



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

From: William F. Sherry, A.A.E.

SUBJECT: SEE BELOW

DATE: February 23, 2009

Approved

Christine S. Shypov

Date

2/25/09

COUNCIL DISTRICT: City-Wide

SUBJECT: LEASE OF AIRPORT PREMISES WITH JETBLUE AIRWAYS

RECOMMENDATION

- 1) Adoption of a resolution authorizing the Director of Aviation to negotiate and execute a lease of Airport premises with JetBlue Airways ("JetBlue") for terminal space at Mineta San Jose International Airport ("Airport") on a month-to-month term, effective August 1, 2008 through June 30, 2012, at a space rental rate calculated pursuant to the terms of the signatory airline lease and operating agreement and subject to the twenty-five percent (25%) premium on all non-signatory airline rates and charges as provided in the signatory airline lease and operating agreement, with annual income to the City of \$333,360.84.
- 2) Adoption of a resolution authorizing the Director of Aviation to negotiate and execute future leases for terminal space with non-signatory airlines operating at the Airport, at a space rental rate calculated pursuant to the terms of the signatory airline lease and operating agreement and subject to the twenty-five percent (25%) premium on all non-signatory airline rates and charges as provided in the signatory airline lease and operating agreement.

OUTCOME

Approval of the lease will allow JetBlue, a non-signatory airline, to continue to occupy terminal space in support of their passenger airline operations at the Airport. In addition, authorizing the Director of Aviation to negotiate and execute future leases for terminal space with non-signatory airlines will allow the Airport to respond to future requests by non signatory airlines to lease

terminal space in support of their passenger airline operations at the Airport in an expeditious manner.

BACKGROUND

JetBlue began operating at the Airport as an itinerant airline in June of 2004. Beginning December 1, 2007, the City entered into new passenger airline lease and operating agreements with the passenger airlines operating at the Airport. At that time, each passenger airline was given an opportunity to become a signatory airline by executing an agreement in standard form provided that: (a) it leased an amount of space in the Terminal for the Term of the Agreement that is deemed sufficient by the Airport to support the airline's operations; and (b) it operated at least one (1) flight, scheduled year round, at least three (3) days per week. Any passenger airline that did not meet the minimum requirements to be a Signatory Airline was given the opportunity to become a non-signatory airline by executing an agreement in similar form. Rates and charges for a non-signatory airline are charged at a 25% premium over the rates and charges for a Signatory Airline. In addition, non-signatory airlines are not eligible to participate in any airline consideration of proposed capital projects.

In the event that a passenger airline operates at the Airport without signing either a signatory or non-signatory agreement, the Municipal Code establishes minimum requirements for the operation at and use of the Airport by any such airline. The Municipal Code establishes airfield and terminal rates and charges for such airlines at a 30% premium over the rates and charges for a Signatory Airline. In addition, the Municipal Code requires any such airline to comply with all applicable rules and regulations as established by the Director of Aviation.

JetBlue initially did not execute an operating agreement when the new airline agreements took effect on December 1, 2007, and continued to operate as an itinerant airline at the Airport, paying a 30% premium on all rates and charges, as required under the Municipal Code. JetBlue subsequently executed an Airline-Airport Non-Signatory Operating Agreement effective August 1, 2008 and now pays a 25% premium on rates and charges pursuant to the terms of that Agreement.

ANALYSIS

It was originally contemplated that airlines leasing terminal space would execute signatory operating and lease agreements with the City. Unlike the signatory operating agreement, the non-signatory operating agreement does not include the terms and conditions necessary for leasing terminal space at the Airport, because the Airport anticipated that all airlines that leased terminal space would sign the signatory agreement. JetBlue has declined to execute the signatory agreement, but JetBlue also wishes to continue to lease terminal space to support its operations at the Airport. Staff therefore recommends approval of the separate lease of Airport premises to allow JetBlue to continue to lease terminal space at the Airport in support of its passenger airline operations. As provided in the signatory agreement, the lease will specify a

25% premium to be paid on all rates and charges and have a month-to-month term that will not extend beyond the June 30, 2012 expiration date of the JetBlue Non-Signatory Operating Agreement.

Currently, JetBlue is the only non-signatory airline that operates at the Airport. Staff also recommends approval to authorize the Director of Aviation to enter into future leases of Airport premises with other non-signatory airlines to lease space at the Airport in support of their passenger airline operations, at a space rental rate calculated pursuant to the terms of the signatory airline lease and operating agreement and subject to the twenty-five percent (25%) premium on all non-signatory airline rates and charges as provided in the signatory airline lease and operating agreement. This will enable the Airport to respond to future requests from non-signatory airlines in an efficient manner, particularly in the case of a new airline starting service at the Airport.

PUBLIC OUTREACH/INTEREST

- Criterion 1: Requires Council action on the use of public funds equal to \$1 million or greater.
(Required: Website Posting)
- Criterion 2: Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. (Required: E-mail and Website Posting)
- Criterion 3: Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. (Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)

This item does not meet the above criteria requiring additional notification; however, it will be posted on the City's Council Agenda Website for the March 17, 2009 Council Meeting.

COORDINATION

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

BUDGET REFERENCE

Not applicable.

HONORABLE MAYOR AND CITY COUNCIL

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CEQA

Resolutions No. 67380 and 71451, PP 09-017

A handwritten signature in black ink, appearing to read 'W. Sherry', is written over the typed name and title.

WILLIAM F. SHERRY, A.A.E.
Director of Aviation
Airport Department

For more information or answers to questions, please contact William F. Sherry, Director of Aviation, at (408) 501-7669.