CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

CITY COUNCIL ACTION REQUEST			
Department(s): Airport	**CEQA:** Not a Project, File No. PP17-005, Adjustment to Fees, Rates and Fares without changes to or expansion of services.	**Coordination:** City Attorney's Office City Manager's Budget Office	**Dept. Approval:** /s/ Mukesh (Mookie) Patel
Council District(s): Citywide			**CMO Approval:** 7/31/24

SUBJECT: Minimum Annual Guarantee Adjustment for Bayport and Elevate Concessionaires

RECOMMENDATION

Adopt a resolution authorizing the City Manager or her designee to negotiate and execute a one-time retroactive adjustment to the Minimum Annual Guarantee for the Food and Beverage concession agreements with Elevate Gourmet Brands-SFO Group and Bayport Concessions, LLC.

BASIS FOR RECOMMENDATION

Elevate Gourmet Brands-SFO Group (Elevate) and Bayport Concessions, LLC. (Bayport) (collectively "concessionaires") are two small businesses that each operate a single food and beverage concession location at the San José Mineta International Airport. Both businesses pay the City the greater of the minimum annual guarantee (MAG) or a tiered percentage rent. The MAG is a fixed annual fee, set at $143,000 for Elevate and $243,499 for Bayport, and is adjusted annually on July 1. The percentage rent is an escalating fee based on gross revenue, in which the concessionaires pay the City 8% of gross revenue up to the first $1 million, 10% between $1-2 million, and 13% of gross revenue above $2 million.

The concessionaires opened their locations in 2023 and have experienced financial hardship due to the MAG structure. The concessionaires' initial MAGs were established based on pre-pandemic revenue projections and their current revenue has fallen short of those projections. Additionally, the MAG only adjusts annually and cannot decrease below the previous year's MAG. As a result, the concessionaires' percentage rent payments are significantly lower than their MAG obligations. Since opening, Elevate's percentage rent on average was 59.2% lower than its MAG and Bayport's averaged 37.1% lower than its MAG. This ongoing shortfall results in the concessionaries paying considerably higher monthly payments to bridge the gap between percentage rent and MAG. Consequently, both businesses are operating on a negative cash flow and are finding it challenging to meet their MAG obligations.

In order to support the concessionaires and ensure their continued presence at the Airport, staff proposes a one-time retroactive adjustment to their MAGs for the fiscal year period of July 1, 2024, to June 30, 2025, to reset the MAG floor. This adjustment will recalculate their individual MAG to reflect 85% of their actual percentage rent payments made to the City during the previous fiscal year (July 1, 2023, to June 30, 2024). This aligns with the existing MAG calculation methodology outlined in the agreement, which sets the MAG as the greater of 85% of percentage rent paid during the previous fiscal year or the previous year's MAG. This one-time adjustment will reset the MAG floor and help alleviate the current financial strain while positioning the concessionaires for long-term success as passenger traffic increases. As a result, Elevate's MAG would decrease by 59.2% to $58,257 and Bayport's MAG would decrease by 37.1% to $153,098. Future MAG adjustments will follow the formula outlined in the agreement, but will never fall below the newly adjusted amount. As enplanements increase, so too will their MAG payments.

Staff recommends delegating authority to the City Manager or her designee to amend the concession agreements to allow for a one-time MAG adjustment for Elevate and Bayport, to help mitigate financial pressure and support their continued operations at the Airport.

COMMISSION RECOMMENDATION AND INPUT

No commission recommendation or input is associated with this action.

COST AND FUNDING SOURCE

No funding will be expended from the Airport Maintenance and Operation Fund.

FOR QUESTIONS CONTACT: Mukesh (Mookie) Patel, Director of Aviation, at (408) 392-3610