

RESOLUTION NO.

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE REVISING THE AIR SERVICE SUPPORT PROGRAM AT THE NORMAN Y. MINETA SAN JOSE INTERNATIONAL AIRPORT TO REDUCE THE MINIMUM WEEKLY FLIGHT THRESHOLD THAT IS A CONDITION TO RECEIVE FEE WAIVERS AND MARKETING SUPPORT RETROACTIVE FROM JANUARY 1, 2021 THROUGH THE TERMINATION OR EXPIRATION OF THE CITY'S PROCLAMATION OF COVID-19 LOCAL EMERGENCY AND REPEAL RESOLUTION NO. 78802 IN RESPONSE TO SIGNIFICANT DECLINES IN TRAVEL DEMAND DUE TO THE IMPACT OF COVID-19

WHEREAS, the City of San José ("City") owns and operates the Norman Y. Mineta San José International Airport ("Airport"); and

WHEREAS, Federal Aviation Administration policy allows airports to establish air service incentive programs involving waivers or discounting of fees and charges imposed on airlines in exchange for new service, so long as the incentives are limited to a defined promotional period and the incentives are available on a non-discriminatory basis to all airlines that are willing to provide the same type and level of new service consistent with the incentive program ("Air Service Support Program"); and

WHEREAS, from its beginning in 2006, the Airport's Air Service Support Program has continued to evolve to take into account changes in the industry as well as competitive dynamics; and

WHEREAS, the City wishes to further revise the Airport's Air Service Support Program to reduce the minimum weekly flight threshold that is a condition to receive fee waivers and marketing support retroactive from January 1, 2021 through the termination or expiration of the City's Proclamation of COVID-19 Local Emergency and repeal

Resolution No. 78802 in response to significant declines in travel demand due to the impact of COVID-19;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

SECTION 1. The Airport's Air Service Support Program is hereby revised and restated to support the development of new air service at the Airport.

SECTION 2. DEFINITIONS

The definitions set forth in this Section shall govern the application and interpretation of this Resolution. For the purpose of these definitions, any reference to a "new" destination means a destination not currently served by nonstop service at that time. Any terms not specifically defined in this Resolution shall have the meanings as defined in the current Airline-Airport Lease and Operating Agreement.

- A. "Aircraft Operation" means a takeoff or landing at the Airport.
- B. "Airline" means a commercial passenger airline.
- C. "Incentive Period" means: (i) for a new Short-Haul Domestic Destination, a period of twelve (12) consecutive months from the commencement of Qualifying Service; (ii) for Long-Haul Domestic Destinations, a period of eighteen (18) consecutive months from the commencement of Qualifying Long-Haul Domestic Service; (iii) for new international destinations within North America, a period of eighteen (18) consecutive months from the commencement of Qualifying Service; (iv) for new international destinations outside North America, a period of eighteen (18) consecutive months from the commencement of Qualifying Service; (v) for new Qualifying International Seasonal Service that is not

converted to year-round service, a period of twelve (12) consecutive months from the commencement of Qualifying International Seasonal Service; (vi) for service to an international destination within North America that was previously operated as Qualifying International Seasonal Service, a period of eighteen (18) consecutive months from the commencement of the initial Qualifying International Seasonal Service; and (vii) for service to an international destination outside North America that was previously operated as Qualifying International Seasonal Service, a period of eighteen (18) consecutive months from the commencement of the initial Qualifying International Seasonal Service.

- D. “Long-Haul Domestic Destination” means any domestic destination outside a radius of 1,250 miles from the Airport. The Director may adjust the radius for Long-Haul Domestic Destinations at any time on account of market conditions.
- E. “Minimum Qualifying Period” means: (i) a period of twelve (12) consecutive months from the commencement date of the first Qualifying Service between the Airport and a new Short-Haul Domestic Destination or international destination; (ii) a period of twelve (12) consecutive months from the commencement date of a new or increased frequency to a Long-Haul Domestic Destination; or (iii) a period of four (4) consecutive months from the commencement date of the first Qualifying International Seasonal Service between the Airport and an international destination.
- F. “Qualifying International Seasonal Service” means an airline’s new Seasonal Service operated at least three (3) days weekly (as documented in OAG (Official Airline Guide) or other worldwide airline schedule system) (the “Minimum Weekly Frequency for Qualifying International Service”) between the Airport and any new international destination, excluding an airline’s new service to a destination commencing within a period of time equal to the length of the Minimum

