



CITY OF
HAYWARD
HEART OF THE BAY

COUNCIL AIRPORT COMMITTEE

JULY 10, 2014

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**CITY COUNCIL AIRPORT COMMITTEE MEETING
THURSDAY, JULY 10, 2014
COUNCIL CHAMBERS
5:30 PM**

CALL TO ORDER

ROLL CALL

PUBLIC COMMENTS: *(The Public Comment section provides an opportunity to address the City Council Committee on items not listed on the agenda. The Committee welcomes your comments and requests that speakers present their remarks in a respectful manner, within established time limits, and focus on issues which directly affect the City or are within the jurisdiction of the City. As the Committee is prohibited by State law from discussing items not listed on the agenda, your item will be taken under consideration and may be referred to staff.)*

1. Summary Minutes for April 24, 2014

[Minutes](#)

2. Second Amendment to the ParkAvion Ground Lease

[Staff Report](#)
[Attachment I](#)
[Attachment II](#)
[Attachment III](#)
[Attachment IV](#)

3. Airport Noise Monitoring System

[Staff Report](#)
[Attachment I](#)

4. Committee Member Announcements and Referrals
5. Future Agenda Items

ADJOURNMENT

NEXT REGULAR MEETING – 5:30, OCTOBER 23, 2014

Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans Disabilities Act of 1990. Interested persons must request the accommodation at least 48 hours in advance of the meeting by contacting the Assistant City Manager at (510) 583-4300 or TDD (510) 247-3340.

HAYWARD CITY COUNCIL, 777 B STREET, HAYWARD, CA 94541
[HTTP://WWW.HAYWARD-CA.GOV](http://www.hayward-ca.gov)



DATE: July 10, 2014
TO: Council Airport Committee
FROM: Director of Public Works - Engineering & Transportation
SUBJECT: Summary Minutes for April 24, 2014

CALL MEETING TO ORDER

Council Member Halliday called the meeting to order at 5:30 p.m. with Council Member Zermeño and Council Member Jones present.

City Staff: Doug McNeeley, Airport Manager
David Decoteau, Airport Operations Supervisor
Noemi Dostal, Administrative Analyst II
Sean Moran, Noise Abatement Analyst
Debbie Summers, Airport Senior Secretary

Members of the public present:

None

PUBLIC COMMENTS:

None

1. Summary Minutes for January 23, 2014

Summary Minutes approved as submitted.

2. Annual Evaluation of the Performance Based Noise Ordinance CY 2013

Airport Manager Doug McNeeley introduced Sean Moran, Noise Abatement Analyst, who presented an overview of the staff report stating that annual aircraft operations were up and noise complaints were down. During CY 2013, a total of 552 noise complaints were received, with only 126 of them correlated with exceedances of the noise ordinance. The majority of the noise complaints originated from the San Lorenzo community due to prevailing winds from the north and west, which requires aircraft departures over San Lorenzo.

Mr. Moran stated the majority of our noise complaints involved aircraft departures requiring full engine power to ensure adequate take-off performance. Most of the complaints correlate with multi-engine aircraft, particularly those used by one commercial tenant early in the morning.

Council Member Zermeño said that he was surprised that helicopters, which seem to be noisier than other aircraft, had fewer complaints. Mr. Moran replied that we are in constant contact with

based helicopter pilots to ensure that they follow the published noise abatement procedures. He added that these procedures require helicopter pilots to follow flight paths primarily over major streets, reducing noise impact. As a result, we have noted a decrease in noise complaints involving helicopters.

Council Member Jones asked for more information regarding the commercial tenant with multi-engine aircraft. Mr. Moran replied that it is a commercial freight forwarder. Mr. McNeeley identified the company as Ameriflight and stated they have been very cooperative in attempting to reduce noise impact by changing various operational procedures at the City's request.

Council Member Halliday asked about a recent, sudden increase in helicopter noise over D Street. Mr. Moran replied that it was the result of a specific police action. He said that once the incident on the ground was resolved the helicopters immediately left the area.

PUBLIC COMMENTS

None

3. Airport Ground Lease to the California Army National Guard

Mr. McNeeley gave an overview of the staff report stating that the City is preparing to issue a RFP for twenty-four acres of the twenty-seven acre California Air National Guard (CANG) site that the United States Government returned to the City in 2012. A federal contractor has been environmentally remediating the site for the last twelve years and they are currently in the last phase of that project.

The CANG lease in question includes 3.18 acres of the twenty-seven acre site, and that lease expired on June 30, 2014. Negotiations for a new ground lease between the City and California Military Department have been underway. The term of the lease will be for eleven years commencing on July 1, 2014, and expiring on June 30, 2025. The ground lease rent is based on standard Airport rates and charges of \$0.32 per square feet per year.

Mr. McNeeley added that the CANG could terminate the lease at any time with thirty days written notice after June 30, 2016, due to changes in either mission or funding. He stated CANG officials are reasonably confident that funding will continue to be available because of the nature of their mission. However, they require the flexibility to terminate the lease if required.

Council Member Halliday asked if the CANG leasehold would be available for development by others in the event the lease is terminated before the expiration in 2025. Mr. McNeeley stated that it would be available.

Council Member Jones asked if the CANG site is the same location the Hayward Fire Department is considering for a new training tower. Mr. McNeeley replied the proposed location is adjacent to the CANG site at Fire Station #6. Council Member Halliday asked if there was an issue with the current training tower, and Council Member Zermeño replied that it is not adequate for their training needs.

Council Member Zermeño inquired about the current market for the large CANG hangar. Mr. McNeeley responded that there has not been much recent interest due to general economic

conditions, but that staff is reasonably optimistic about future demand. He added that with the conclusion of environmental remediation anticipated in the near term, staff is now preparing an RFP to be issued before the end of the year.

