

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE REVISING THE CITY'S AIRLINE AIR SERVICE PROMOTIONAL FEE-WAIVER INCENTIVE PROGRAM TO SUPPORT THE DEVELOPMENT OF NEW AIR SERVICE AT THE NORMAN Y. MINETA SAN JOSE INTERNATIONAL AIRPORT AND REPEALING RESOLUTION NO. 74877

WHEREAS, The City of San Jose ("City") has experienced a significant reduction in the availability of domestic and international air service; and

WHEREAS, airline route planning decisions are focused on establishing and maintaining route profitability; and

WHEREAS, Federal Aviation Administration policy allows airports to establish air service incentive programs involving waivers or discounting of fees and charges imposed on airlines in exchange for new service, as long as the incentives are limited to a defined promotional period and the incentives are available on a non-discriminatory basis to all airlines that are willing to provide the same type and level of new service consistent with the incentive program; and

WHEREAS, on June 13, 2006, the City Council adopted Resolution No. 73212, establishing an airline incentive program for the Norman Y. Mineta San Jose International Airport ("Airport") to help reduce an airline's financial risk during the important start up period and to demonstrate San Jose's commitment to partnering with its airlines; and

WHEREAS, on June 3, 2008, the City Council adopted Resolution No. 74388, revising the airline incentive program to provide incentives for airlines to establish new air service between San Jose and underserved long haul domestic markets, and an

increased incentive for new air service between San Jose and currently unserved Trans-Atlantic and/or Trans Pacific and long haul domestic destinations; and

WHEREAS, on April 21, 2009, the City Council adopted Resolution No. 74877, revising the airline incentive program to provide that any qualifying destination in Canada or Mexico is a Medium-Range International City under the airline incentive program; and

WHEREAS, the City wishes to further revise the airline incentive program to revise the calculation of qualifying incentive periods, limit incentives for flights to underserved cities only to new flights, and require reimbursement of waived fees for service cancelled prior to the end of a qualifying incentive period;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

SECTION 1. The airline service promotional fee-waiver incentive program is hereby revised to support the development of new air service at the Norman Y. Mineta San Jose International Airport.

SECTION 2. DEFINITIONS

The definitions set forth in this Section shall govern the application and interpretation of this Resolution. Any terms not specifically defined in this Resolution shall have the meanings as defined in the current Airline-Airport Lease and Operating Agreement.

- a. "Aircraft Operation" means a takeoff or landing at the Airport.
- b. "Airline" means a commercial passenger airline.

- c. "Airline Fees" means: (i) Landing Fees as defined in the current Airline-Airport Lease and Operating Agreement; and (ii) Eligible Terminal Rents. Any other fees payable by an Airline on account of its operations at the Airport, including but not limited to Passenger Facility Charges, shall not be considered Airline Fees for the purpose of this Resolution.
- d. "Eligible Terminal Rents" means Terminal Rents otherwise payable pursuant to the current Airline-Airport Lease and Operating Agreement, but shall not include Terminal Rents for use of Preferential Use Premises or Exclusive Use Premises. For Qualifying Service operated from Preferential Use Premises, Eligible Terminal Rents shall include an amount equal to the Terminal Rents for use of Common Use Premises calculated as if the Qualifying Service were operated using Common Use Premises.
- e. "List of Qualifying Short-Haul Domestic Cities" means the list of Qualifying Short-Haul Domestic Cities prepared and revised from time to time by the Director of Aviation.
- f. "List of Qualifying Medium-Range Domestic and International Cities" means the list of Qualifying Medium-Range Domestic and International Cities prepared and revised from time to time by the Director of Aviation.
- g. "List of Qualifying Long-Haul International Cities" means the list of Qualifying Long-Haul International Cities prepared and revised from time to time by the Director of Aviation.
- h. "Minimum Qualifying Period" means: (i) for Qualifying Short-Haul Domestic Cities, a period of twelve (12) continuous months from the commencement date of the first Qualifying Service between the Airport and a Qualifying Short-Haul

Domestic City; (ii) for Qualifying Medium-Range Domestic and International Cities, a period of twenty-four (24) continuous months from the commencement date of the first Qualifying Service between the Airport and a Qualifying Medium-Range Domestic or International City; and (iii) for Qualifying Long-Haul International Cities, a period of thirty-six (36) months from the commencement date of the first Qualifying Service between the Airport and a Qualifying Long-Haul International City.

- i. "Qualifying Short-Haul Domestic City" means a city in the United States designated from time to time by the Director of Aviation as a new or underserved Short-Haul Domestic destination eligible for this incentive program.

- j. "Qualifying Medium-Range Domestic or International City" means a city in the United States, Canada or Mexico designated from time to time by the Director of Aviation as a new or underserved Medium-Range Domestic or International destination eligible for this incentive program.

