



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** John Aitken, AAE

**SUBJECT:** SEE BELOW

**DATE:** May 29, 2018

Approved

Date

6/7/18

**SUBJECT: APPROVAL OF A FIRST AMENDMENT BETWEEN THE CITY AND SIGNATURE FLIGHT SUPPORT**

## RECOMMENDATION

- a. Adopt a resolution adopting an Addendum to the Final Environmental Impact Report for the Norman Y. Mineta San José International Airport Master Plan Update, as supplemented and addended, all in accordance with the California Environmental Quality Act (CEQA), as amended.
- b. Adopt a resolution authorizing the City Manager to execute:
  1. A First Amendment to Ground Lease and Operating Agreement between the City of San José and Signature Flight Support Corporation to expand leased premises by 3.72 acres, for a revised total leased premises of approximately 33.34 acres to accommodate the construction of a new "Hangar A", for an initial additional annual ground rent of \$184,754.69, and add a ten (10) year option to extend the term to December 11, 2073, to be exercised by Signature prior to its expiration; and
  2. An amended and restated Non-Disturbance, Consent, Estoppel and Subordination Agreement with the City of San José, BCH San José LLC, Gilead Sciences, Inc. and Signature Flight Corporation for the continued use of approximately 31 acres of the leasehold by BCH, San José LLC pursuant to the terms of a new ground lease and operating agreement between the City and BCH San José LLC on the same terms and conditions as the ground lease and operating agreement with Signature Flight Support Corporation, in the event that the lease with Signature is rejected in bankruptcy, terminated or otherwise cancelled at any time prior to the end of its 50-year term or option to extend.
  3. A Non-Disturbance, Consent, Estoppel and Subordination Agreement with the City of San José, Hangar A, LLC and Signature Flight Corporation for the continued use of approximately 1.88 acres of leasehold by Hangar A LLC pursuant to the terms of a new ground lease and operating agreement between the City and Hangar A LLC on the same

terms and conditions as the ground lease and operating agreement with Signature Flight Support Corporation, in the event that the lease with Signature is rejected in bankruptcy, terminated or otherwise cancelled at any time prior to the end of its 50 year term or option to extend.

## **OUTCOME**

Approval will authorize the City Manager to execute an amendment to Signature Flight Corporation's agreement to allow expansion of the space, and other documents related to Signature's subleases that protect the sublessees if Signature is terminated.

## **BACKGROUND**

On December 3, 2016, Council adopted Resolution 76869 which authorized the City Manager to execute a ground lease and operating agreement with Signature Flight Support Corporation ("Signature") for the construction and operation of a Fixed Based Operation on approximately 29.64 acres at the west side of the Airport for a 50-year term from the date of execution by the City. The Council also authorized the City Manager to execute a Non-Disturbance, Consent, Estoppel and Subordination Agreement with Signature and BCH San José, LLC ("BCH") to provide for continued use of approximately 19 acres of leasehold by BCH pursuant to a new ground lease and operating agreement between the City and BCH on the same terms and conditions as the ground lease and operating agreement with Signature, in the event that the lease with Signature is rejected in bankruptcy, terminated or otherwise cancelled at any time prior to the end of its 50-year term.

On December 12, 2013, the City Manager and Signature executed the Ground Lease and Operating Agreement as well as the Non-Disturbance, Consent, Estoppel and Subordination Agreement. The agreements will expire on December 11, 2063.

Signature and BCH approached the City in 2015 asking to allow BCH to sublease one of BCH's hangars to Gilead Sciences. The agreement does not require the City to approve a sublease to a sublessee. Gilead currently subleases from BCH one hangar totaling approximately 30,000 square feet, associated office/shop space totaling approximately 3,731 square feet, and car parking areas totaling approximately 9,929 square feet

## **ANALYSIS**

Signature has requested the City allow:

- An expansion of the leasehold to expand to the south 3.72 acres for a revised overall leased premises of approximately 33.34 acres,

- Approval for two subleases with Hangar A, LLC (“Hangar A”) and a sublease between BCH and Gilead Sciences, Inc. (“Gilead”),
- An amended and restated Non-Disturbance, Consent, Estoppel and Subordination Agreement between the City, Signature, BCH and Gilead,
- A Non-Disturbance, Consent, Estoppel and Subordination Agreement between the City and Hangar A; and
- A 10-year option to extend the term.

### **Hangar A Sublease and Expansion**

If approved, Hangar A will sublease from Signature 2.08 acres of the expanded 3.72 acres of the leasehold which will allow either Signature or Hangar A to build:

- One 30,000 square foot aircraft hangar similar to the existing hangars;
- Office/Shop/Support areas consisting of approximately 4,000 square feet;
- Exterior utility room consisting of approximately 550 square feet;
- Vehicle parking and driveway area consisting of approximately 31,590 square feet;
- Hangar A’s priority ramp space consisting of approximately 24,525 square feet; and
- An additional aircraft apron for Signature consisting of approximately 71,380 square feet.

Signature will pay additional ground rent for the expanded premises in the initial annual amount of \$184,754.69 during the initial 18-month period from execution of the Amendment to account for the time necessary to construct Hangar A. Upon expiration of the 18-month interim ground rent period, Signature will pay annual ground rent of \$369,509.37 for the expanded premises. Hangar A or Signature will also be responsible for modifying the remaining parking lot at the South of the expanded leasehold in order to maintain access via an access road off Martin Ave and relocate the Airport’s service road that runs along the east side of the expanded leasehold. A drawing of the proposed expansion and improvements is shown on Attachment A.

### **Non-Disturbance, Consent, Estoppel and Subordination Agreements**

The Council approved a Non-Disturbance, Consent, Estoppel and Subordination Agreement with Signature and BCH, for the continued use of approximately 19 acres of the leasehold by BCH pursuant to the terms of a new ground lease and operating agreement between the City and BCH on the same terms and conditions as the ground lease and operating agreement with Signature, in the event that the lease with Signature is rejected in bankruptcy, terminated or otherwise cancelled at any time prior to the end of its 50-year term. Signature, BCH, Hangar A, and Gilead have requested that the City allow for Hangar A and Gilead to be parties to Non-Disturbance, Consent, Estoppel and Subordination Agreements. If Signature is rejected in bankruptcy, terminated or otherwise cancelled, BCH would enter into a direct lease with the City and Gilead would continue to be a sublessee of BCH. Hangar A would enter into a direct lease with the City. If BCH is rejected in bankruptcy, terminated or otherwise cancelled, then Gilead would enter into a direct lease with the City.

### **Ten Year Option to Extend**

The current term of Signatures agreement is 50 years. Signature has requested that the City allow for a 10-year option to extend the term which is consistent with what two other Fixed Based Operators at the Airport have in their agreement with the City.

### **Environmental Approval**

The Director of Planning, Building and Code Enforcement completed a Twelfth Addendum to the Airport Master Plan Environmental Impact report (EIR). As set out in the Addendum, a copy of which is posted on the City's website at <http://www.sanjoseca.gov/index.aspx?nid=2435>, the Director of Planning, Building and Code Enforcement determined that the Project will not have any significant environmental impacts not previously disclosed in the Airport Master Plan EIR, nor changes with respect to the circumstances under which the Project is undertaken, that would indicate that the Project's impacts will be any greater than those previously analyzed. Therefore, no new mitigation is required to implement the Project and no subsequent or supplemental EIR is warranted or required.

### **EVALUATION AND FOLLOW-UP**

The Director of Aviation shall be responsible for coordination of the Agreements and shall render overall supervision of its progress and performance.

### **PUBLIC OUTREACH**

This item will be posted on the City's Council Agenda Website for the June 19, 2018 Council Meeting.

### **COORDINATION**

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

### **COMMISSION RECOMMENDATION/INPUT**

As an extension of an existing agreement for an existing lease, this item is an administrative function. Therefore, no action by the Airport Commission occurred.

HONORABLE MAYOR AND CITY COUNCIL

**Subject: Approval of a First Amendment between the City and Signature Flight Support**

May 29, 2018

Page 5

**CEQA**

Addendum to the Final Environmental Impact Report for the San José International Airport Master Plan Update, as Supplemented, File No. PP18-059.

/s/  
JOHN AITKEN, AAE  
Director of Aviation

For questions, please contact Matthew Kazmierczak, Manager of Strategy and Policy for the Airport, at 408-392-3640 or Janelle Adams at 408-392-3611.

Attachment A

