
Name of contractor:				
Pacific Gateway Concessions, LLC (company comprise				
Please list the names of (1)m embers of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer, and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored by controlled by the contractor. Use additional pages as necessary.				
Patricia Lee, President, Soto & Sanchez Debbie Seanez, Vice President, Soto & Sanchez Manuel Soto, CFO, Soto & Sanchez Frank de la Cruz, Delave, Inc. Managing Member Javier Vega, Founder, Delave, Inc.				
Contractor address:				
13701 Cimarron Avenue, Gardena, CA 90249-2463				
Date that contract was approved:	Amount of contract:			
	\$ 1,450,000 (curr	ent MAG per Amendment No. 3)		
Describe the nature of the contract that was approved:				
Principal concessionaire for retail facilities in Boardin	g Areas "B" and "C"			
Comments:	·			
Lease awarded through a Request for Bid process				
This contract was approved by (check applicable):  ☐ the City elective officer(s) identified on this form ☐ a board on which the City elective officer(s) services ☐ San Francisco Board of Supervisors ☐ 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				
Filer Information (Please print clearly.)	<del></del>			
Name of filer:		Contact telephone number:		
Clerk of the SF Board of Supervisors , Angela C	alvillo	(415) 554-5184		
Address:		E-mail:		
City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl.	SF, CA 94102	bos.legislation@sfgov.org		
Signature of City Elective Officer (if submitted by City elective office	er)	Date Signed		
Signature of Board Secretary or Clerk (if submitted by Board Secretary	y or Clerk)	Date Signed		

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