



Memorandum

**TO: HONORABLE MAYOR AND
CITY COUNCIL**

FROM: Ralph G. Tonseth

SUBJECT: SEE BELOW

DATE: March 11, 2004

Approved

Date

COUNCIL DISTRICT: Citywide

**SUBJECT: AMENDMENTS TO AVBASE SAN JOSÉ LLC, ACM AVIATION LLC AND
SAN JOSÉ JET CENTER GROUND LEASE AGREEMENTS**

RECOMMENDATION

1. Approval of a First Amendment to the Ground Lease with AvBase San José L.L.C. to re-configure the leased premises with no increase in the total square footage, and to modify provisions regarding compliance with the City's Airport curfew to be consistent with curfew provisions in all three Fixed Based Operator (FBO) agreements at the Airport.
2. Approval of a First Amendment to the Ground Lease with ACM Aviation LLC to modify provisions regarding compliance with the City's Airport curfew to be consistent with curfew provisions in all three FBO agreements at the Airport.
3. Approval of a Seventh Amendment to the Ground Lease with San José Jet Center to modify provisions regarding compliance with the City's Airport curfew to be consistent with curfew provisions in all three FBO agreements at the Airport.

BACKGROUND

AvBase Ground Lease:

On March 20, 2001 Council approved a Ground Lease with AvBase San José, LLC (AvBase) for the construction and operation of a new Fixed Base Operation (FBO) on the southwest side of the Norman Y. Mineta San José International Airport, for a 30-year term. FBOs provide general aviation services such as: flight training to pilots, rental of aircraft, retailing or delivery of fuel petroleum products, supplying of line service for general aviation aircraft users, specialized aircraft repair services and hangar and tiedown storage facilities for general aviation aircraft.

Currently the AvBase leased premises include one large parcel and a smaller parcel with approximately a 30' taxi lane separating them. This is the same configuration as the prior FBO, Aris Helicopters. The Ground Lease provides that if, at any time during the term of the Ground Lease, the City wishes to utilize the smaller parcel for Airport purposes, the City will provide AvBase with replacement space so as not to impede AvBase's operations at the Airport.

ACM Aviation LLC and San José Jet Center Ground Leases:

The Airport Master Plan, adopted by Council in June 1997, calls for all general aviation facilities to be ultimately located on the southwest side of the Airport by the year 2010. Specific projects include the removal of general aviation facilities from the east side of the Airport (including the current ACM facilities upon lease expiration in 2006), conversion of existing non-aviation land uses on the west side of the Airport to general aviation use, and the reconfiguration of west side general aviation facilities to achieve a more efficient operational use. Consistent with the Master Plan's development program objectives, in February 2000, Council accepted the Transportation & Environment Committee recommendation authorizing the Director of Aviation to commence negotiations with the two then-existing FBOs, ACM Aviation (ACM) and San José Jet Center (SJJC), for their operations on the southwest side of the Airport. As part of that process, Airport staff and ACM conducted negotiations to allow the relocation of the ACM leasehold from the existing site on the east side of the Airport to a new site on the west side.

SJJC expressed an interest in adding the 7 acre vacant site immediately adjacent to its existing 15 acre leasehold for the purposes of expanding its facilities to serve additional corporate aviation demand.

The City negotiated the ACM and SJJC Ground Leases during the same time period in 2003. On April 29, 2003 Council approved the Sixth Amendment to SJJC's Ground Lease to expand the size of the SJJC leased premises and a Ground Lease with ACM Aviation, LLC, for a new FBO on the southwest side of the Airport.

Curfew Provisions

Each of the three FBO Ground Leases currently include provisions that require the FBOs and their subtenants to comply with the City's Airport Noise Control Program (Curfew). The AvBase Ground Lease provides that AvBase will comply with the Curfew and that failure to comply with the Curfew shall be deemed a material breach of the Ground Lease, for which the City may terminate the Ground Lease. The AvBase Ground Lease further requires AvBase to include provisions requiring compliance with the Curfew in all of its subleases. In the event that a subtenant violates the Curfew, the AvBase Ground Lease provides that the City may require AvBase to evict the subtenant.

