



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** John Aitken

**SUBJECT:** SEE BELOW

**DATE:** October 18, 2021

Approved

Date

10/21/21

**SUBJECT: TEMPORARY FINANCIAL RELIEF AND AMENDMENTS TO AGREEMENTS FOR AERONAUTICAL AND NON-AERONAUTICAL TENANTS AT THE NORMAN Y. MINETA SAN JOSE INTERNATIONAL AIRPORT**

## **RECOMMENDATION**

Adopt a resolution to:

- (a) Authorize the City Manager or designee to negotiate and execute amendments to concessionaires, airlines, tenant leases, and permits at the Norman Y. Mineta San Jose International Airport ("Airport") to provide continued financial relief to the Airport's aeronautical and non-aeronautical tenants due to the ongoing impacts of the COVID-19 pandemic using Coronavirus Response and Relief Supplemental Appropriation Act and American Rescue Plan Act Grant Funds or other grants or Airport funds through December 31, 2023, as deemed necessary. Use of funds and delegated authority may include but is not limited to:
  - (1) Amend Minimum Annual Guarantee Abatement language;
  - (2) Continued suspension of Minimum Annual Guarantee Rent, and charge only percentage rent;
  - (3) Modify the Pricing Policies;
  - (4) Offset invoices for tenants that are unable to pay rents and fees due to tenant operations that were suspended at SJC due to COVID;
  - (5) Deferral of fixed rents; and
  - (6) Adjust tenant improvement construction schedules.
- (b) Authorize the City Manager or designee to extend non-aeronautical tenant agreements by up to four years to offset revenue losses due to low enplanements, and increased labor and construction costs as a result of the COVID-19 pandemic.

## **OUTCOME**

Approval of delegated authority to the City Manager or designee will allow the City Manager to have the flexibility to quickly negotiate and execute amendments for Airport concessionaires,

airlines, and other aeronautical and non-aeronautical tenants to swiftly provide financial relief and assistance using federal grant money or other Airport funds in response to continued significant impacts from the COVID-19 pandemic that have occurred or have yet to be identified. Financial relief may include but is not limited to, applying grant money to help tenants offset reduced revenues resulting from COVID-19 pandemic and extending concession agreements to allow for more time to amortize rising construction costs, cover increased costs of goods, and increased labor costs.

## **BACKGROUND**

Airport concessionaires, airlines, and other aeronautical and non-aeronautical tenants continue to see significant financial losses caused by the impacts of the COVID-19 pandemic. These impacts have included route cancellations due to travel restrictions, low levels of passenger enplanements at the Airport, increased costs of goods, the loss of time to amortize construction costs in addition to revenue losses. Passenger traffic and associated revenues continue to be severely impacted by the COVID-19 pandemic, and all of the aeronautical and non-aeronautical tenants which includes concessionaires and their Airport Concessions Disadvantage Business Enterprise partners, airlines, lounge operators, rental cars, fixed base handlers, ground handlers and so on, are among tenants that are incurring more than expected operational costs while trying to meet their financial obligations to the City. Given the ongoing slow recovery from the COVID-19 pandemic, it is critical that the City Manager or designee be in a position to respond quickly to the Airport tenants.

On April 14, 2020, City Council approved Resolution No. 79477, which delegated authority to the City Manager to negotiate and execute Concession Agreement Amendments to provide the non-aeronautical concessionaires and rental car concessions certain financial relief for April and May 2020, and asked staff to return to Council after engaging in conversations between concessionaires and employee representatives.

On May 12, 2020, City Council approved Resolution No. 79514, which extended the financial relief through June 2020 for the Non-Aeronautical Concessionaires and Rental Car Concessions. On August 4, 2020, City Council approved Resolution 79967, which extended the financial relief retroactive from July 1, 2020 through December 31, 2020 for the non-aeronautical concessionaires.

