



# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

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

**SUBJECT:** SEE BELOW

**DATE:** August 8, 2011

Approved

Date

8/12/11

**COUNCIL DISTRICT:** City-Wide

**SUBJECT: SECOND AMENDMENT TO NON-EXCLUSIVE INSTALLATION AND  
PROPERTY USE AGREEMENT BETWEEN THE CITY OF SAN JOSÉ  
AND WAYPORT, INC.**

## RECOMMENDATION

Adopt a resolution authorizing the City Manager to:

- (a) Negotiate and execute a Second Amendment to the Non-Exclusive Installation and Property Use Agreement (“Agreement”) with Wayport, Inc. (“Wayport”) to extend the term of the Agreement through October 31, 2015, require a security deposit, modify the calculation of the use charge and revise the licensed use area to include Terminal B; and
- (b) Negotiate and execute additional amendments to extend the term of the Agreement for up to five years commencing on November 1, 2015.

## OUTCOME

Approval of this Amendment will allow Wayport to continue to provide paid Wi-Fi services to customers at the Airport with revenue to the City in the amount of \$70,103 per year.

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## **BACKGROUND**

On November 14, 2000, Council approved a five year Agreement with Wayport, including one five year option to extend, for the installation and operation of 16 telecommunications radio repeaters in Terminals A and C. The Agreement provides for an annual use charge of \$45,000 and Wayport is charged \$2,640 for each additional telecommunications radio repeater. The fees increase annually by the greater of the percentage increase in the Consumer Price Index ("CPI") or 4%. The annual revenue that the Airport receives has escalated to the current amount of \$70,103.

On September 10, 2004, Wayport exercised its option to extend the term of the Agreement for an additional five years through November 15, 2010. The Agreement was extended an additional six months, through May 15, 2011.

Wayport provides paid Wi-Fi service to Airport users with both short-term daily rates and monthly subscription rates. In May 2008, as part of the Airport's Terminal Area Improvement Program (TAIP), the Airport began offering free Wi-Fi. This service is now available throughout the terminals and the consolidated car rental facility. Free Wi-Fi was initially offered without a revenue component, but the Airport now receives roughly \$10,000 per month from Wi-Fi sponsorship through a Small Concession Agreement with Cloud-9 Wireless, Inc.

## **ANALYSIS**

Due to competition with free Wi-Fi, Wayport did not intend to continue offering paid Wi-Fi after the existing term of the Agreement. However, Wayport has elected to continue to provide their paid Wi-Fi service as their customers have come to expect it.

The Second Amendment will extend the Agreement through October 31, 2015, providing annual revenue to the Airport of \$70,103. The Second Amendment will also add a deposit requirement and remove language that requires Wayport to pay the greater of the rate identified in the Agreement or the highest rate that it pays for a similar activity with any other airport in the world. This "most favored nation" provision was originally intended to ensure that the Airport rate for this type of antenna lease would remain competitive with rates paid at other Airports. However, monitoring these rates at other Airports around the world is impractical from an administrative standpoint and staff believes that the lease provisions for annual rate adjustments sufficiently reflect market conditions for these types of leases.

The Agreement was originally entered into to provide paid Wi-Fi services in Terminals A and C. Terminal C was demolished as part of the Terminal Area Improvement Project and Wayport intends to extend their Wi-Fi system into Terminal B. The Second Amendment will revise Exhibit D to reflect the current Airport terminals.

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Adoption of the resolution will delegate authority to the City Manager to extend the Agreement for up to five years. The Second Amendment also adds a provision that allows the City Manager to terminate the Agreement without cause on 180 days prior written notice.

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

The Director of Aviation shall be responsible for coordination of the Second Amendment and shall render overall supervision of the progress and performance.

### **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 Website for the August 30, 2011, Council Meeting.

### **COORDINATION**

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

### **COST IMPLICATIONS**

The services covered under this Agreement support Airport customer service and provide annual revenue in the amount of \$70,103 at no cost to the City.

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**CEQA**

Not a project, File No. PP10-066(e), Services that involve no physical changes to the environment.

/s/

WILLIAM F. SHERRY, A.A.E.

Director of Aviation

Airport Department

For questions please contact William F. Sherry, Director of Aviation at (408) 392-3611.