Qualifying Period following that airline's cancellation of previously scheduled service to the same destination during the Minimum Qualifying Period. Notwithstanding the preceding, retroactive to January 1, 2021, and only until the expiration or termination of the City's COVID-19 Emergency Proclamation, the Minimum Weekly Frequency for Qualifying International Service will be one (1) day weekly. Notwithstanding the preceding, an Aircraft Operation during the Airport Curfew hours between 11:30 p.m. to 6:30 a.m. will not be a Qualifying International Seasonal Service. Qualifying International Seasonal Service excludes repeated Seasonal Service, upgrade of equipment type, or increased number of seats on existing flights. Notwithstanding any provision of this Resolution to the contrary, the Director may, at any time, determine that new nonstop commercial passenger air carrier service to an international destination that is then currently served by nonstop commercial passenger air carrier service at the Airport is no longer Qualifying International Seasonal Service.

- G. "Qualifying Long-Haul Domestic Service" means an airline's new or additional nonstop commercial passenger air carrier service operated at least three (3) days weekly (as documented in OAG or other worldwide airline schedule system) (the "Minimum Frequency for Qualifying Long-Haul Domestic Service") between the Airport and any Long-Haul Domestic Destination, excluding an airline's new service to a destination commencing within a period of time equal to the length of the Minimum Qualifying Period following that airline's cancellation of previously scheduled service to the same destination during the Minimum Qualifying Period. Notwithstanding the preceding, retroactive to January 1, 2021, and only until the expiration or termination of the City's COVID-19 Emergency Proclamation, the Minimum Weekly Frequency for Qualifying Long-Haul Domestic Service will be one (1) day weekly. Notwithstanding the preceding, an Aircraft Operation during the Airport Curfew hours between 11:30 p.m. to 6:30 a.m. will not be a Qualifying Long-Haul Domestic Service. Qualifying Long-Haul Domestic Service excludes

repeated Seasonal Service, upgrade of equipment type, or increased number of seats on existing flights. Notwithstanding any provision of this Resolution to the contrary, the Director may, at any time, determine that new nonstop commercial passenger air carrier service to a Long-Haul Domestic Destination that is then currently served by nonstop commercial passenger air carrier service at the Airport is no longer Qualifying Long-Haul Service.

- H. “Qualifying Service” means an airline’s new nonstop commercial passenger air carrier service operated at least three (3) days weekly (as documented in OAG or other worldwide airline schedule system) (the “Minimum Weekly Frequency”) between the Airport and (i) any new Short-Haul Domestic Destination, or any previously unserved Short-Haul Domestic Destination that commences during the then effective Incentive Period for that Destination; (ii) any new international destination (either within or outside North America), or any previously unserved international destination that commences during the then effective Incentive Period for that international destination. Notwithstanding the preceding, retroactive to January 1, 2021, and only until the expiration or termination of the City’s COVID-19 Emergency Proclamation, the Minimum Weekly Frequency will be one (1) day weekly. Also notwithstanding the foregoing, an Aircraft Operation during the Airport Curfew hours between 11:30 p.m. to 6:30 a.m. will not be a Qualifying Service.
- I. “International Seasonal Service” means nonstop commercial passenger air carrier service operated between the Airport and an international destination for a minimum of four (4) months during a twelve (12) month period.
- J. “Short-Haul Domestic Destination” means any domestic destination within a 1,250 mile radius of the Airport. The Director may adjust the radius for Short-Haul Domestic Destinations at any time on account of market conditions.

SECTION 3. NEW AIR SERVICE SUPPORT PROGRAM

The Director is hereby authorized to act in accordance with the New Air Service Support Program set forth in this Resolution and to implement this Program pursuant to its terms and subject to the following conditions:

- A. Subject to the provisions of this Section 3, for any Airline that commences Qualifying Service to a new Short-Haul Domestic Destination or a new international destination within or outside North America, the City will credit the Airline with Landing Fees that would otherwise be due to the City for the Qualifying Service for the remaining Incentive Period for that destination as of the commencement date of the first Qualifying Service to that destination. From the date of the first Qualifying Service to a new Short-Haul Domestic Destination or new international destination within or outside North America through the end of the Incentive Period for that destination, any airline may apply for the Landing Fee credit for its new service to that destination. However, any such additional service to that destination will receive the Landing Fee credit only for the then remaining portion of the Incentive Period that commenced with the first Qualifying Service to that destination.
- B. Subject to the provisions of this Section 3, for any Airline that commences Qualifying Long-Haul Domestic Service, the City will credit the Airline with Landing Fees that would otherwise be due to the City for the Qualifying Service for the Incentive Period for that Long-Haul Domestic Destination.
- C. Subject to the provisions of this Section 3, for any Airline that commences Qualifying International Seasonal Service to a new international destination, the City will credit the Airline with all Landing Fees that would otherwise be due to the City for the Qualifying International Seasonal Service for the remaining

