

**RESOLUTION NO. 75186**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE ESTABLISHING A FOCUS CITY PROMOTIONAL FEE WAIVER INCENTIVE PROGRAM TO SUPPORT THE DEVELOPMENT OF NEW AIR SERVICE AT THE NORMAN Y. MINETA SAN JOSE INTERNATIONAL AIRPORT AND AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE FOCUS CITY AGREEMENTS WITH PASSENGER AIRLINES AT THE AIRPORT TO IMPLEMENT THE TERMS AND CONDITIONS OF THE FOCUS CITY PROGRAM**

**WHEREAS**, The City of San José ("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**, the City wishes to establish a new air service incentive program to encourage airlines to increase their overall commitment to the Airport;

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

**SECTION 1.** The Focus City Promotional Fee-Waiver Incentive Program is hereby established to support the development of new air service at the Norman Y. Mineta San José 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. "Focus City Agreement" means a written agreement between the City and an Airline that implements the terms and conditions of the Focus City Promotional Fee-Waiver Incentive Program pursuant to the terms of this Resolution.
- f. "Focus City Airline" means an Airline that enters into a Focus City Agreement with the City.
- g. "List of Underserved Cities" means the list of Qualifying Underserved Cities prepared and revised from time to time by the Director of Aviation.
- h. "List of Qualifying Well-Served Cities" means the list of Qualifying Well-Served Cities prepared and revised from time to time by the Director of Aviation.
- i. "Minimum Qualifying Period" means a period of twenty-four (24) continuous months from the commencement date of the any Qualifying Service between the Airport and a Qualifying Underserved City or an Unserved City.
- j. "Qualifying Service" means new non-stop commercial passenger air carrier service between the Airport and a Qualifying Underserved City or an Unserved 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.
- k. "Qualifying Underserved City" means a domestic or international city designated from time to time by the Director of Aviation as an underserved destination eligible for this incentive program.
- l. "Unserved City" means any domestic or international city that is not a non-stop commercial passenger air carrier destination from the Airport at the time that a Focus City Airline commences new air service between the Airport and that city.

- m. "Qualifying Well-Served City" means a domestic or international city designated from time to time by the Director of Aviation as a destination that is currently well-served from the Airport and therefore not eligible for a promotional fee waiver under this incentive program.

### **SECTION 3. FOCUS CITY PROMOTIONAL FEE-WAIVER INCENTIVE PROGRAM**

Any promotional fee waivers provided by City under this incentive program shall be made subject to the terms and conditions of a Focus City Agreement. The City Manager is hereby authorized to negotiate and execute Focus City Agreements with Airlines at the Airport to implement the provisions of the Focus City Promotional Fee-Waiver Incentive Program pursuant to the following terms and conditions:

- a. A Focus City Airline shall agree to add a minimum of four (4) new year-round flights between the Airport and any city each year of the Focus City Agreement. At least two (2) of the new year-round flights added by the Focus City Airline each year of the Focus City Agreement shall be between the Airport and an Unserved City.
- b. The City will credit the Focus City Airline with all Airline Fees that would otherwise be due to the City for the Qualifying Service between the Airport and a Qualifying Underserved City or an Unserved City that is commenced by the Focus City Airline during the two-year term of the Focus City Agreement. The promotional fee waiver will run for the entire two-year Minimum Qualifying Period for each new Qualifying Service.
- c. New air service to Qualifying Well-Served Cities will be counted toward the minimum of four (4) new year-round flights between the Airport and any city each year of the Focus City Agreement, but any such new service to Qualifying Well-

Served Cities will not be eligible for any promotional fee waivers under this incentive program.

- d. In the event that a Focus City 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 Focus City Agreement shall terminate and 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
- e. In the event that a Focus City 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 to a Qualifying City within ninety (90) days after the cessation of the eliminated service, the Focus Agreement shall terminate and the City shall invoice the Focus City Airline for all Airline Fees that would otherwise have been due from the commencement date of such Qualifying Service.
- f. During the term of a Focus City Agreement, a Focus Airline shall only be eligible for promotional fee waiver incentives as provided in the Focus City Agreement for any new non-stop commercial passenger air carrier service added by the Focus City Airline. In no event shall a Focus City Airline be eligible during the term of a Focus City Agreement for any additional promotional fee waivers for any new non-stop commercial passenger air carrier service added by the Focus City Airline that are otherwise available to Airlines that are not Focus City Airlines.

- g. Pursuant to the terms of a Focus City Agreement, in consideration for the promotional fee waivers to be granted by City, a Focus City Airline shall, at a minimum:
- (i) Assign sales and marketing resources at sufficient levels acceptable to the Director of Aviation to promote new air service routes for Silicon Valley and San Jose;
  - (ii) Designate San José as a focus city in its in-flight magazine;
  - (iii) Include information regarding terminal layouts and services at the Airport in its in-flight magazine in order to facilitate connections and service with other Airlines and rental car companies; and
  - (iv) Work with Airport and City staff to develop at least one feature article regarding San José and Silicon Valley in its in-flight magazine each year during the term of the Focus City Agreement.
- h. Pursuant to the terms of a Focus City Agreement, in consideration for the new service and promotional activities to be provided by a Focus City Airline at the Airport, City shall, at a minimum:
- (i) Install banners in the Airport terminals to promote a Focus City Airline's new air service at the Airport;
  - (ii) Provide links on the Airport website to information regarding the Focus City Airline's new air service at the Airport;
  - (iii) Coordinate and facilitate partnerships and promotional activities regarding the Focus City Airline's new air service at the Airport with the City's Office

of Economic Development, the San José Convention and Visitors Bureau and local and regional chambers of commerce; and

- (iv) For each year during the term of a Focus City Agreement, contribute up to \$125,000 toward an Airport/Focus City Airline collaborative marketing program, as a dollar for dollar match of marketing funds dedicated by the Focus City Airline to promote its new air service at the Airport, for a total not to exceed \$250,000 for the two-year term of the Focus City Agreement.
- i. In the event that City terminates a Focus City Agreement based upon a default by a Focus City Airline, the City shall invoice the Focus City Airline for all collaborative marketing program contributions made by the City pursuant to the terms of the Focus City Agreement.

#### **SECTION 4. LISTS OF QUALIFYING UNDERSERVED AND WELL-SERVED 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 a List of Qualifying Cities at any time. Notwithstanding the preceding sentence, a Focus Airline shall be eligible for the promotional fee waiver for the full Minimum Qualifying Period if the Focus Airline commences service to a Qualifying Underserved City or a Qualifying Well-Served City during the term of a Focus City Agreement and prior to the removal of such city from a List of Qualifying Cities.

ADOPTED this 1st day of December, 2009, by the following vote:

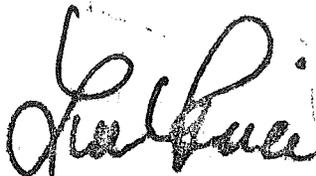
AYES: CAMPOS, CHIRCO, CHU, CONSTANT, HERRERA,  
KALRA, LICCARDO, NGUYEN, OLIVERIO, PYLE; REED.

NOES: NONE.

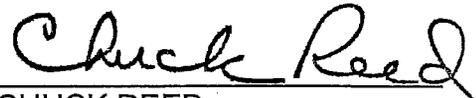
ABSENT: NONE.

DISQUALIFIED: NONE.

ATTEST:



LEE PRICE, MMC  
City Clerk



CHUCK REED  
Mayor