The ACM and SJJC Ground Leases currently include provisions that require the FBOs and their subtenants to comply with the Curfew. However, certain Curfew provisions in the ACM and

SJJC Ground Leases are different from the AvBase Curfew provisions, and there are also additional Curfew provisions in the ACM and SJJC Ground Leases that are not included in the AvBase Ground Lease. As with the AvBase Ground Lease, the ACM and SJJC Ground Leases provide that ACM and SJJC will comply with the Curfew and that failure to comply with the Curfew shall be deemed a material breach of the Ground Lease, for which the City may terminate the Ground Lease. As with AvBase, the ACM and SJJC Ground Leases require ACM and SJJC to include provisions requiring compliance with the Curfew in all of their subleases, and the Ground Leases provide that a subtenant may be evicted for a violation of the Curfew. However, the ACM and SJJC Ground Leases provide that the FBOs will assign their right to evict the subtenant to the City and that the City will then proceed with the eviction of the subtenant.

In addition, effective as of the date that these restrictions are included in all three FBO Ground Leases at the Airport (ACM, AvBase and SJJC), and are applicable to all of their subtenants pursuant to the terms of the leases, ACM and SJJC separately agreed to adhere to and abide by at all times the curfew period as set out in the Curfew, regardless of whether the Curfew is terminated at any time during the term of this Ground Lease.

Finally, the ACM and SJJC Ground Leases require the FBOs to report annually to the Airport Curfew Monitoring Committee on all operations that occur during the Curfew and to develop a Curfew awareness education program to be reported bi-annually to the Airport Curfew Monitoring Committee.

ANALYSIS

AvBase Contiguous Space Request:

The proposed AvBase First Amendment re-configures the leased premises by relocating the current Parcel W3-C to a location that is the same size as the current Parcel W3-C and is contiguous to the rest of the AvBase leased premises. This change will allow AvBase to better utilize its leased premises and will allow greater flexibility for the Airport. The proposed change does not alter the size of the leased premises nor does it affect income to the City. The proposed change moves one parcel and changes its shape to abut the larger parcel, however, the total square footage remains the same.

Shared Coleman Entry:

ACM and AvBase share a lease line and propose to install a common roadway for access that is required for both projects. The alternative would be that both FBOs would need to provide a road; however, the sharing of one common road would be more efficient use of the limited space. Because either ACM or AvBase will need to continue to use the road in the event that the other FBO's Ground Lease terminates, the proposed amendments to the ACM and AvBase Ground

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Leases provide that the remaining FBO may assume the other's interest in the shared road under the same terms and conditions, in the event that the other FBO's Ground Lease is terminated for any reason.

Revised Curfew Provisions

Because the provisions in the ACM and SJJC Ground Leases requiring the FBOs and their subtenants to comply with the Curfew regardless of whether the Curfew is terminated only become effective when they are included in all three FBO Ground Leases at the Airport, Airport staff has negotiated identical Curfew Provisions for the three proposed FBO Ground Lease amendments that will apply the same Curfew requirements to all three FBOs and their subtenants. The proposed AvBase First Amendment also includes the annual curfew operations reports and curfew education provisions that were included in the ACM and SJJC Ground Leases.

In addition to the requirement that each FBO and all of their subtenants comply with the Curfew, regardless of whether the City's Curfew Ordinance is terminated at any time during the term of the Ground Leases, each proposed amendment includes the following revised provisions:

- a) In the event that a subtenant violates the curfew and the City determines to require a termination of the subtenant, the City will notify the FBO, and the FBO must either directly terminate the sublease or assign its right to terminate the sublease to the City. In either event, the City has the right to require a termination of a sublease upon the first violation of the curfew.
- b) The FBOs have requested that the City indemnify the FBOs to the extent that any claim arises from or relates to the sole wrongful (negligent or willful) actions of City in enforcing the Curfew provisions of the FBO leases.

In conclusion, staff recommends approval of the proposed Ground Lease amendments to provide for better utilization of the AvBase leased premises and to ensure that all provisions for enforcement of the City's Airport Curfew are fully effective and are applied equally to all three FBOs at the Airport.

COORDINATION

The preparation of this memo and the FBO amendments has been coordinated with the City Attorney's Office, Risk Management and Planning.

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COST IMPLICATIONS

This is not expenditure related and there is no cost implication associated with this request.

CEQA

Resolutions No. 67380 and 71451, PP 04-02-056.

RALPH G. TONSETH
Director of Aviation
Airport Department

RGT:sr