



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: John Aitken

SUBJECT: SEE BELOW

DATE: March 20, 2023

Approved

Date

3/29/30

**SUBJECT: AMENDMENTS TO ALL ON-AIRPORT RENTAL CAR OPERATIONS
AGREEMENT AND LEASE AT THE SAN JOSE MINETA
INTERNATIONAL AIRPORT**

RECOMMENDATION

Adopt a resolution authorizing the Director of Aviation to negotiate and execute amendments for all On-Airport Rental Car concession agreements to:

- a. Extend the term retroactive from July 1, 2020, to June 30, 2030;
- b. Provide temporary financial relief to Rental Cars operating on the Airport premises retroactive from April 1, 2020, through June 30, 2021, to support operations that were directly impacted by Airport passenger activity declines as a result of the COVID-19 pandemic;
- c. Revise and add certain Customer Facility Charge defined terms;
- d. Revise and restate the definition of Gross Revenues to include alternative energy sources;
- e. Modify certain "Reallocation of Tenant's Premises" provisions concerning the ready return areas and quick turn around areas;
- f. Defer the date for Tenant space reallocation from 2020 to 2023;
- g. Defer rent adjustment appraisals to a later date and allow the Director the authority to waive appraisals and adjust rent of leased premises by Consumer Price Index;
- h. Add provisions required under the City's Municipal Code, California law, and federal law and regulations.

SUMMARY AND OUTCOME

Approval by the City Council and delegation to negotiate and execute amendments to the Director of Aviation, will extend the terms of all On-Airport Rental Car (Rental Cars) agreements at the San José Mineta International Airport (Airport) through June 30, 2030, and to memorialize the financial relief provided to the Rental Cars as part of the Airport's efforts to support financial stability during the COVID-19 pandemic. The amendments also increase the

Customer Facility Charge (CFC) daily rate, add certain CFC defined terms, provide the flexibility to allow for a Consumer Price Index (CPI) adjustment in lieu of an appraisal, and allow for a reallocation of the tenant space that was originally scheduled to commence by June 30, 2020. The reallocation will assign the parking levels in the Rental Car Facility based on their level of rental activities which incentivizes the Rental Car operators to promote their brands at the Airport.

The Rental Cars provide approximately \$16 million in annual revenue from Minimum Annual Guarantee (MAG) and leased space to the Airport. In addition, the Rental Cars remitted approximately \$14 million to the Airport in Fiscal Year 2021-22 from CFCs. The CFC amount varies by year depending on the number of passengers renting cars at the Airport. The Rental Cars provide a service and convenience to visitors and users of the airport and also indirectly impact the local economy by providing transportation from the Airport to various venues and locations within the City and adjacent municipalities.

BACKGROUND

In 2019, the City had finalized negotiations with the Rental Car companies for a ten-year extension of the term to be presented before Council in June 2020, but this was delayed due to the impacts of COVID-19. The negotiations also included a reallocation of the space in the Rental Car Facility to match current market share conditions and modified the definition of “Day” for purposes of calculating CFCs.

In March 2020, the impacts of the COVID-19 pandemic halted negotiations on the rental car extension. With the approval from City Council, the Airport provided financial relief to the Rental Cars by suspending the MAG and the Rental Cars paid their contractual percentage fee of gross revenues only along with a collective lump-sum amount of \$1,400,000 for the period of July 1, 2020, through June 30, 2021.

By June 30, 2020, the Rental Car companies had not agreed to the proposed amendment given the challenges they were experiencing from the COVID-19 pandemic. Because of the significant impact to the travel industry, the Rental Cars were unable to commit to an extension of the term. Therefore, the Rental Cars were placed into holdover and continued to operate at the Airport pursuant to the terms of the expired agreements. See below for a detailed summary of the history:

- On June 27, 2019, the Airport notified all Rental Cars of the intent to amend the existing agreements to extend the term for another 10 years in accordance with the agreement.
- On March 4, 2020, Governor Newsom issued the Proclamation of a State of Emergency under Section 8625 of the California Government Code and the California Emergency Services Act, establishing the existence of a state of emergency throughout California due to COVID-19.