Council Member Jones inquired whether staff plans to include a provision in the 3.18 acre CANG lease permitting early termination with 30 days' notice at the City's sole discretion. Mr. McNeeley responded that such a provision has not been a part of past commercial Airport leases; however, the City can terminate the lease for cause, such as non-payment of rent. Council Member Jones expressed concern that the City could be locked into a long-term commercial lease that might prevent the construction of retail space in the near term at any point along West Winton Avenue, on Airport property. Mr. McNeeley noted that the Federal Aviation Administration must also approve any non-aviation development on Airport property.

PUBLIC COMMENTS

None

4. Committee Members and Staff Announcements, Referrals

Council Member Halliday provided an update on the recent Oakland Airport-Community Noise Management Forum Meeting stating the City of Santa Monica is involved in a legal dispute with the FAA over the future of Santa Monica Airport.

Council Member Zermeño asked for a progress report regarding the monument sign to be placed at the corner of Hesperian and Winton Avenues. Mr. McNeeley replied that it will be incorporated in an upcoming City project to reconstruct the intersection.

Council Member Jones asked if there are any plans to develop the vacant site on Airport property, along Hesperian Boulevard. Mr. McNeeley stated that within the next twelve months he plans to issue RFPs for development of three sites on Airport property to generate additional revenue, including the Hesperian site.

Mr. McNeeley stated that an item will be brought before Council on May 6, 2014, to amend the lease of Hayward FBO, an existing commercial tenant. Hayward FBO is doing business as Airport Property Partners, LLC and they have been a tenant at the Airport since 2009. APP Properties, Inc. will replace Airport Property Partners, LLC as the sole member of Hayward FBO, LLC. They are restructuring to allow the company to qualify as a Real Estate Investment Trust (REIT). This will assist the company in raising operating and investment capital and minimizing taxes, among other benefits. The lease amendment is essentially an internal restructuring and there will not be any change in ownership or in operations.

Council Member Halliday inquired about the type of taxes the company was attempting to minimize. Mr. McNeeley replied that to the best of his knowledge it is federal tax, not property tax.

Mr. McNeeley provided an update on the new Administration Building construction project. He said the building is 70% complete and should reach substantial completion in July 2014. The building will provide services and amenities that are not currently available, including a public meeting room, weather briefing and flight planning area, pilot lounge, office for local police, and a

new vehicular parking lot with two electric car recharging stations. A grand opening event is tentatively planned for mid-September 2014.

Mr. McNeely mentioned the upcoming Airport Open House, being held this Saturday from 10:00 AM to 4:00 PM.

5. Future Agenda Items

None

ADJOURNMENT

The meeting adjourned at 6:23 p.m.

DATE: July 10, 2014

TO: Council Airport Committee Members

FROM: Director of Public Works - Engineering and Transportation

SUBJECT: Second Amendment to the ParkAvion Ground Lease

RECOMMENDATION

That the Committee reviews this information, provides comments regarding the proposed lease amendment, and makes a recommendation for action to Council.

BACKGROUND

On November 16, 1993, an assignment of the Hunt-Myers Commercial Aviation Lease to Valley Oil Co. was approved by Council. Valley Oil Co. subsequently changed their corporate name to EPIC Aviation, Inc. (“Epic”). A Commercial Aviation Site Lease between the City and Epic was executed on February 2, 2004. A first amendment to this lease was executed on December 16, 2008 to include a parcel necessary for the completion of a commercial hangar project, among other provisions, but construction of this project was never initiated. On May 9, 2011, the City was informed that Epic had executed a sales agreement with Parkavion Property Management HWD, LLC (“Parkavion”) and requested an assignment of their leasehold interest. The Epic leasehold is approximately 7.55 acres in size with two existing hangar buildings. The leasehold is illustrated in Attachment I, and an aerial photograph of the leasehold is shown in Attachment II. On December 6, 2011, Council approved the assignment of the Epic lease to ParkAvion and a resolution was executed (Attachment III).

DISCUSSION

The existing commercial leasehold of Hayward Hangars, LLC adjoins the ParkAvion leasehold to the east. It was anticipated that cooperation would be necessary between the two companies to allow Hayward Hangars to complete their hangar construction project in a timely manner, and for Hayward Hangars to manage construction in a way that did not adversely affect ParkAvion. However, over the past several years, a number of unanticipated issues have arisen regarding these adjacent leaseholds.

For example, easements were necessary on the ParkAvion leasehold to allow Hayward Hangar tenants to gain access to the airport’s taxiway system, but after the respective ground leases were executed, staff discovered that the location of taxiway easements in each respective ground lease were depicted differently. The easements on each of the leaseholds did not connect with Taxiway

Alpha, a common-area taxiway used to reach the Airport's runways for takeoff and landing. Originally planned construction by Hayward Hangars would have provided insufficient space on their leasehold for tenants to park aircraft in front of their hangars. Aircraft must be parked in front of hangars before departure and after arrival to be fueled and to position them to be pulled into and out of the hangars. Other issues were subsequently identified regarding storm water runoff, vehicular access, site elevations, the allocation of grading and paving costs along the leasehold boundary, and a variety of associated legal questions.

Staff has been engaged in ongoing discussions with ParkAvion and Hayward Hangars separately to resolve these difficult issues. The majority of issues have been resolved via negotiations with ParkAvion, which are reflected in the proposed Second Amendment. A summary of the negotiation points is as follows:

- **Effective Date** - This Second Amendment will be executed after approval by Council, on or about July 15, 2014. The amendment will run concurrently with the existing ParkAvion lease until December 31, 2054.
- **Change in Size and Configuration of ParkAvion Parcels "B" and "C"** – ParkAvion has agreed to relinquish a portion of its leasehold, which was slated for additional hangar development, in order to help facilitate a resolution. A portion of Parcels B and C, approximately 139 by 362 feet, or 50,318 square feet closest to the Hayward Hangars leasehold, will be removed from the ParkAvion leasehold for the creation of a common-use taxilane for the benefit of both ParkAvion and Hayward Hangars. Also, the addition of an area approximately 39 by 391 feet, or 15,249 square feet, to the southwest boundary of Parcel C, will provide access to Taxiway "A".
- **City to Construct Common-Use Taxilane** – The City will design, fund, construct, and maintain a taxilane in the portion of Parcels B and C removed from the ParkAvion leasehold (this project may be eligible for FAA funding). Work will be completed no later than the issuance of a Certificate of Occupancy (COO) for the new ParkAvion hangars, should they be constructed.
- **ParkAvion Hangar Construction Deadline** – Either party may elect to terminate the lease with respect to Parcel C if, at any time ten years after the effective date of the Second Amendment, ParkAvion has not completed construction of hangars. The Lessee may also terminate in the event the plans submitted to the City and subsequent modifications are not approved. In the event hangars are not constructed within ten years due to economic conditions relative to demand, the City may also opt to increase rent on Parcel C to 100 percent of the Adjusted Land Value.
- **Rent** – During the Initial Period between execution of this amendment and the commencement of hangar construction, rent will be calculated based upon \$0.10 per square foot; between the commencement of hangar construction and the issuance of a COO, \$0.16 per square foot; and after the issuance of a COO, \$0.32 per square foot. These rates are subject to periodic increase. These rates are consistent with similarly situated tenants at the Airport.

- **Easements Removed** - Paragraph 5 of the Recitals in the original lease is removed, deleting any reference to a taxiway easement as it is no longer needed.
- **ParkAvion's Right of First Refusal on Additional Property** – ParkAvion will have a right of first refusal for the Aviation Training, Inc. leasehold when that lease expires on September 1, 2015. ParkAvion may conduct a due diligence investigation of the property for a period of no more than 180 days, beginning no later than January 1, 2015. In the event negotiations are unsuccessful for the Aviation Training, Inc. leasehold, after July 31, 2015 the City will notify ParkAvion each time a parcel becomes available on the north side of the airport, up to a maximum of two times. ParkAvion will have a 60-day due diligence period to evaluate additional parcels. If negotiations are unsuccessful for the Aviation Training, Inc. leasehold, and then unsuccessful for up to a maximum of two additional leaseholds as they become available, then the City shall have no further obligation to negotiate for additional leaseholds under the terms of this agreement.
- **Storm Water Runoff** – After the Second Amendment is executed, the City will investigate ParkAvion's concern regarding excess storm water runoff from the Hayward Hangars leasehold, identify possible remedies, and take any necessary remedial action.
- **Prohibitions Against Taxilane Obstructions** – The City shall not permit Hayward Hangars to construct any above-ground structure within a 40-foot anticipated parking area closest to the ParkAvion leasehold to allow full access by the largest aircraft stored by ParkAvion.
- **FBO Confirmation** – The City confirms ParkAvion's right to sell aviation fuel and provide related services in accordance with provisions of the original lease.

The negotiation of these points and the execution of the Second Amendment will resolve any previous errors, omissions, or inequities that may have existed with regard to the boundary between ParkAvion and Hayward Hangars.

FISCAL IMPACT

There will be no change in the amount of rent received for Parcel "A" under the Amended Lease. However, because the City proposes to take a significant portion of land from ParkAvion's leasehold in order to accommodate a new taxiway, an adjustment in rent will occur as to Parcel "B" and "C". Currently, ParkAvion's leasehold generates \$105,252 in gross rent revenues per year. With the modification of the site parcels to allow for additional development, ParkAvion's rent will be reduced to \$79,476. This rent would automatically increase to \$92,296 upon ParkAvion's development of Parcel "C".

The cost of the additional taxiway required to support further development will be borne internally. However, an application for funding of up to ninety percent of the cost will be made to the Federal Aviation Administration to help offset the cost of this development.

The cost of the Storm Water Runoff Study will be borne internally. There may be additional costs to remediate any drainage problems found. However, staff will make every effort to identify cost effective solutions if a problem is discovered.

Prepared by: Douglas McNeeley, Airport Manager

Recommended by: Morad Fakhrai, Director of Public Works – Engineering & Transportation

Approved by:



Fran David, City Manager

Attachments:

Attachment I: Depiction of Leasehold

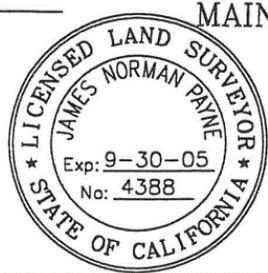
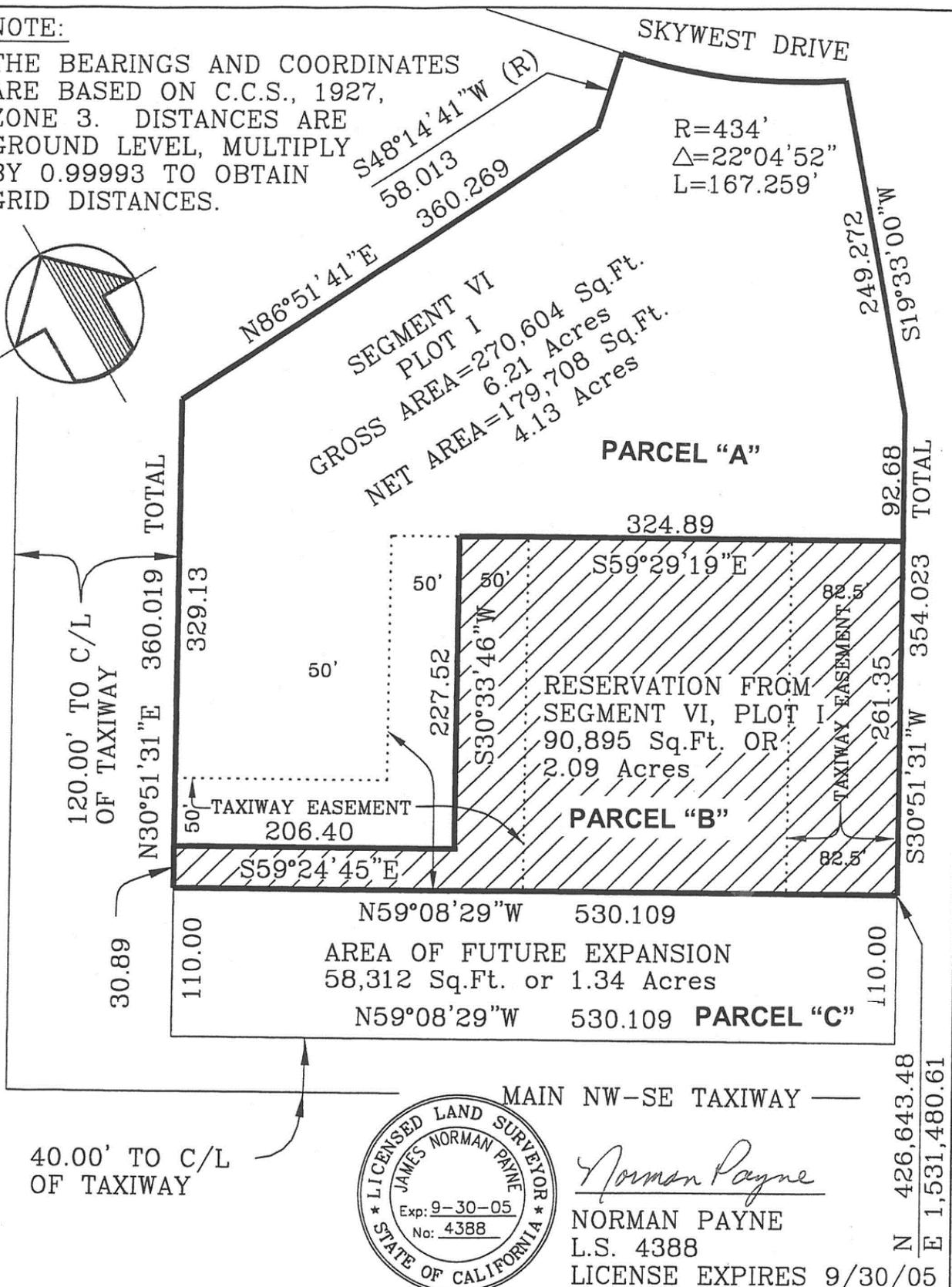
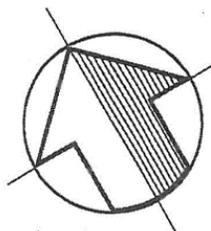
Attachment II: Aerial of Leasehold

Attachment III: Resolution – December 6, 2011

Attachment IV: Draft Second Amendment to Lease

NOTE:

THE BEARINGS AND COORDINATES ARE BASED ON C.C.S., 1927, ZONE 3. DISTANCES ARE GROUND LEVEL, MULTIPLY BY 0.99993 TO OBTAIN GRID DISTANCES.



Norman Payne
NORMAN PAYNE
L.S. 4388
LICENSE EXPIRES 9/30/05

CITY OF HAYWARD ENGINEERING DIVISION			HAYWARD EXECUTIVE AIRPORT - LEASE PORTION SEGMENT VI PLOT I (REVISED)	DWG. NO. 04002
REV	DATE	BY		FILED
				SHT. 1 OF 1
			DRAWN BY: JNP	DATE 01-15-04
			CHECKED BY: JNP	SCALE: 1"=100'
			APPD. BY	APPROVED
			CITY ENGINEER	DIR. PUBLIC WORKS



Imagery Date: 10/1/2009 1993 37°39'41.18" N 122°07'12.39" W elev 35 ft

Eye alt 1431 ft

HAYWARD CITY COUNCIL

RESOLUTION NO. 11-181

Introduced by Council Member Zermeño

RESOLUTION AUTHORIZING THE CITY MANAGER TO APPROVE AN ASSIGNMENT AND ASSUMPTION OF THE COMMERCIAL AVIATION SITE LEASE BETWEEN THE CITY AND EPIC AVIATION, LLC, TO PARKAVION PROPERTY MANAGEMENT HWD, LLC

WHEREAS, the City of Hayward owns and operates the Hayward Executive Airport; and

WHEREAS, representatives of Parkavion Property Management HWD, LLC have notified the City that they have purchased the Hayward operation of EPIC Aviation, LLC and wish to have the lease transferred to their corporate name; and

WHEREAS, it is in the best interest of the City of Hayward to approve the assignment and assumption of this lease.

NOW, THEREFORE, BE IT RESOLVED, that the City Manager is authorized to execute the lease assignment and assumption and all related documents regarding the assignment and assumption as described in the staff report, in a form approved by the City Attorney

IN COUNCIL, HAYWARD, CALIFORNIA December 6, 2011

ADOPTED BY THE FOLLOWING VOTE:

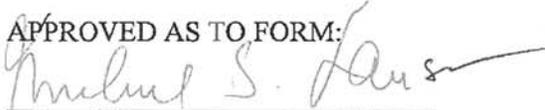
AYES: COUNCIL MEMBERS: Zermeño, Quirk, Halliday, Peixoto, Salinas, Henson
MAYOR: Sweeney

NOES: COUNCIL MEMBERS: None

ABSTAIN: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

ATTEST: 
City Clerk of the City of Hayward

APPROVED AS TO FORM: 
City Attorney of the City of Hayward

SECOND AMENDMENT

Commercial Aviation Site Lease, as assigned
(Segment VI-Plot I Identified as Parcels "A", "B", and "C")

THIS SECOND AMENDMENT TO LEASE (hereinafter referred to as "this Second Amendment") made and entered into as of this ____ day of July, 2014, by and between the City of Hayward, a municipal corporation located in the County of Alameda, State of California (hereinafter "Lessor" or the "City") and Parkavion Property Management HWD, LLC, a California Limited Liability Company (hereinafter "Lessee"), the address of which is 20193 Skywest Drive, Hayward, California 94541, successor in interest to Epic Aviation LLC, an Oregon Limited Liability Company (hereinafter "Epic"). Lessor and Lessee (hereinafter sometimes referred to collectively as the "Parties") agree as follows:

RECITALS

WHEREAS, Lessor and Epic entered into that certain agreement and lease dated January 20, 2004 and effective February 2, 2004 (hereinafter referred to as the "Original Lease"), entitled "Commercial Aviation Site Lease."

WHEREAS, Lessor and Epic entered into the First Amendment to the Original Lease, dated December 16, 2008 (the "First Amendment"), which modified specific provisions of the Original Lease (the Original Lease, as modified by said First Amendment, is hereinafter referred to collectively as the "Amended Lease").

WHEREAS, the interests of Epic under the Amended Lease were, with Lessor's consent, assigned by Epic to Lessee in accordance with the Assignment, Assumption and Consent Agreement by and among Lessor, Epic and Lessee, made as of March 31, 2012; and

WHEREAS, the Parties desire to further amend the Amended Lease in certain respects as set forth herein, including with respect to Parcels B and to C referred to in the Amended Lease.

AMENDED TERMS

NOW, THEREFORE, in consideration of the covenants, conditions, and terms hereinafter set forth, Lessor and Lessee do hereby agree that the Original Lease, the purpose of which was and is to provide aviation related services and activities on the designated leasehold, is hereby further amended in the following particulars only, to wit:

1. Effective Date of Second Amendment and Continued Effect of Provisions of Amended Lease.

This Second Amendment shall be effective on the _____ day of July, 2014. All provisions of the Amended Lease shall remain in full force and effect unless expressly modified herein.

2. Modified Description and Definition of Leased Premises.

- (a) Exhibit "A" referred to in paragraph 4 of the Recitals in the Original Lease and referred to in Section 1.02 of the Original Lease, and Exhibit A-1 referred to in paragraph 2 of the First Amendment, are replaced, overridden and superseded by Exhibits AA-1 and AA-2 attached to and made part of this Second Amendment and the Lease, as hereinafter defined. As a consequence, Exhibits AA-1 and AA-2 are substituted for and take the place of said Exhibit "A" and Exhibit A-1, and the configuration and size of Parcels B and C, as described in Exhibit "A" and Exhibit A-1, are changed as shown in Exhibits AA-1 and AA-2.
- (b) The changes in the configuration and size of Parcels B and C referred to in Section 2(a) of this Second Amendment include: (1) the removal of a portion of the land from Parcels B and C, as previously described in the First Amendment and Exhibit A-1 thereof (the portion of the land so removed being approximately 139' x 362' and being hereinafter referred to as the "Taxiway Removed Land") and located at the portions of said Parcels B and C closest to the land that the City leases at Hayward Airport as of the date of this Second Amendment to the limited liability company known as Hayward Hangars, LLC (hereinafter referred to as "HH LLC"; the land and improvements that the City leases at Hayward Airport to HH LLC as of the date of this Second Amendment are hereinafter referred to as the "HH Leasehold"); (2) the addition to Parcel C, as previously described in the First Amendment and Exhibit A-1 thereof, of land approximately 39' x 391' in area and located adjacent to the southwest boundary of Parcel "C" as previously described in the First Amendment and Exhibit A-1 thereof; and (3) for all purposes of the Amended Lease, as further amended by this Second Amendment (the Amended Lease as so further amended being hereinafter referred to as the "Lease"), the reduction in the size of Parcel "B" from 90,895 sq. ft. to 50,446 sq. ft., and the change in the size of Parcel C from 58,312 sq. ft. to 58,271 sq. ft. The changes in the configuration and size of Parcels B and C described in the previous sentence are identified in Exhibit BB attached to and made a part of this Second Amendment and the Lease.
- (c) Consistent with Section 2(a) and 2(b) of this Second Amendment and for all purposes of the Lease from and after the effective date of this Second Amendment, the Leased Premises are defined and consist of the real property situated in the City of Hayward, County of Alameda, State of California, more particularly described as a portion of Segment VI-Plot I and depicted in yellow on Exhibit "AA-2," as Parcel A (179,708 sq. ft. or 4.12 acres + or -), Parcel B (50,446 sq. ft. or 1.16 acres + or -), and Parcel C (58,271 sq. ft. or 1.34 acres + or -), consisting of a total of 6.62 acres + or - .

3. Leased Premises Not Encumbered by Taxiway Easement.

Paragraph 5 of the Recitals in the Original Lessee is deleted therefrom and the Parties acknowledge that the Leased Premises under the Lease are not encumbered by any taxiway easement. This provision shall not be interpreted to eliminate the utility easements identified in Exhibit "A" of the Original Lease.

4. Construction and Operation by the City of Common Use Taxiway and Aircraft Parking Area.

- (a) The City shall, at no expense to Lessee, design, construct, operate and maintain (1) a taxiway in an area that is approximately 121' x 401' and includes a portion of the Taxiway Removed Land (the "Additional Taxiway"), and (2) an aircraft parking area that is approximately 18' x 401', that includes a portion of the Taxiway Removed Land and that is located adjacent to the HH Leasehold (the "Parking Area"), all as identified in Exhibit BB.
- (b) The Additional Taxiway will be for common use at Hayward Airport for taxiway purposes, including for use by Lessee, HH LLC and their respective successors in interest, if any, at Hayward Airport. The aircraft Parking Area will be for the benefit of the HH Leasehold.
- (c) Not later than Lessee's commencement of construction of approved hangars on Parcel C, the City will begin the design and construction of the Additional Taxiway and the Parking Area as described in Section 4(b) above. The City will complete construction by the date of the City's issuance of a Certificate of Occupancy for the Lessee's developed structure(s) on Parcel C. Said construction will be completed in a manner consistent with applicable City standards.

5. Lease Term.

- (a) Sections 1.07, 1.08 and 1.09 of the Original Lease, reference to Exhibit "B" in said Section 1.09, and the first paragraph of Section 2 of the First Amendment are deleted and not included in the Lease.
- (b) The term of the Lease for all purposes, including for Parcels A, B and C, expires on December 31, 2054 and not sooner, subject to termination as otherwise provided including in Section 1.03 and Article 10 of the Original Lease and subject to the provisions of Section 5(c) below.
- (c) Lessor or Lessee may elect to terminate the Lease with respect to Parcel C as provided in this Section 5(c), or as otherwise provided in this Lease including Section 1.03 and Article 10 of the Original Lease, if at any time ten (10) years or more after the date this Second Amendment has been executed by the Parties Lessee has not completed construction of the planned improvements on Parcel C as outlined in Section 7. Without compromising Lessor's and Lessee's aforementioned right to terminate the Lease with respect to Parcel C, the Lessor may also elect to raise the rent on Parcel C, at any time after the ten (10) year period referred to in the previous sentence, to 100% of the Adjusted Land Value per square foot subject to the Policy Establishing Periodic Adjustments to Land Value (as defined in the Original Lease). In the event that Lessor elects to terminate the Lease or increase the rent with respect to Parcel C, the Lessor will provide a written notice of such an election at least sixty

(60) days prior to the effective date of the election. Should Lessee receive such notice, Lessee may terminate the Lease with respect to Parcel C, by providing City with written notice at least sixty (60) days prior to the effective date of the termination.

6. Rent.

Payments of rent by Lessee to Lessor shall be made as provided in Article 5 of the Original Lease and Section 9 of the First Amendment, except as otherwise provided below in this Section 6.

- (a) The payment of rent with respect to Parcel B under the Lease will be based on the square footage of 50,446 sq. ft. and not 90,895 sq. ft.
- (b) The payment of rent with respect to Parcel C under the Lease will be based on the square footage of 58,271 sq. ft. and not 58,312 sq. ft.
- (c) The rent with respect to Parcel C will be calculated at the following rates per square foot:
 - (i) during the period (the “Initial Period”) beginning on the first day of the month following execution of this Second Amendment by the Parties and continuing until Lessee commences construction of hangars in Parcel C, 33% of the Adjusted Land Value subject to the Policy Establishing Periodic Adjustments to Land Value (as defined in the Original Lease) per square foot (equivalent to 33.3% of the Adjusted Land Value, presently \$0.10 per square foot per year);
 - (ii) beginning on the first day following the last day of the Initial Period and continuing until either the City’s Building Department issues Certificates of Occupancy for the hangars Lessee begins to construct during the Initial Period or the date the City completes construction of the taxiway specified in this Section 4 (“Construction Period”), whichever occurs last, 50% of the Adjusted Land Value per square foot subject to the Policy Establishing Periodic Adjustments to Land Value (as defined in the Original Lease) (equivalent to 50% of the Adjusted Land Value, presently \$0.16 per square foot per year); and
 - (iii) beginning on the first day following the last day of the Construction Period as described in clause (ii) of this Section 6(c) , 100% of the Adjusted Land Value per square foot subject to the Policy Establishing Periodic Adjustments to Land Value (as defined in the Original Lease) (equivalent to 100% of the Adjusted Land Value, presently \$0.32 per square foot per year), subject to the right of either Lessor or Lessee to terminate the Lease with respect to Parcel C, after a period of ten (10) years from the date of this Second Amendment.

7. Modified Site Plan(s) for Parcels B and C.

As soon as Lessee reasonably expects that construction of hangars on Parcels B and C will be reasonably justified by economic conditions relevant to demand for such construction, Lessee shall submit to Lessor a modified site plan or site plans for hangar construction on said Parcels and shall request review and approval thereof by Lessor. Lessor, in its sole but reasonable judgment, will review the submitted plans and if satisfactory to Lessor, the Lessor will approve such plans. If Lessor does not approve the submitted plans, or additional plans submitted by Lessee within ninety (90) days after submittal, Lessee may elect to terminate the Lease with respect to Parcel C, upon providing written notice to Lessor, at least ninety (90) days prior to the effective date of termination. Such site plan or site plans will supplement and / or take the place of Exhibit E of the First Amendment, to the extent information in Exhibit E is supplemented or replaced by information included in such site plan or site plans. Lessee's obligations under the preceding provisions of this Section 7 take the place of Section 10(a), (b) and (c) of the First Amendment, and those subdivisions of Section 10 are deleted and not included in the Lease. References to Exhibit B-1 in Section 2 of the First Amendment and to Exhibit E in said paragraph preceding Section 7 of the First Amendment are deleted from the Lease and said Exhibit B-1 and Exhibit E are not included in the Lease.

8. Lessee's Right of First Refusal.

- (a) Lessor acknowledges that Lessee is interested in leasing from Lessor, in addition to the Leased Premises, property located at the northerly portion of Hayward Airport, in the area of Skywest Drive (the "Northerly Airport Area"), if such property is available for lease from Lessor.
- (b) In particular, Lessee may wish to enter into a long-term lease with Lessor beginning on September 1, 2015, for the land known as Plot F in said Segment VI and for the improvements thereon, collectively sometimes referred to as the Flying Vikings leasehold located at 21593 Skywest Drive. Lessor shall permit Lessee, at Lessee's request to Lessor, made no later than December 1, 2014, and at Lessee's expense, to examine and conduct investigative due diligence of said leasehold for a period of up to one hundred eighty (180) days after execution of this Second Amendment by the Parties and beginning no later than January 1, 2015. If Lessee notifies Lessor no later than twenty (20) days after completion of such examination and due diligence that Lessee wishes to enter into a long-term lease with Lessor for said leasehold, the Parties shall negotiate in good faith seeking to agree on terms for such long-term lease. If Lessee does not make the request to Lessor as described in the next preceding sentence or does not notify Lessor as described in the preceding sentence, or if the Parties do not agree within a reasonable time, and no later than July 31, 2015, on terms for such long-term lease, neither Lessor nor Lessee will have any further obligation to the other under this Section 8(b), provided that both Parties have complied with the obligation under the preceding sentence, if applicable, to negotiate in good faith. Provided the Parties negotiate in good faith for said long-term lease in accordance with this Section 8(b), neither of the Parties guarantees or warrants to the other any particular outcome or result from such negotiations, and neither of the Parties is obligated to agree on particular lease terms. If within a reasonable time, and no later than July 31, 2015, the Parties agree on terms for said long-term lease, then the following provisions of this Section 8 will have no effect. Otherwise, such provisions will apply after July 31, 2015.
- (c) After execution of this Second Amendment by the Parties, and after July 31, 2015, Lessor shall notify Lessee if, when and each time any improved or unimproved land in the Northerly Airport Area, other than the Leased Premises, is or becomes available to lease from Lessor. Each such notice shall include, if available to Lessor, a description of any such land and any improvements thereon available to lease from Lessor and of each date on which, or period during which, the same is or will be so available.

Following the giving of each such notice in accordance with the preceding two sentences, Lessor shall permit Lessee, at Lessee's request to Lessor made within thirty (30) days after Lessee's receipt of notice, and at Lessee's expense, to examine for a reasonable period of time not to exceed sixty (60) days and conduct during such period investigative due diligence of the land and any improvements thereon described in each such notice. Within thirty (30) days after completion of each such

examination and due diligence, Lessee may notify Lessor in writing that Lessee wishes to lease from Lessor the land and any improvements thereon described in the applicable notice, in which case Lessee shall, within thirty (30) days thereafter, submit to Lessor an offer in writing setting forth the terms proposed by Lessee for such lease.

If Lessee does not make the request to Lessor as described above, or does not notify Lessor as described in the preceding sentence, or if Lessee does not submit an offer as described in the preceding sentence, then Lessor will have no further obligation to Lessee regarding a lease for the improved or unimproved land described in the applicable notice in accordance with the first two sentences of this Section 8(c).

If Lessee, however, makes such request to Lessor, so notifies Lessor and submits such offer within the times permitted therefor, the Parties shall negotiate in good faith for a reasonable time, taking into account the available date of the leasehold, in an attempt to enter into a lease with mutually agreeable terms.

- (d) If the Parties enter into a lease pursuant to Section 8(b) or Section 8(c) neither Lessor nor Lessee will have any obligation thereafter under Section 8(b) or Section 8(c). If Lessor has given two (2) notices to Lessee in accordance with the first two sentences of Section 8(c), then whether or not the Parties enter into a lease pursuant to Section 8(c), neither Lessor nor Lessee will thereafter have any further obligation to the other under Section 8(c) provided that the Parties have complied with any applicable obligation to negotiate in good faith.

9. Storm Water Runoff.

- (a) Lessor acknowledges that Lessee believes the construction on the HH Leasehold has resulted in excess storm water draining onto the Leased Premises. On or before July 1, 2014, Lessor shall commence an investigation to verify said condition and identify a possible remedy or possible remedies for preventing such excess drainage onto the Leased Premises and shall give notice to Lessee of such remedy or remedies in reasonable detail. Within thirty (30) days after receipt of such notice from Lessor, Lessee shall notify Lessor in reasonable detail of any comments of Lessee and of any disagreement by Lessee as to the effectiveness or as to adverse impacts concerning the remedy or possible remedies identified by Lessor in such notice to Lessee.
- (b) Lessor shall, as soon as practicable, take action as needed to prevent any such excess storm water drainage, identified in the investigation referred to in Section 9(a), from entering onto the Leased Premises. Lessor shall make reasonable effort to undertake any such action in a manner that does not conflict with reasonable comments of Lessee or any reasonable disagreement by Lessee set forth in Lessee's notice to Lessor described in the last sentence of Section 9(a). Lessee shall provide access and fully cooperate in any investigation or implementation of any remedies as described in this section.

10. Prohibition Against Obstruction of the Additional Taxiway.

- (a) The City represents that as of the date of execution by the Parties of this Second Amendment, no approval or consent has been given or agreed on that would permit any above-ground structure or other improvement, other than pavement or like improvements, to be constructed or otherwise placed on the portion of the HH Leasehold that is closest to the Leased Premises and located within forty (40) feet of the Additional Taxiway (the “40-Foot Anticipated Parking Area”). Lessor represents that its consent is required for any above-ground structure or other improvement within the 40-Foot Anticipated Parking Area under the present lease from Lessor to HH LLC for the HH Leasehold.
- (b) The City will not permit any above ground structure(s) to be constructed within the 40-Foot Anticipated Parking Area as defined in Section 4 above. The City will not give any consent or approval to HH LLC, or any successor under the lease between Lessor and HH for the HH Leasehold, to construct hangers in a location that would cause a violation of Hayward Municipal Code Section 2-6.38(a) as in effect at the time of this amendment(Attached hereto as Exhibit F). Parking will only be allowed in the Parking Area if the planes do not cause interference with the use and enjoyment of the Additional Taxiway.

11. FBO Confirmation.

The Parties acknowledge that the Lease confers upon Lessee the right to sell aviation fuel and related services in accordance with paragraph 3 of the Recitals, Sections 1.05 and 3.01, and Article 4 of the Original Lease. Section 10(c), (d), (e), (f) and (g) of the First Amendment, concerning self-service fuel facilities, have no application and are deleted and not included in the Lease. The City confirms that in the event that Parcel C is removed from the Leased Premises, the remainder of the Leased premises in its current configuration would still satisfy the total minimum area requirements of Hayward Municipal Code Section 2-6.64.

12. Waiver of Security Under Section 9.05.

Section 9.05 of the Original Lease is amended to read as follows:

“Notwithstanding the provisions of Section 9.04, no bond, cash deposit or letter of credit is required under the Lease if Parkavion is the Lessee under the Lease.”

13. Notices.

Section 14.09 of the Original Lease is amended to read as follows:

“Any notice, request, offer, approval, consent or other communication required or permitted to be given by or on behalf of either Party to the other shall be given or communicated in writing by personal delivery, reputable overnight carrier service which keeps receipts of deliveries (i.e., Federal Express), or United States certified mail (return receipt requested with postage fully prepaid) or express mail service addressed to the other Party as follows:

To City: City of Hayward
777 B Street
Hayward, California 94541
Attn: City Manager

With a copy to: Airport Manager
Hayward Executive Airport
20301 Skywest Drive
Hayward, California 94541
(510) 293-8678
(510) 783-4556 [FAX]

To Lessee: Parkavion Property Management HWD, LLC
20193 Skywest Drive
Hayward, California 94541
Attn: Gary Briggs

or at such other address as may be specified from time to time in writing by either Party. All such notices hereunder shall be deemed to have been given on the date personally delivered, or the date shown on a receipt or other documentation of delivery by overnight or express mail service, or the date marked on the return receipt, as applicable to the method used for giving notice, unless delivery is refused or cannot be made, in which case the date of documented attempted delivery shall be deemed the date notice has been given.”

14. Integration.

This Second Amendment contains the entire agreement of the Parties, and all negotiations and agreements between the Parties, or their respective agents, are hereby declared to be incorporated into this Second Amendment. The Amended Lease and this Second Amendment constitute the Parties’ entire understanding and agreement, integrates all terms and conditions relevant to the subject matter of the Lease, and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of such subject matter. The Lease may only be altered in writing, signed by both Parties.

15. Headings and Capitalized Terms.

The headings or captions in this Second Amendment are for convenience only and do not in any way limit, amplify or otherwise affect any term or provision of this Second Amendment. Any capitalized term used but not defined in this Second Amendment and defined in the Amended Lease has the meaning ascribed to it in the Amended Lease.

16. No Third-Party Rights.

The parties do not intend to create rights in, or to grant remedies to, any third party as a beneficiary of this Second Amended Lease. Nor do the parties intend to create any duty, covenant, obligation, or undertaking for any third party by entering into this Agreement.

Exhibit AA-1
(Legal Description)

Exhibit AA-2

(Diagram of legal description)

Exhibit BB

(Identification of Changes in Configuration and Size of Parcels B and C –
with approximations of boundary measurements)

Exhibit F

(Hayward Municipal Code Section 2-6.38(a))

SEC. 2-6.38 AIRCRAFT PARKING AND STORAGE.

a. Aircraft shall be parked only in those areas designated for such purpose by the Airport Manager and shall not be positioned in such a manner so as to block a runway, Taxiway, Taxilane or obstruct access to hangars, parked Aircraft, parked Vehicles, gates or fuel storage facilities.

DATE: July 10, 2014

TO: Council Airport Committee

FROM: Director of Public Works – Engineering & Transportation

SUBJECT: Airport Noise Monitoring System

RECOMMENDATION

That the Committee reviews this information, provides comments regarding the proposed equipment additions and makes a recommendation for action to Council.

BACKGROUND

Hayward Executive Airport (HEA) currently utilizes the Airport Noise and Operations Monitoring System (ANOMS) manufactured by Bruel & Kjaer to administer the Airport's noise abatement program that was adopted in 1992. The current system was installed in 1999 and it enables staff to provide a high level of service to residents with concerns about aircraft noise. The equipment includes computers, servers, and noise monitors placed at four locations in the vicinity of the Airport (Attachment I). The equipment allows staff to monitor the noise level, in decibels, of aircraft arriving and departing from the Airport, and it provides a tracking mechanism that permits staff to identify each aircraft by registration number and flight track.

DISCUSSION

There have been significant advances in technology and equipment reliability since the current ANOMS system was installed in 1999. Hayward's current ANOMS equipment employs analog technology and uses dedicated hard lines between the noise monitors and the Administration building. In recent years, the noise monitors have started to malfunction on a more frequent basis, as often as once per quarter. This requires troubleshooting by the Airport Noise Analyst, consultations with Bruel & Kjaer employees, the shipment and installation of replacement parts, and occasional site visits by Bruel & Kjaer employees to get the monitors back on line. There are also occasional issues with computers and software. These issues render portions of the noise monitoring system unusable until they are repaired, impairing staff's ability to respond to noise complaints on a timely basis.

ANOMS is most commonly used by large air carrier airports such as Oakland International Airport. Accordingly, ANOMS is a very capable system, but after extensive experience with the system at HEA, it has become apparent that ANOMS provides functions and a variety of features that have no applicability at general aviation airports like the HEA. Such features that have no applicability at the HEA include full gate and corridor analysis, and report document preparation. However, ANOMS is sold as a complete package and the manufacturer does not allow features to be selectively deleted. This means the Airport is paying for unnecessary features.

In an attempt to improve functionality and reduce costs associated with the existing noise monitoring program, over the past twelve months, staff has requested service proposals and price quotes from recognized providers of airport noise monitoring systems, including Bruel & Kjaer, ITT Exelis, HMMH, and Casper Noise. After evaluation, staff recommends approval of a software subscription and equipment purchase for the Bruel & Kjaer Noise Desk system.

Bruel & Kjaer Noise Desk is a new and improved product designed primarily for small commercial and general aviation airports. The associated noise monitors utilize digital technology that should prove to be more reliable than analog equipment. Noise Desk will allow staff to monitor individual noise events with readings in decibels, and it will also provide the same aircraft tracking features available through ANOMS, but without the superfluous features designed for large air carrier airports. Advanced technology, the elimination of certain unnecessary features, and the use of radar data from Oakland International Airport and San Jose International Airport instead of a dedicated radar data subscription, results in substantial cost savings.

FISCAL IMPACT

The monthly subscription fee for the current ANOMS system is \$5,718, or \$68,616 annually. An annual radar data subscription of \$17,250 is also required, for a grand annual total of \$85,866. This is equivalent to \$429,330 over a five-year term.

The monthly subscription fee for the proposed Noise Desk is \$2,916, or \$34,992 annually, with radar data included at no extra cost. There is a one-time fee of \$68,750 for the installation of four new digital noise monitors and setup of radar data. This is a total of \$243,710 over five years, and it represents a savings of \$185,620 in comparison with the current ANOMS system.

Prepared by: Douglas McNeeley, Airport Manager

Recommended by: Morad Fakhrai, Director of Public Works - Engineering & Transportation

Approved by:



Fran David, City Manager

Attachments: Attachment I: Location Map

