



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

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

SUBJECT: SEE BELOW

DATE: April 27, 2009

Approved

Date

5/6/09

Council District: City-Wide

**SUBJECT: FIRST AMENDMENT TO THE PROVISIONING FACILITY GROUND
LEASE WITH SOUTHWEST AIRLINES**

RECOMMENDATION

Approve a First Amendment to the Provisioning Facility Ground Lease ("Ground Lease") with Southwest Airlines Co. ("Southwest") to allow Southwest to indefinitely delay commencement of construction of tenant improvements, subject to termination by the Director of Aviation upon thirty (30) days written notice at any time prior to issuance of a notice to proceed with construction to Southwest.

OUTCOME

Approval of the proposed lease amendment will permit Southwest to defer construction of the provisioning facility during the current difficult economic climate, while allowing the City to continue to collect rent under the Ground Lease and enabling the City to terminate the Ground Lease in the event the land is required for a more pressing need.

BACKGROUND

On September 18, 2007, City Council adopted Resolution 73996 authorizing the City Manager to negotiate and execute a ground lease with Southwest for the development of a provisioning facility at Mineta San Jose International Airport ("Airport"). The Ground Lease was fully executed on October 3, 2008 for a 20 year term. It encompasses 2.4 acres of undeveloped land on the southeast corner of the Airport and is for a 20 year term effective October 3, 2008. Southwest is currently paying a reduced rent under the Ground Lease of \$7,040 per month. This amount increases to full rent of \$14,080 on October 3, 2009. The rent increases by the Consumer Price Index every July 1 and by appraisal every 5 years.

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ANALYSIS

Southwest has nearly completed its design drawings for the new provisioning facility and has met with Airport staff and City Planning to review procedural requirements and discuss exterior design elements. City Planning provided comments on November 3, 2008 in response to Southwest's last design submittal. The provisioning facility would be approximately 16,125 square feet and includes a provisioning warehouse with ice making equipment, ground service equipment maintenance bays, and associated administrative offices.

As a result of the current state of the economy, Southwest has advised the City that they do not wish to proceed with construction of the provisioning facility at this time. The City recognizes the difficult economic climate and the impact it has had on all the airlines. Staff recommends deferral of the Ground Lease requirement to commence construction at this time. Southwest will continue to pay rent under the terms of the Ground Lease.

In recognition of the potential need for the City to retain control over the development of this land, and in consideration for the indefinite deferral of the requirement to commence construction, the First Amendment provides the Director of Aviation with the unilateral right to terminate the Ground Lease with 30 days notice to Southwest at any time, without cause, prior to issuance of a notice to proceed with construction of the provisioning facility. The City would no longer have the right to terminate the Ground Lease without cause after Southwest receives the notice to proceed with construction of the provisioning facility.

EVALUATION AND FOLLOW-UP

The Director of Aviation will be responsible for monitoring the current economic climate and its impact on the feasibility of Southwest commencing construction of the provisioning facility. The Director of Aviation will advise Council when Southwest plans to proceed with construction or, in the alternative, when the Ground Lease is terminated by the Director of Aviation.

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)**

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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 May 19, 2009 Council Meeting.

COORDINATION

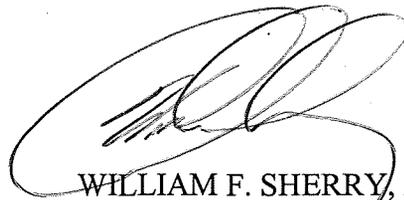
This item has been coordinated with the City Attorney's Office and the City Manager's Budget Office.

COST IMPLICATIONS

None.

CEQA

Resolution Nos. 67380 and 71451, PP 09-074.

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

For questions please contact William Sherry, Director of Aviation, 501-7670.