- On April 14, 2020, City Council adopted Resolution No. 79477, which authorized the City Manager to, among other things, suspend the MAG for the period from March 1, 2020, through May 30, 2020, in an effort to mitigate the financial impact on various non-aeronautical tenants which includes the Rental Cars, from the COVID-19 global pandemic; and
- On May 12, 2020, City Council adopted Resolution No. 79514, which authorized the City Manager to, among other things, suspend the MAG for the period from June 1, 2020, through June 30, 2021, in an effort to mitigate the financial impact on various non-aeronautical tenants from the COVID-19 global pandemic; and
- On June 30, 2020, the amended Agreement expired, and the City permitted Tenant to become, and Tenant continues to be, a “tenant-at-will” effective July 1, 2020, under a periodic (monthly) tenancy, as Tenant continues to pay City, and City continues to accept from Tenant, Tenant’s payments of Concession Fees, Rent, CFCs, Utility Charges, and other rent, fees and charges due under the Agreement; and
- On August 4, 2020, City Council adopted Resolution No. 79668 authorizing City Manager to negotiate and execute Concession Agreement Amendments with Non-Aeronautical Rental Car Concessionaires at the Airport to, among other things, (i) extend the term retroactively from July 1, 2020, to June 30, 2030; and (ii) suspend the MAG from July 1, 2020, through December 31, 2020, in an effort to mitigate the financial impact from the COVID-19 global pandemic; and
- On January 5, 2021, City Council adopted Resolution No. 79855, which authorized the City Manager to increase the CFC daily rate.; and
- On January 5, 2021, City Council adopted Resolution No. 79851 authorizing City Manager to, among other things, (i) suspend the MAG from January 1, 2021, through June 30, 2021; and (ii) increase the percentage fee as consideration for any further MAG suspension or negotiate flat fee rents, in an effort to mitigate the financial impact from the COVID-19 global pandemic.

ANALYSIS

The current Rental Car agreements expired on June 30, 2020, and the Rental Car companies are currently in holdover and continue to operate at the Airport pursuant to the terms of the expired agreements. Prior to the onset of the pandemic, Staff had finalized negotiations with the industry for a ten-year extension of the term to be presented at Council in June 2020, but this was delayed due to the impacts of COVID-19. In 2022, the Airport continued to see passenger numbers recover and Airport staff and the Rental Cars resumed negotiations. The Airport and Rental Car concessions have acted in good faith to negotiate and finalize the terms of the amendments presented for approval today.

Extending the existing agreement benefits the Airport and the Rental Car concessionaires post COVID-19 economic recovery and results in better long term and more stable revenues to the City. The Rental Cars provide approximately \$30 million dollars in annual revenue to the Airport through CFC, MAG and leased space. Furthermore, as a passenger service, the Rental Car Facility provides a convenient on-site location for passengers to pick-up and drop-off rental cars, giving passengers transportation opportunities from the Airport to various venues and locations throughout the County of Santa Clara.

Staff is requesting City Council to delegate authority to the Director of Aviation to negotiate and execute amendments to On-Airport Rental Car Operations Agreements and Lease agreements to extend the term to June 30, 2030, and provide temporary financial relief from July 1, 2020, through December 31, 2020, along with the other actions as stated in the Recommendation of this memo.

EVALUATION AND FOLLOW-UP

The Director of Aviation shall be responsible for coordination of any amendments to the Airport agreements and shall render overall supervision of progress and performance.

COST SUMMARY/IMPLICATIONS

The Rental Car concessionaires provide approximately \$30 million dollars in annual revenue from CFCs, MAG, and leased space to the Airport. In the event that the Rental Cars were to withdraw their operations at the Airport, then the Airport would lose this revenue and would need to repurpose the Consolidated Rental Car Facility to both compensate for loss of revenue, expenses for the annual debt service payments as well as the cost of facility upkeep for the consolidated rental car facility until such time that it is leased out to a new tenant.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office and the City Manager's Budget Office.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the April 11, 2023 City Council meeting.

HONORABLE MAYOR AND CITY COUNCIL

March 20, 2023

Subject: Amendments to all On-Airport Rental Car Operations Agreement and Lease at San José Mineta International Airport

Page 5

COMMISSION RECOMMENDATION AND INPUT

No commission recommendation or input is associated with this action.

CEQA

Not a Project, File No. PP17-003, Agreements/Contracts resulting in no physical changes to the environment.

PUBLIC SUBSIDY REPORTING

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.

/s/

JOHN AITKEN, A.A.E.
Director of Aviation

For questions, please contact John Aitken, A.A.E., Director of Aviation at (408) 392-3610.