Incentive Period for that international destination as of the commencement date of the first Qualifying International Seasonal Service to that destination. From the date of the first Qualifying International Seasonal Service to a new international destination through the end of the Incentive Period for that destination, any airline may apply for the Landing Fee credit for its new seasonal service to that destination. However, any such additional seasonal service to that destination will receive the Landing Fee credit only for the then remaining portion of the Incentive Period that commenced with the first Qualifying International Seasonal Service to that destination. In order to receive this credit, the Airline must notify the City that its service to the international destination is to be Seasonal Service in its application for the credit.

- D. Subject to scheduled temporary service changes made by an Airline as published in OAG and subject also to temporary suspensions as provided in subparagraph 8 below, in the event that an Airline: (i) eliminates any of its nonstop service between the Airport and any destination during the Minimum Qualifying Period for any Qualifying Long-Haul Domestic Service or Qualifying Service; and (ii) fails to replace any such eliminated nonstop service with an equal number of new nonstop flights immediately after the cessation of the eliminated service, the City may, at the Director's discretion, invoice the Airline for all previously credited Landing Fees, that would otherwise have been due from the commencement date of all otherwise Qualifying Service.
- E. An Airline seeking a Landing Fee credit for Qualifying Long-Haul Domestic Service, Qualifying International Seasonal Service or Qualifying Service shall apply for the credit through the Airport's application process in advance of commencing Qualifying Long-Haul Domestic Service or Qualifying Service.

- F. The Director is authorized to suspend and resume the Incentive Period for a destination when all service to a destination is suspended due to circumstances beyond the control of the Airline(s). The extension of the Incentive Period shall be equal to the length of the unforeseen suspension of service to the destination.

SECTION 4. NEW AIR SERVICE MARKETING

- A. For all Qualifying Service, Qualifying Long-Haul Domestic Service, and Qualifying International Seasonal Service, and subject to appropriation of funds, the Director will be responsible for establishing and managing a Marketing Introduction Program utilizing Airport marketing and community outreach resources to promote the service at the Airport. Such resources may include on-Airport messaging, website announcements, external newsletter announcements, public relations assistance, and community introductions.
- B. Subject to appropriation of funds, the City may expend:
- (i) up to \$25,000 of marketing funds to promote new air service at the Airport to a new Qualifying Short-Haul Domestic destination;
 - (ii) up to \$75,000 of marketing funds to promote any new or added air service to a Long-Haul Domestic Destination; and
 - (iii) up to \$100,000 of marketing funds to promote any new air service to any new international destination within North America; and
 - (iv) up to \$500,000 of marketing funds to any Airline to promote its new air service at the Airport to any new international destination outside North America. For Seasonal Service to any new international destination outside North America, City's expenditure of marketing funds shall be

prorated to account for the Seasonal Service. City shall offer and expend these marketing funds only during the first two years of operation of an Airline's new air service at the Airport to any new international destination outside North America.

- C. For any expenditure of marketing funds, all such expenditures shall be limited to promotion of the specific new air service at the Airport, and City shall have the opportunity to review and approve the Airline's marketing plan prior to placement by Airline. Airline shall place approved advertising and submit copies of paid invoices for advertising to City. City shall reimburse Airline within thirty (30) days of City's approval of the invoice.
- D. In the event that an Airline: (i) eliminates any of its nonstop service between the Airport and any destination during the Minimum Qualifying Period for any Qualifying Long-Haul Domestic Service or Qualifying Service; and (ii) fails to replace any such eliminated nonstop service with an equal number of new nonstop flights immediately after the cessation of the eliminated service, the City may invoice the Airline, at the Director's discretion, for all marketing funds expended by City for any new air service.

SECTION 5. MULTIPLE LOW-FREQUENCY ROUTES

The Director may award marketing funds in an amount not to exceed \$100,000 and Landing Fee waivers not to exceed a maximum period of 18 months to an airline that introduces multiple low-frequency routes within a 12-month period, subject to City appropriation of funds.

SECTION 6. Notwithstanding any provision of this Resolution to the contrary, the provision of Landing Fee credits and marketing funds in a combined amount of One Hundred Thousand Dollars (\$100,000) or more is subject to City Council approval.

SECTION 7. Resolution No. 78802 is hereby repealed.

ADOPTED this _____ day of _____, 2021, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk