



U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of Airport Planning
and Programming

800 Independence Ave., SW.
Washington, DC 20591

JUL - 2 2008

Mr. William F. Sherry
Director of Aviation
San Jose International Airport
1732 N. First Street, Suite 600
San Jose, CA 95112

Dear Mr. Sherry:

Thank you for submitting the city of San Jose's (City) FY 2008 Competition Plan update for Norman Y. Mineta San Jose International Airport (SJC). We have reviewed your Competition Plan update for the airport that was occasioned by the new Airport Lease and Operating Agreement, which was effective December 1, 2007. We have determined the SJC Competition Plan update is in accordance with the requirements of section 155 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), Pub. L. 106-181, April 5, 2000, codified as Title 49 U.S. Code sections 40117(k) and 47106(f).

We commend the city for the following pro-competitive policies and practices included in the new SJC Lease and Operating Agreement.

- Enhancing competition by providing the same lease terms for both legacy carriers and new entrant signatory airlines;
- Increasing airport control over facilities through a short-term (5 year) agreement rather than a long-term (30 year) agreement;
- Facilitating access by requesting carriers to offer only common use or preferential uses of gates, ticket counters, baggage make up and baggage claim facilities;
- Encouraging efficient use of gates by allocating preferential use gates to airlines on the basis of each airline's scheduled seats percentage, through annual determinations and allocations;
- Assisting new entrants and incumbents wishing to expand by authorizing the city to schedule requesting airlines at preferential use gates and ticket counters during unused time periods;
- Enhancing access of new entrants by providing for city rights to install shared use equipment for passenger processing at all gates;

- Funding capital improvements through a new revenue sharing agreement;
- Eliminating additional airline consultation for construction of an additional 12 gates, when flight or passenger activity reaches an agreed upon level;
- Relaxing Majority In Interest (MII) approval requirements by permitting airport to undertake proposed projects one year after an MII disapproval; and exempting from MII approval projects financed by a signatory airline or through a special purpose revenue bond and projects required by FAA/DOT, among others;
- Encouraging air service through a municipally-funded air service incentive program effective when the percentage growth in annual airport enplanements exceeds the annual growth in enplanements nationwide;
- Assisting with meaningful airport-airline consultations by notifying airlines of the proposed rates and charges each year and agreeing to meet with the airlines to discuss the proposed fees; and
- More efficient managing of disputes through the Resource Management Advisory Committee (RMAC) conflict resolution recommendations.

Additionally, thank you for responding to our June 2, 2004 SJC Competition Plan update approval letter recommendations in your current Plan update. We were delighted to learn more about your gate-use protocol, pilot program results and your plans to adjust forced accommodation to better meet airport needs. As you continue to move forward with these initiatives please keep us informed of any significant changes in these areas.

We are enclosing with this letter a chart, prepared in September 2006, highlighting actions taken by airports covered by the Competition Plan requirement to reduce barriers to entry and enhance competitive access. We have distributed this product at several airport conferences in order to demonstrate the tools airport managers are using to comply with the statutory elements of the Competition Plan requirement, the competitive benefits that may be achieved through implementation of these tools, and other ancillary advantages that may be derived from these tools. This chart may be of interest to you as you fully implement SJC's Competition Plan.

As you are aware, FAA Program Guidance Letter (PGL) 04-08 streamlined the Competition Plan process by eliminating the need for a written Competition Plan update from a covered airport whose original Competition Plan and two Plan updates have been approved by the FAA, unless certain special conditions arise. PGL 04-08 identified the following two special conditions that would require the filing of a Competition Plan update.

- An airport files a competitive access report as required by Section 424 of Vision 100 (2003), codified as 49 U.S.C. 47107 (s) stating it had denied access to an air carrier for gates or facilities within the last six months. Section 424 requires any medium hub or large airport that has denied a carrier's request or requests for access to file a report with the FAA describing the carrier's requests, providing an explanation as to why the requests could not be accommodated, and providing a time frame within which, if any, the airport will be able to accommodate the requests.
- An airport executes a new lease and use agreement, or significantly amends a lease and use agreement, including an amendment due to use of PFC financing for gates.

The city has filed, and the FAA has approved, an initial Competition Plan and two Plan updates for SJC. A further written Competition Plan update will be required only upon the occurrence of one of the two special conditions noted above.

Further, the Secretary is required by section 40117(k) to review implementation of Competition Plans from time to time to verify that each covered airport implements its Plan successfully. In connection with our review, we may determine that site visits to, or teleconferences with, one or more locations are useful. We will notify you if we decide to visit SJC regarding implementation of its Competition Plan.

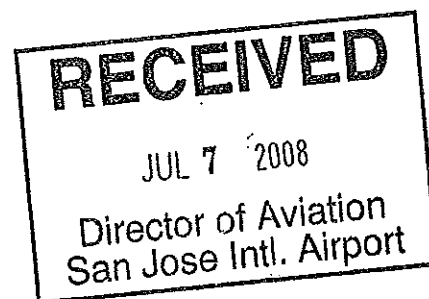
If you have any questions regarding this letter or the FAA's review of your Plan, please contact Mr. Joe Hebert, Manager, Financial Analysis and Passenger Facility Charge Branch, at (202) 267-3831.

Sincerely,



Benito DeLeon
Director, Office of Airport Planning
and Programming

Enclosure





NORMAN Y. MINETA
SAN JOSE
INTERNATIONAL
AIRPORT

February 29, 2008

Mr. Benito De Leon
Director, Office of Airport Planning & Programming
Federal Aviation Administration
800 Independence Avenue SW
Washington DC 20591

Mr. Rusty Chapman
Acting Manager, San Francisco District Office
Federal Aviation Administration
831 Mitten Road
Burlingame, CA 94010

Subject: Competition Plan Update, Norman Y. Mineta San Jose International Airport

Dear Mr. De Leon and Mr. Chapman:

In accordance with Program Guidance Letter 04-08 (dated September 30, 2004), once the Federal Aviation Administration (FAA) has accepted an initial Competition Plan and two Plan updates, a covered airport would be required to submit an additional update only if one of two special circumstances exist – the airport has submitted a report of denial of access under section 424 of Vision 100 or the airport has executed a new master lease and use agreement or a significantly amended lease and use agreement. Covered airports submitting a Plan update because they have executed a new master use and lease agreement or a significant lease amendment should file a Plan update within two month of execution of the lease. The update may be limited to a copy of the new master use and lease agreement or amended lease agreement with a written description of the changes in lease terms, and leasing practices and policies included in the lease document.

The Norman Y. Mineta San Jose International Airport (SJC) has recently executed a new Airport Lease and Operating agreement with air passenger and cargo airlines currently operating at SJC. This event is classified under the second special circumstance above. The effective date of the new Airport Lease and Operating agreement was December 1, 2007.

Competition Plan Update, Norman Y. Mineta San Jose International Airport
February 29, 2008
Page 2

In compliance with the Program Guidance Letter '04-08 and with the FAA approved filing extension, we are submitting the following documents as an update to SJC's Competition Plan:

- Attachment A - Summary of Major Changes to the Airline-Airport Lease and Operating Agreement for SJC.
- Attachment B - Copy of the New Airline-Airport Lease and Operating Agreement for SJC.
- Attachment C - List of Passenger and Cargo Airlines that have executed the new Lease and Operating Agreements

Currently, all passenger airlines operating in SJC, except Jet Blue and American Eagle, have executed the new airline-airport lease and operating agreement. There are ten passenger airlines that have signed a signatory lease and operating agreement and six passenger airlines that have signed a non-signatory lease and operating agreement. All the four cargo airlines have executed new operating agreements.

We are also enclosing Attachment D which describes SJC's new gate-use protocol and other related information, recommended by the FAA on June 2, 2004, to be included in the next update of our competition plan.

We trust that the foregoing information satisfies the requirements set forth in the Program Guidance Letter for competition plan update. Please let us know if you require any additional information. We would be happy to discuss any comments or questions that you may have.