- k. "Qualifying Long-Haul International City" means a city in a country other than the United States, Canada or Mexico designated from time to time by the Director of Aviation as a new or underserved Long-Haul International destination eligible for this incentive program.

- l. "Qualifying Service" means new non-stop commercial passenger air carrier service between the Airport and a Qualifying Short-Haul Domestic City, Medium-Range Domestic or International City or Long-Haul International City.
Notwithstanding the preceding sentence, an Aircraft Operation during the Airport Curfew hours between 11:30 p.m. to 6:30 a.m. will not be a Qualifying Service.

SECTION 3. PROMOTIONAL FEE-WAIVER INCENTIVE PROGRAM

The Director of Aviation is hereby authorized to act in accordance with the Promotional Fee-Waiver Incentive Program set forth in this Resolution and to implement this Program pursuant to its terms and subject to the following conditions:

- a. Subject to the provisions of this Section 3, for any Airline that commences Qualifying Service to a Qualifying Short-Haul Domestic City, the City will credit the Airline with all Airline Fees that would otherwise be due to the City for the Qualifying Service for the remaining Minimum Qualifying Period for that Qualifying Short-Haul Domestic City as of the commencement date of the Qualifying Service.

- b. Subject to the provisions of this Section 3, for any Airline that commences Qualifying Service to a Qualifying Medium-Range Domestic or International City, the City will credit the Airline with Airline Fees that would otherwise be due to the City for the Qualifying Service for the remaining Minimum Qualifying Period for that Qualifying Medium-Range Domestic or International City as of the commencement date of the Qualifying Service as follows: (i) all Airline Fees that would otherwise be due to the City for the Qualifying Service for any remaining portion of the first twelve (12) continuous months of the Minimum Qualifying Period; and (ii) fifty percent (50%) of Airline Fees that would otherwise be due to the City for the Qualifying Service for any remaining portion of the second twelve (12) continuous months of the remaining Minimum Qualifying Period.

- c. Subject to the provisions of this Section 3, for any Airline that commences Qualifying Service to a Qualifying Long-Haul International City, the City will credit the Airline with Airline Fees that would otherwise be due to the City for the Qualifying Service for the remaining Minimum Qualifying Period for that

Qualifying Long-Haul International City as of the commencement date of the Qualifying Service as follows: (i) all Airline Fees that would otherwise be due to the City for the Qualifying Service for any remaining portion of the first twelve (12) continuous months of the Minimum Qualifying Period; (ii) sixty-six percent (66%) of Airline Fees that would otherwise be due to the City for the Qualifying Service for any remaining portion of the second twelve (12) continuous months of the Minimum Qualifying Period; and (iii) thirty-three percent (33%) of Airline Fees that would otherwise be due to the City for the Qualifying Service for any remaining portion of the third twelve (12) continuous months of the Minimum Qualifying Period.

- d. Any non-stop commercial passenger air carrier service between the Airport and a Qualifying Short-Haul Domestic City, Medium-Range Domestic or International City or Long-Haul International City that commenced prior to the date that the Director of Aviation added the City to the List of Qualifying Cities will not qualify for an Airline Fee credit for any portion of the Minimum Qualifying Period.
- e. In the event that an Airline: (i) eliminates any of its non-stop service between the Airport and any city during the Minimum Qualifying Period; and (ii) fails to replace any such eliminated non-stop service with an equal number of new non-stop flights within ninety (90) days after the cessation of the eliminated service, the City shall invoice the Airline for all Airline Fees that would otherwise have been due from the commencement date of all otherwise Qualifying Service.
- f. In the event that an Airline: (i) eliminates all of its non-stop service between the Airport and any Qualifying City during the Minimum Qualifying Period for such Qualifying Service; and (ii) fails to replace any such eliminated non-stop service with an equal number of new non-stop flights within ninety (90) days after the cessation of the eliminated service, the City shall invoice the Airline for all Airline

Fees that would otherwise have been due from the commencement date of such Qualifying Service.

SECTION 4. LIST OF QUALIFYING DOMESTIC OR INTERNATIONAL CITIES

- a. The Director of Aviation will be responsible for establishing and managing the Lists of Qualifying Cities. The Director of Aviation may consider a number of factors in establishing and maintaining the Lists of Qualifying Cities, including but not limited to market conditions, passenger data, market research, route feasibility studies and community feedback.

- b. The Director of Aviation may remove a city from the List of Qualifying Cities effective as of the expiration of the Minimum Qualifying Period for the first Qualifying Service that commences between the Airport and that city.

RD:KWF
11/19/2009

ADOPTED this _____ day of _____, 2009, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk