

# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** John Aitken

**SUBJECT: AIRLINE-AIRPORT LEASE AND  
OPERATING AGREEMENT WITH  
ALL NIPPON AIRWAYS CO., LTD.**

**DATE:** August 30, 2021

Approved



Date

**9/1/2021**

## **RECOMMENDATION**

Adopt a resolution authorizing the City Manager or designee to negotiate and execute:

- (a) A First Amendment to the Airline-Airport Lease and Operating Agreement (“Signatory Agreement” or “Agreement”) with All Nippon Airways Co., LTD. (“ANA”) to terminate the agreement early, effective March 31, 2021; and
- (b) A retroactive Airline-Airport Non-Signatory Operating Agreement (“Non-Signatory Agreement”) effective April 1, 2021.

## **OUTCOME**

ANA and City Staff have negotiated for ANA to convert their status at the Airport to a Non-Signatory carrier retroactive to March 31, 2021. Should Council approve, the City Manager will finalize an amendment to terminate the Signatory Agreement and ANA will pay the City \$458,197, which represents all rents, fees and charges owed by ANA, calculated as though ANA had been operating as a Non-Signatory carrier with the 25% premium from July 1, 2019 through March 31, 2021. A new Non-Signatory Operating Agreement with ANA will be executed. If ANA resumes service at the Airport under the new Non-Signatory Agreement prior to July 1, 2022, the City will refund \$241,131 of the settlement amount paid to the City.

## **BACKGROUND**

ANA has been operating at the Airport since January 2013 with a direct flight to Tokyo, Japan. ANA executed a new Agreement with the City, effective on July 1, 2019 which terminates on June 30, 2029 unless cancelled sooner as provided in the Signatory Agreement. ANA ceased operating at the Airport on March 23, 2020, as a result of the COVID-19 pandemic and it is not clear when ANA will be able to restart service at the Norman Y. Mineta San Jose International Airport (“Airport” or “SJC”).

## **ANALYSIS**

The airport has two types of airline agreements at the Airport. The Signatory Airline-Airport Lease and Operating Agreement, which has no termination language and the Non-Signatory Airline-Airport Operating Agreement, which can be terminated with thirty (30) days' notice. The Non-Signatory airlines must pay a 25% premium on all rates, charges and fees, and Non-Signatory airlines do not participate in revenue sharing at the Airport.

In 2019, ANA executed a new Signatory Agreement between the City of San José and ANA. This agreement has a ten-year term and cannot be terminated by ANA or the City unless specific circumstances exist, as provided for in the agreement. ANA and City Staff have negotiated to allow ANA to convert their status at the Airport to be a Non-Signatory carrier. In exchange for this, ANA will pay the City the 25% premium they would have paid had they executed a Non-Signatory Agreement from July 1, 2019 through March 31, 2021. If ANA resumes service at the Airport prior to July 1, 2022, the City will refund to ANA \$241,131 of the settlement amount paid by ANA to the City.

ANA has been severely impacted by the effects of COVID-19 on international travel, which has seen more significant reductions in passengers than domestic travel. Under the current Signatory Agreement, ANA would be required to pay approximately \$375,000 annually through the term of the agreement, which is June 30, 2029. As a result, City Staff created this plan to allow ANA to terminate their Signatory Agreement and retroactively enter into a separate Airline-Airport Non-Signatory Operating Agreement.

Retroactive approval by the City Council will mitigate the immediate financial burden for ANA and allow them the ability to restructure and wait for improved conditions abroad to restart at the Airport as a Non-Signatory carrier.

## **CONCLUSION**

The City is able to assist the airlines operating at SJC with some economic relief during the prolonged span of the COVID-19 pandemic, which has had a greater impact on the international carriers. The Airport desires to minimize any further impacts to ANA and retroactively execute a Non-Signatory Agreement. It is the desire of the Airport to continue maintaining a strong partnership with ANA, with the hope that they are able to resume operations at SJC in the near future.

## **EVALUATION AND FOLLOW-UP**

The Director of Aviation shall be responsible for coordination of any amendments to the Airline-Airport Lease and Operating Agreement. In addition, a new Non-Signatory Agreement will be required between the City and ANA.

## **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:** The City Council may choose not to approve the First Amendment to cancel the Signatory Airline-Airport Lease and Operating Agreement between the City and ANA as recommended in this memorandum.

**Pros:** The Airline will continue to be financially responsible for charges for exclusive use premises and baggage areas for the Agreement through June 30, 2029.

**Cons:** This results in undue financial burden on ANA, who has not been able to operate at SJC since March 23, 2020.

**Reason for not recommending:** Given the severe impact resulting from the COVID-19 pandemic and the uncertainty of the future, continuing under the Signatory Agreement results in a significant financial burden on ANA to pay all fees through the June 30, 2029 expiration date of the current agreement. By executing a Non-Signatory Agreement with ANA, the foundation for ANA to restart future service at SJC is laid without burdening the airline with ongoing fees.

## **PUBLIC OUTREACH**

This memorandum will be posted on the City Council's Agenda website for the September 14, 2021 Council meeting.

## **COORDINATION**

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

### **COMMISSION RECOMMENDATION/INPUT**

This item does not have explicit input from the Airport Commission, although Commission members are provided with regular updates of airline services and proposed program changes.

### **FISCAL/POLICY ALIGNMENT**

This action aligns with the City's Economic Development Strategy #9 "Keep Developing a Competitive, World Class Airport, and Attract New Air Service."

### **COST SUMMARY/IMPLICATIONS**

There is no cost to the Airport associated with this action. Additional Airport revenue of \$458,197 results from calculating rents, fees and charges at the 25% Non-Signatory premium for ANA for the term of July 1, 2019 through March 31, 2021.

### **CEQA**

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

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

For questions, please contact John Aitken, Director of Aviation at (408) 392-3611.