Sincerely,

Frank Kirkbride

for William F. Sherry, A.A.E.
Director of Aviation

The new Agreements represent a significant change from the previous business and operating environment in placed at SJC. A change in the methodology for calculating rates and charges is incorporated in the Agreements, and a majority of the terminal facilities will be occupied on a shared use or preferential use basis. The major changes to the new agreements are listed below:

New	Prior
<p><u>Signatory Airline</u> Both passenger and cargo airlines have been given an opportunity to become a Signatory Airline by executing an agreement in standard form provided, in the case of a passenger airline, that: (a) it leases an amount of space in the Terminal for the Term of the Agreement that is deemed sufficient by the Airport to support the airline's operations; and (b) it operates at least one (1) flight, scheduled year round, at least three (3) days per week; and in the case of a cargo airline, that it leases cargo-handling facilities on the Airport from the Airport for no less than the term of the Agreement and guarantees a minimum of 142,000 pounds of Maximum Gross Landed Weight per Operations and operates at least three (3) scheduled operations per week.</p>	<p>There were two different forms of the previous agreement. Three of the passenger airlines currently providing service at the Airport, American Airlines, Delta Air Lines, and United Airlines, were parties to the original version of previous agreement (the "Version A Agreement"). All other airlines that leased space at the Airport directly from the City and signed an agreement were signatory to a later version of the previous agreement (the "Version B Agreement"), which had a month-to-month term and the same rates and charges methodology contained in the Version A Agreement. Airlines that do not lease space directly from the City operated at the Airport pursuant to month-to-month operating agreements.</p>
<p><u>Non-Signatory Airline</u> Any passenger or cargo airline that does not meet the minimum requirements to be a Signatory Airline have been given the opportunity to become a Non-Signatory Airline by executing an agreement in similar form. Rates and charges for a Non-Signatory Airline will be charged at a 25% premium over the rates and charges for a Signatory Airline. In addition, Non-Signatory Airlines will not participate in any MII consideration of proposed capital projects.</p>	<p>There was no provision for non-signatory airlines.</p>
<p><u>Term</u> The new Agreements took effect on December 1, 2007 and will run through June 30, 2012. The Agreements provide for one 5-year renewal period (July 1, 2012 – June 30, 2017) subject to the agreement of the City and the airlines. The City Manager also has the authority to execute the Agreements with any new passenger or cargo airlines that commence operations at the Airport after December 1, 2007, through June 30, 2012.</p>	<p>The term of the previous agreement was April 1, 1978 to November 30, 2007.</p>

<p><u>Use of Terminal Facilities</u> A majority of the terminal facilities will be leased on a shared use or preferential use basis. These will include such facilities as gates, ticket counters, baggage make-up ("Baggage Make-Up" is the area post-check in where airlines sort and process checked baggage") and baggage claim facilities. Rules governing the use of shared use and preferential use facilities will be prescribed by Airport Rules and Regulations to be established by the Director of Aviation. Airline Ticket Offices ("ATOs"), VIP lounges and other such space may be leased to the airlines on an exclusive basis as conditions warrant.</p>	<p>Terminal facilities were leased on a preferential or exclusive use basis.</p>
<p><u>Rates and Charges</u> The Agreement set the formulas to be used to calculate rates and charges for Fiscal Year (FY) 2008 through FY 2012. Landing Fees are calculated using a residual Airfield Cost Center method and are based upon the landed weight of each aircraft. Under the residual methodology, the airlines assume the financial risk associated with airfield costs and revenues. There will be no crediting of revenues generated from other cost centers (i.e. parking, concessions). Terminal Rents are calculated using a commercial compensatory method and are based upon the square footage of the terminal space. Under the compensatory methodology, the airlines pay only for the facilities they use. The structure of charges for the shared use space is determined in accordance with the activity of that particular space (i.e. shared use charge of the gate/holdroom is based on aircraft turns; shared use charge of the ticket counter is based on hours used).</p>	<p>Calculations of rates and charges for both the airfield charges and terminal rents were based on residual method.</p>
<p><u>Revenue Sharing</u> In any year in which there are net remaining revenues generated at the Airport, and all requirements of the Bond Trust Agreement have been satisfied, including the minimum rate covenant requirement, the net remaining revenues shall be divided 50/50 between the Airport and the airlines executing the Agreement (Signatory Airlines). The Signatory Airlines' share of the net remaining revenues shall be applied as a credit to the terminal cost center, thus reducing the Signatory Airlines' terminal</p>	<p>There was no provision for revenue sharing, since rates and charges were calculated using the residual method.</p>

