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City Manager's Office

# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Kimberly B. Aguirre

**SUBJECT:** ASSIGNMENT OF AREAS  
CONCESSION AGREEMENT

**DATE:** October 22, 2013

Approved

Date

10/23/13

## INFORMATION

The purpose of this memorandum is to provide an update on the Food and Beverage Concession Agreement with Areas USA SJC, LLC.

## BACKGROUND

On September 17, 2013, Council approved a Third Amendment to the Food and Beverage Concession Agreement ("Agreement") with Areas USA SJC, LLC ("Areas") to approve new concession concepts and provide for City reimbursement of costs to Areas that are related to protection of screening equipment in an amount not to exceed \$500,000, that are not typical in the usual concession construction process at Norman Y. Mineta San José International Airport ("Airport"). The Third Amendment requires Areas to also provide a performance bond, naming City as obligee, of not less than \$1,300,000 for the construction and completion of the TA-21 concessions by no later than July 31, 2014. The construction of this new concession area will provide the traveling public with greater variety of food and beverage concession choices in Terminal A at lower price points than currently exist.

## UPDATE

Areas proposes to assign the Agreement to Pacific Gateway Concessions, LLC ("PGC") effective upon execution of the Fourth Amendment to document the assignment. Staff has reviewed PGC's financial statements and finds PGC capable of meeting its financial obligations under the Agreement. Staff also contacted other airports where PGC currently operates concessions and received positive references. PGC does not have any outstanding obligations due to the City nor are they in an adverse position in any pending litigation with the City. Staff finds no reasonable grounds for denying consent to the proposed assignment of the Agreement.

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The Airport receives a Minimum Annual Guarantee ("MAG") of \$2,023,200 from the Agreement and PGC is obligated to continue paying the Airport the greater of MAG or 14% of gross sales through June 30, 2020.

The Fourth Amendment documenting the assignment obligates PGC to complete construction of the TA-21 concessions and provides reimbursement to PGC from the Airport, not to exceed \$500,000, for costs that are directly related to constructing over the screening area below and protecting it from leaks. Reimbursable costs would be tightly controlled by Airport staff and no costs would be reimbursed without thorough review and approval by the Airport. Any costs the Airport reimburses must be competitively bid. PGC must also provide a performance bond, naming City as obligee, of not less than \$1,300,000 for the construction and completion of the TA-21 concessions by not later than July 31, 2014.

The Fourth Amendment also requires PGC to assume all terms and conditions of the Areas Concession Agreement. Pursuant to the Airport Living Wage and Labor Standards Ordinance (San José Municipal Code Chapter 25.11), PGC's Labor Peace Assurances and Employee Work Environment Report are attached as an exhibit to the Fourth Amendment. As further provided under the Ordinance, PGC must require each of its subconcessionaires to provide it with assurances as to how the subconcessionaire will prevent service disruptions at the Airport due to labor disputes. PGC is also subject to all employee retention requirements under the ordinance.

The City Manager is authorized to execute the Fourth Amendment pursuant to Section 4.04.055 of the Municipal Code.

/s/

Kimberly B. Aguirre  
Director of Aviation

For questions please contact Kimberly B. Aguirre, Director of Aviation, at (408) 392-3610.