On January 5, 2021, Council approved Resolution 79851, which extended the financial relief retroactively from December 31, 2020 through June 30, 2021 for the non-aeronautical concessionaires and rental car concessions.

On February 2, 2021, Council approved Resolution 79885, which revised the Air Service Support Program to reduce the minimum weekly flight threshold, which is a condition to receive fee waivers and marketing support retroactive from January 1, 2021 through termination or

expiration of the City's proclamation of COVID-19 Local Emergency and Repeal Resolution 78802.

On March 27, 2020 Congress approved the Coronavirus Aid, Relief, and Economic Security Act, providing emergency relief to businesses and government infrastructure impacted by COVID-19. In March 2021, the Airport was awarded grant funding under the Coronavirus Response and Relief Supplemental Appropriation Act, which included \$1.6 million designated to financial relief for eligible concessionaires and their Airport Concessions Disadvantage Business partners. The American Rescue Plan Act also passed in March 2021 and, although the grant has not yet been awarded to the Airport, another \$6.6 million is expected to be granted to the Airport as relief for concessionaires to prevent, prepare for, and respond to the COVID-19 pandemic.

In the 2020-2021 Adopted Operating Budget, the Airport utilized funds from the Coronavirus Aid, Relief, and Economic Security Act and Coronavirus Response and Relief Supplemental Appropriation Act to provide financial relief for non-aeronautical concessionaires and airlines, as noted in the above Resolutions, however additional support is needed. Airport staff has been contacted throughout the pandemic by numerous tenants describing the negative impacts they are continuing to experience and seeking relief from the Airport in its capacity as a landlord, a public commercial airport that provides a service to the local community. The ability to provide such relief must be balanced with the Airport's own financial health and obligations to comply with the Coronavirus Response and Relief Supplemental Appropriation Act and the American Rescue Plan Act grant funds. The Airport's goal is to provide stability to our tenants that are in danger of default or continue to experience financial losses during this unprecedented economic slowdown.

As of October 2021, 36% of Food and Beverage concessions and 73% of the Retail concessions are open at the Airport with limited hours. The number of concessions open directly corresponds with the number of enplanements. The environment is fluid, and Airport staff are working with the concessionaires to reopen concepts when the number of passengers is able to support additional concepts and when there is sufficient staff to support the additional locations. It is unknown at this time, when the passenger levels and corresponding revenues of the concessionaires will return to pre-pandemic levels. However, this recovery is not expected to occur prior to the end of calendar year 2023.

As result of the COVID-19 pandemic, supply chains in the Food and Beverage and Retail industry have been severely constrained, and Concessionaires have reported delivery delays, increased cost of goods and labor costs, and there are significant labor shortages. Additionally, the ongoing impact of COVID-19 has reduced the time needed by the concessionaires to amortize their costs for construction of the existing and new locations. Since 2018, the Concessionaires have completed over ten construction projects bringing new concepts to SJC including Trader Vic's, Great American Bagel, Tumi, Rip Curl, Brookstone and a new lounge at Gate 8 in addition to many other projects to refresh and enhance the concession program at SJC. Given the current passenger levels at the Airport and the higher costs to operate, these concessionaires are earning little profit, if any. By delegating authority to the City Manager to

extend the concession agreements by up to four (4) years, will allow the concessionaire's more time to amortize their costs on recently completed construction projects and existing locations, and allow them more time to offset their losses incurred since 2020.

## **ANALYSIS**

Since March of 2020, the Airport has worked to significantly reduce costs and spending for both the Airport and its tenants including the following measures:

- **Reduced Operating and Capital Spending**
  - Operating: Identified cost reductions from the Adopted Budget in the amount of approximately **\$13 million** in FY 2019-20 and approximately **\$11 million** in FY 2020-21.
  - Capital: Suspended or reduced the scope of certain capital projects that could be scaled back or delayed to future periods based on the operational needs of the Airport. These actions are projected to have reduced outlays compared to the Adopted Budget by approximately **\$19 million** in FY 2019-2020 and by approximately **\$6 million** in FY 2020-2021.
- **Increase Customer Facility Charge Rate**
  - Effective April 1, 2021 increased the level of customer facility charges that the on-Airport rental car companies collect from their passengers and remit to the City ("CFCs") to pay rental car customer transportation costs and debt service on the bonds, which financed the Consolidated Rental Car Facility (the "ConRAC"), from a maximum of \$7.50 per day to a maximum of \$9.00 per day, up to a maximum of five days per rental car contract.
- **Airline Support Program**
  - Modified the Airport's airline support program to provide waivers of landing fees and federal inspection facilities fees for airlines that restart international flights that were suspended during the COVID-19 pandemic.
- **Refunding of Bonds**
  - In early 2021, the Airport completed a refunding of nearly 38% of the outstanding bonds, delivering net savings in today's dollars, or "net present value" savings (NPV), to the Airport of \$148.7 million or 31.4% of the refunded bonds. This represents aggregate cash savings to the Airport of \$188.2 million over the term of the bonds.
- **Concession Support Program**
  - Suspended Minimum Annual Guarantee payments from April 2020 through June 2021, suspended Joint Marketing and Customer service contributions from April 1, 2020 through June 2021, and modified construction timelines.
- **Airline Payment Deferral**
  - Deferred payment due dates by the airlines during the period of April 2020 through September 2020.

Staff continues to find opportunities to reduce costs, however, the prolonged effects of COVID-19 are still very prevalent and changing. Approving the City Managers Authority to negotiate and execute amendments to aeronautical and non-aeronautical agreements will help the Airport meet its goal to provide stability to tenants that are in danger of default and continue to experience financial losses during this unprecedented economic slowdown. The Airport desires to continue to partner with the tenants to assist them in enduring the impacts of the pandemic and continue to provide vital services to the traveling public. While the pace of the recovery is unknown, some projections indicate that tenants will continue to be financially impacted through the end of calendar year 2023 with the impacts including reduced revenues, higher costs to operate, increased costs to comply with current health and safety requirements, navigating the product and equipment shortages, as well as challenges finding sufficient staffing to run their operations.

### **CONCLUSION**

The City could assist aeronautical and non-aeronautical tenants with continued temporary relief through the use of grant or other funds to allow them to keep their businesses operational and their workforce in place while the Airport continues its path to recovery. Staff desires to minimize impacts to the aeronautical and non-aeronautical tenants during these tumultuous times and provide immediate financial relief, which will allow these companies to continue operating at the Airport and to provide essential customer service and services to the traveling public. Delegation of Authority to the City Manager will allow the Airport the flexibility to make decisions and respond to the immediate needs of the tenants.

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

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

### **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 ask Airport staff to present each situation to Council for review and approval.

**Pros:** Council would be able to review and provide input on all actions taken by Airport staff to provide relief to the aeronautical and non-aeronautical tenants resulting from the impacts of the COVID-19 pandemic.

**Cons:** The aeronautical and non-aeronautical tenants would continue to be required to pay in accordance with the terms of their agreement until further financial relief may be approved by Council.

**Reason for not recommending:** The City has received grant funding for the purpose of sustaining and supporting both the Airport and its tenants during a period of low enplanements. Being able to respond quickly by providing financial relief and extending concession agreements will result in better long term and more stable revenues to the City than strict adherence to the agreement terms that could possibly result in an eviction action and the need to release the tenants from their agreements. This action could impact the services offered to our passengers at the airport.

### **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.

### **COST SUMMARY/IMPLICATIONS**

While the ongoing impact of the COVID-19 pandemic on our tenants is unknown at this time, Airport staff is estimating that the use of grant funding to provide financial relief to the tenants would range between \$6 million and \$10 million between now and June 30, 2023. However, given the pace of recovery at the Airport, this amount could be more or less than this estimate.

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**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, A.A.E., Director of Aviation, at (408) 392-3610.