<p>rents for the following year. The first \$1 million of the City's share shall be retained by the Airport in a discretionary fund to be used for any lawful Airport purpose. The remaining balance of the City's share (at least during the initial term of the agreement) shall be applied to the capital costs of the projects in the approved Airport Master Plan Program to reduce the costs of those projects borne by the Signatory Airlines.</p>	
<p><u>Airline Approval of Master Plan Program</u> Phase I: All of the projects in Phase I of the Airport Master Plan Program (see Exhibit K of the Agreement) are pre-approved and may be designed and built by the City without further Signatory Airline approval. Phase I projects include improvements to Terminal A, construction of Terminal B, demolition of portions of Terminal C, roadway improvements, and a consolidated rental car parking facility.</p> <p>Phase II: The projects in Phase II of the Airport Master Plan Program (see Exhibit K of the Agreement) are pre-approved, but the City will not initiate design or construction of these projects until a specified activity trigger is met: 217 flights on any day or 12.2 million total passengers in any given year. If either trigger is met, the City may, in its sole discretion, proceed with any or all of the pre-approved Phase II projects without first consulting with the Signatory Airlines. Phase II projects will include expansion of the terminal from 28 to 40 gates.</p>	<p>Any additions, deletions, modifications or changes to the list of Master Plan Capital Improvement Projects described in the Version A Agreement were to be made by the Airline and the City in a letter of agreement duly executed and acknowledged by the City Manager (or designee) on behalf of [the] City, and an authorized representative of the Airline. Consent to additions, deletions, modifications or changes to the list of Master Plan Capital Improvement Projects was not required from airlines that were signatory to the Version B Agreement.</p>
<p><u>Majority-in-Interest</u> Majority-in-Interest ("MII") consideration will only apply to new capital projects not already pre-approved as Phase I or Phase II projects that: (a) will affect airline rates and charges during the Term of the Agreement; and (b) have gross project costs expected to exceed \$5 million. MII consideration will not apply to projects: (a) that are required by the federal government; (b) that must be rebuilt or replaced to meet the Airport's obligations under the Agreement or applicable law; (c) that are required to respond to emergencies in order to keep the Airport open for public use; (d) that are undertaken in cost centers other than the Airfield and Terminal cost centers; (e) for the increased requirements of any</p>	<p>Any additions, deletions, modifications or changes to the list of Master Plan Capital Improvement Projects described in the Version A Agreement were to be made by the Airline and the City in a letter of agreement duly executed and acknowledged by the City Manager (or designee) on behalf of [the] City, and an authorized representative of the Airline. Consent to additions, deletions, modifications or changes to the list of Master Plan Capital Improvement Projects was not required from airlines that were signatory to the Version B Agreement</p>

<p>Signatory Airline(s) if such Signatory Airline(s) agree to increased rentals, fees, and charges sufficient to cover the annual debt service associated with the project; or (f) that are for special purpose facilities for which the user will pay or reimburse the Airport.</p> <p>The Airport will not proceed to design or build projects that are subject to MII consideration without first giving the Signatory Airlines a detailed description of the purpose and expected costs of each such project and an opportunity to voice any objections to the project. If an MII of the Signatory Airlines does not disapprove the project, the Airport may proceed with design and construction. If, within 60 days of the Airport's notice, an MII of the Signatory Airlines disapproves the proposed project, the Airport shall defer the project for a period of up to one year to allow for further consultation with the Signatory Airlines. At the end of the one-year deferral period, the Airport may proceed with the project, notwithstanding any remaining airline objections.</p> <p>All Signatory Airlines will have MII participation rights with respect to Airfield projects; only passenger Signatory Airlines will have MII participation rights with respect to Terminal projects.</p> <p>MII for Airfield projects shall be Signatory Airlines with at least 50% of the total landing fees paid by Signatory airlines during the preceding fiscal year. MII for Terminal projects shall be at least 50% of the total Signatory Airlines who together have (a) paid at least 50% of the total Terminal rents paid by Signatory Airlines during the preceding fiscal year; and (b) carried at least 50% of the enplaned passengers in the preceding fiscal year.</p>	
<p><u>Contract Security</u> Signatory and Non-Signatory Airlines provide contract security in an amount equal to two months' landing fees, terminal rents and other charges to guarantee the faithful performance by the Airline of its obligations under the Agreement.</p>	<p>Airlines that were signatory to the Version A Agreement were not required to provide contract security. Airlines that were signatory to the Version B Agreement and the month to month operating agreements provided contract security in an</p>

<p>amount equal to two months' landing fees, terminal rents and other charges to guarantee the faithful performance by the Airline of its obligations under the Agreement.</p>	
<p>There was no provision for rate stabilization fund.</p>	<p><u>Rate Stabilization Fund</u> A Rate Stabilization Fund will be maintained at the level of \$9 million. Deposits and withdrawals will be made to the Rate Stabilization Fund based on the City's ability to achieve the forecasted CPE. Once the Rate Stabilization Fund has a balance of \$9 million, there will be no further deposits made until the balance falls below \$9 million.</p>
<p>The agreements provide that the City will with reasonable diligence prudently operate, and keep in good repair the Airport and all appurtenance facilities and services.</p>	<p><u>Operation and Maintenance Expenses</u> The Agreements provide that the City will use reasonable efforts to manage and control the growth of operation and maintenance (O&M) expenses at the Airport and will set as its goal that "controllable" expenses will not rise by more than 5% per year. However, the Agreements further provide that the City will have no obligation to keep "controllable" expenses below this goal if, in Director's sole discretion, this is impractical at any time during the term of the Agreements.</p>
<p>There was no provision for a municipally-funded air service incentive program.</p>	<p><u>Municipally-Funded Air Service Incentive Program</u> After any year during the Term of the Agreement in which the percentage growth in annual enplanements at the Airport exceeds the growth in annual enplanements nationwide, the City will credit back to the Signatory Airlines a corresponding percentage decrease in the amount of City indirect overhead expenses allocated to the Airport's operating budget for the next succeeding year. The Agreement will cap the City indirect operating overhead rate at 25% and will set a corresponding floor at 15%. In addition, the Agreement will provide an appropriate period of time for the City to credit any funds due to the Airlines.</p>
<p>No later than 90 days before the end of each fiscal year, the City shall submit to the scheduled airlines the proposed annual budget for the next fiscal year. Airlines can request in writing within 15 days to have informal discussion. Informal discussion shall be within 30 days after receipt of</p>	<p><u>Annual operating budget review process:</u> No later than 60 days before the end of each fiscal year, the City shall notify the Signatory Airlines of the proposed rates and charges for the next fiscal year. No later than 30 days after the forwarding of the budget information, the City agrees to meet with the Signatory Airlines to discuss the proposed rates and charges.</p>

<p>written request.</p>	
<p>There was no provision for the number of days to complete the audit of the financial data.</p>	<p><u>Annual settlement provision:</u> The City shall use reasonable efforts to complete within 120 days after the end of a fiscal year the audit of its financial data, so that the City can recalculate rates and charges for the Signatory Airlines based on the City's actual expenses.</p>
<p>Rate adjustment during the year was provided only for landing fees when rate deviates by more than 10%. Rate adjustment for the terminal rents and other charges were made as part of the annual rates and charges calculations.</p>	<p><u>Other rate adjustments:</u> Landing fees, terminal rents and other charges may be changed at any other time when, based upon the City's actual expenses and the actual levels of activity at the Airport, the City reasonably estimates that the rates will deviate by more than 10% from the landing fees, terminal rents or other charges projected for the fiscal year.</p>

ATTACHMENT B

AIRLINE-AIRPORT LEASE AND OPERATING AGREEMENT

FOR

NORMAN Y. MINETA SAN JOSE INTERNATIONAL AIRPORT

BY AND BETWEEN

CITY OF SAN JOSE

AND

**COPY OF THIS AGREEMENT IS AVAILABLE AT
THE AIRPORT FINANCE AND ADMINISTRATION
OFFICE FOR REVIEW.**

EXECUTION COPY

ATTACHMENT C

**List of Passenger and Cargo Airlines with Executed Lease and
Operating Agreements
As of February 22, 2008**

Passenger Airlines – With Signatory Lease and Operating Agreement

Alaska Airlines
American Airlines
Continental Airlines
Delta Airlines
Hawaiian Airlines
Mexicana Airlines
Northwest Airlines
Southwest Airlines
United Airlines
U S Airways

Passenger Airlines – With Non-Signatory Lease and Operating Agreement

Express Jet Airlines
Frontier Airlines
Horizon Air
Mesa Airlines
Republic Airways
Skywest Airlines

Cargo Airlines – With Operating Agreement

ABX Air, Inc.
Air Transport International, LLC
Federal Express Corp.
United Parcel Service, Inc.

**Norman Y Mineta San Jose International Airport
FAA Recommended Updates**

On June 2, 2004, the Federal Aviation Administration approved the second update to the Norman Y Mineta San Jose International Airport's (SJC) competition plan. The approval letter included recommendations from the FAA to include the following items in the next SJC's competition plan update:

- a. Describe the new gate-use protocol and submit a copy of the approved protocol;
- b. Provide FAA with a report of the pilot program results; and,
- c. Advise FAA of plans to adjust forced accommodation to better meet airport needs.

New Gate-Use Protocol

Since the last update of the competition plan, SJC has executed a new Airport Lease and Operating Agreement with air passenger and air cargo airlines. The new agreement was effective December 1, 2007 and has provisions that address the recommendations listed on letters a and c above.

Article 5 of the new Airport Lease and Operating Agreement provides the procedures for assignment and use of gates. No air carrier will have exclusive use of any gates. All gates within the Terminal will be for either common use or preferential use. Airline's use of all gates shall at all times be subject to the Airport Rules and Regulations, which Rules and Regulations include the City's Terminal Resources Use, Assignment and Scheduling Procedures (see Exhibit E of the Airport Lease and Operating Agreement). Rules and Regulations may be amended from time to time after consultation with the Signatory Airlines. Some of the key provisions included in Article 5 of the agreement that address the recommendations listed on a and c above are:

- a. SJC's Director shall have the sole discretion to determine the total number of gates to be reserved for use as Common Use Gates during the year after taking into consideration any recommendations by the Resource Management Advisory Committee (RMAC).
- b. The remaining gates will be offered to the Signatory Airlines for preferential use. The number of gates to be offered to a Signatory Airline will be based on the percentage of total scheduled departing seat for that Airline to the total scheduled departing seats for all Signatory Airlines. Any gates not accepted for preferential use will be designated as common use gate.
- c. The Airport has reserved the right, upon reasonable notice to the Airlines, to schedule at a Preferential Use Gate arrivals and departures by Requesting Airline at all period of time other than Airline's period of use of that Preferential Use Gate.
- d. SJC shall retain exclusive control of all the use of the Common Use Gates.
- e. SJC has installed "shared use computer equipment" at all Common Use Gates and reserves the right to install "shared use computer equipment" at Airline's preferential gates so that any preferential gate may be used by any Airlines.

**Norman Y Mineta San Jose International Airport
FAA Recommended Updates**

- f. RMAC is established by the SJC Director and is composed of representatives designated by City and representatives of the Signatory Airlines designated by the Airport-Airline Affairs Committee. The Committee shall review and make recommendations to City on the numbers of gates to be reserved for use as Common Use Gates during the fiscal year, the locations within the Terminal of Common Use Gates and Preferential Use Gates, the number and locations within the Terminal of Common Use Ticket Counters and Preferential Use Ticket Counters and on the locations of Common Use and Preferential Use Skycap Positions. The Committee shall consider both the operational efficiency (from the perspectives of the City, the Signatory Airlines and any Non-Signatory Airlines) and the customer service implications of its recommendations.

Common Use Ticket Counter and Gate-Use System Pilot Program

The last update of SJC's competition plan included plan to implement a pilot program to purchase and test common use ticket counter and gate use system on a small set of common-use gates in Terminal A and C. With the anticipated expiration of the airport lease and operating agreement in November 2007 and the plan to incorporate the common use ticket counter and gate use provisions on the new agreement, efforts were placed on the acquisition of a common use system that is now in place to support the newly executed Airport Lease and Operating Agreement.

On February 2006, SJC entered into an agreement with Air-Transport IT Services, Inc. for the purchase and installation of an integrated system. The system includes a Resource Management Subsystem (RMS) that will assist SJC Operations in the assignment of common use resources including gates, ticket counters, baggage claim carousels, and baggage makeup conveyors. The RMS provides planning functions, 'best fit' recommendations, and real-time conflict warnings to assist SJC Operations in the management of these resources. To date, ten airlines systems have been validated and are actively using the SJC shared-use equipment to process flight. The rollout of shared use equipment to gates and ticket counters continues. To date, 16 gates have shared-use equipment installed and 34 ticket counters have shared-used equipment installed.