



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** John Aitken

**SUBJECT:** SEE BELOW

**DATE:** June 8, 2020

Approved

Date

6/11/2020

**SUBJECT: AMENDMENTS TO GROUND LEASE AND OPERATING AGREEMENTS  
AT THE NORMAN Y. MINETA SAN JOSE INTERNATIONAL AIRPORT  
TO REVISE GROUND RENT APPRAISAL PROVISIONS**

## **RECOMMENDATION**

Adopt a resolution authorizing the City Manager to negotiate and execute amendments to ground lease and operating agreements at the Norman Y. Mineta San Jose International Airport to:

- (a) Revise ground rent appraisal adjustment provisions to streamline and simplify appraisal processes going forward; and
- (b) Address any appraisal-based rent adjustments that were not made in accordance with the terms of any such ground lease and operating agreements.

## **OUTCOME**

Approval by City Council and delegation to negotiate and execute amendments to the City Manager will improve the appraisal process for Airport ground lease and operating agreements.

This will provide a more comprehensive and targeted financial policy that will allow City staff an opportunity to improve the appraisal process by making it more efficient and cost effective, adjust appraisal dates to occur at the same time, so that one appraisal can be processed for similar types of ground leases, and address previous appraisal effective dates that were not adjusted in accordance with the terms of any such agreements.

## **BACKGROUND**

The City has several ground leases at the Airport including the following types:

- On-Airport Rental Car Operations Agreements and Leases
  - appraisal due June 30, 2020;
- Fixed Based Operation (FBO) and Lease Agreements, with appraisals due:
  - April 29, 2018
  - December 12, 2018
  - December 3, 2019
  - July 1, 2020;
- Ground Lease for a corporate fixed based operation
  - appraisal due June 1, 2021;
- Provisioning Facility Ground Lease
  - appraisal due July 1, 2023; and
- Ground Lease for Fuel System
  - appraisal due August 1, 2018.

Each of the above ground leases provide for an annual Consumer Price Index (CPI) adjustment with an appraisal every fifth year of the agreement term. Historically, City appraisals of ground leases have been costly and time consuming due to the numerous leased properties and different agreement term dates impacting when appraisals of those premises are scheduled. Also, the language associated with the appraisals require aggressive timelines for the City to process appraisals and does not allow for disputes and negotiations effectively, which may impact processing of an appraisal successfully, and/or in a cost-effective manner. Staff has had significant difficulty processing multiple appraisals and there have been delays from the appraisal date to when the appraisal-adjusted rent is finalized.

Pursuant to the current agreement terms, appraisals for the various parcels used by the ground lease tenants have different dates and currently are not coordinated to occur at the same time. The cost and time associated with processing each appraisal may not reflect adequate recovery of costs associated with solicitation, processing and review/approval of the appraisal for the Airport and is equally burdensome to the tenants.

## **ANALYSIS**

Airport staff has explored various timelines and appraisal processes to find potential savings and reduce confusion through combining appraisals so that only one is required for each type of ground lease and the new rate is applied to groups of similar ground leases; therefore, the City is requesting City Council to delegate authority to the City Manager to negotiate and execute amendments to agreements to amend the language as outlined below.

1. Amend the appraisal process language of the agreement to provide adequate time to process the appraisal;
2. Allow for appraisals of leased premises to occur at one time and the rate be applied to similar ground leases with similar permitted uses; and
3. Adjust the effective date of past appraisals to account for missed deadlines.

The rent differentials for changing the past appraisal effective dates is difficult to assess until staff is able to negotiate the final appraisal figures and the effective dates of the appraisals. Because the rents have all been subject to annual CPI adjustments, staff anticipates that the impact of any delayed appraisal-based rent adjustments will be relatively small. Staff also anticipates that most of the leases will see a 4% appraisal-based increase, that will account for delayed appraisal periods ranging from five months to two years.

### **CONCLUSION**

The City is in a position to assist ground lease tenants with long-term financial stability by amending the appraisal language to account for missed appraisal dates and providing a more efficient process where the Airport can process one appraisal for all FBOs at the same time. This will assist both the City and FBOs by controlling their businesses costs and making the process more efficient.

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

No additional follow up action with the City Council is expected at this time.

### **CLIMATE SMART SAN JOSE**

The recommendation in this memo has no effect on Climate Smart San José energy, water, or mobility goals.

### **POLICY ALTERNATIVES**

**Alternative #1:** Council can elect to not approve the amendments to the agreements and uphold the terms of those agreements.

**Pros:** The tenants would continue to be required to pay in accordance with the terms of their agreement.

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**Cons:** Additional costs would be incurred by the airport to conduct different appraisals for each agreement, and in some cases, the appraisals would have to wait until the next appraisal date.

**Reason for not recommending:** Staff believes tenants would be willing to negotiate new and easier appraisal processes and would be willing to accept a new appraisal effective date without waiting until the next appraisal in the future.

### **PUBLIC OUTREACH**

This memorandum will be posted on the City's Council Agenda website for the June 23, 2020 Council Meeting.

### **COORDINATION**

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

### **COMMISSION RECOMMENDATION/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.

/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.