

AIRPORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO
RESOLUTION NO. 21-0110

APPROVAL OF THE LEASE MODIFICATION TO LEASE AND USE AGREEMENT NO. 10-0096 WITH TACA INTERNATIONAL AIRLINES, S.A. AT SAN FRANCISCO INTERNATIONAL AIRPORT

- WHEREAS, by Airport Commission Resolution No. 10-0096, adopted March 16, 2010, and Board of Supervisors Resolution No. 208-10, adopted May 21, 2010, TACA International Airlines, S.A. (Airline) became a signatory to the 2011 Lease and Use Agreement (2011 Lease), which became effective July 1, 2011 and will expire on June 30, 2021 (the Current Expiration Date); and
- WHEREAS, the outbreak of the COVID-19 pandemic interrupted negotiations and rendered impractical a comprehensive replacement lease and use agreement to commence directly after the Current Expiration Date; and
- WHEREAS, in lieu of a replacement lease and use agreement, Staff and signatory airlines have negotiated an extension to the 2011 Lease that would (1) extend the term to June 30, 2023; (2) reserve the rights of City and Airline with respect to any legal challenges involving the Healthy Airport Ordinance; and (3) update certain legal provisions required by applicable local, state, and federal laws (the Lease Modification); and
- WHEREAS, all other terms and conditions of the 2011 Lease remain unchanged, including continuance of the current residual rate-setting methodology for terminal rental rates and landing fees based on the Airport's Rates and Charges and continuance of the Annual Service Payment to the City's General Fund; and
- WHEREAS, Avianca and certain subsidiaries, including TACA, filed for protection under Chapter 11 of the Bankruptcy Code (Code) on May 10, 2020; and
- WHEREAS, on December 6, 2020, TACA assumed the Lease pursuant to the Code and has met its financial obligations under the Lease; and
- WHEREAS, on November 18, 2020, the San Francisco Planning Department, Environmental Planning Division determined that the Lease Modification is exempt from review under the California Environmental Quality Act (Public Resources Code Section 21000, et seq.) (CEQA), CEQA Guidelines §15061(b)(3) exemption – common sense exemption, and Chapter 31 of the San Francisco Administrative Code (Planning Department File No. 2020-010550ENV); and
- WHEREAS, on March 16, 2021, the Commission affirmed and incorporated, by reference, the Planning Department's determination that the Lease Modification is exempt from review under CEQA and determined to proceed with the Lease Modifications; and
- WHEREAS, in the event that the Lease Modification is not approved by the Board of Supervisors prior to the Current Expiration Date, the TACA Lease will go into holdover status until such approval is obtained; now, therefore, be it

AIRPORT COMMISSION

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- RESOLVED, that this Commission approves the Lease Modification to Lease and Use Agreement No. 10-0096 with TACA International Airlines, S.A., which (1) extends the term for two years for a new Expiration Date of June 30, 2023; (2) reserves the rights of City and Airline with respect to any legal challenges involving the Healthy Airport Ordinance; and (3) updates the legal provisions required by applicable local, state, and federal laws; and, be it further
- RESOLVED, that this Commission directs the Commission Secretary to request the Board of Supervisors' approval of this Lease Modification in accordance with Section 9.118 of the Charter of the City and County of San Francisco.

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I hereby certify that the foregoing resolution was adopted by the Airport Commission
at its meeting of _____ **MAY - 4 2021**



Secretary



San Francisco International Airport

MEMORANDUM

May 4, 2021

TO: AIRPORT COMMISSION
Hon. Larry Mazzola, President
Hon. Eleanor Johns, Vice President
Hon. Richard J. Guggenlime
Hon. Everett A. Hewlett, Jr.
Hon. Malcolm Yeung

21-0110

MAY - 4 2021

FROM: Airport Director

SUBJECT: Approval of the Lease Modification to Lease and Use Agreement No. 10-0096 with TACA International Airlines, S.A. Extending the Term for Two Years

DIRECTOR'S RECOMMENDATION: APPROVE THE LEASE MODIFICATION TO LEASE AND USE AGREEMENT NO. 10-0096 WITH TACA INTERNATIONAL AIRLINES, S.A., WHICH INCLUDES EXTENDING THE TERM THROUGH JUNE 30, 2023.

Executive Summary

All 2011 Lease and Use Agreements (2011 Lease) between San Francisco International Airport (Airport) and its signatory airlines operating at the Airport (Signatory Airlines) will expire on June 30, 2021 (Current Expiration Date). Although Airport staff and Signatory Airlines have been negotiating a replacement lease and use agreement for a new lease, the parties determined that continuing negotiations was impractical given the emergency conditions facing the Signatory Airlines and the Airport as a result of the COVID-19 pandemic. A new lease was determined not to be in their mutual best interests and, thus, elected to extend the 2011 Lease for a period of two years. On February 9, 2021 and March 16, 2021, the Airport Commission (Commission) approved the modifications to the 2011 Lease for 39 Signatory Airlines operating at the Airport (the 2011 Lease Modifications).

Staff is returning to the Commission to request approval of the Lease Modification to Lease and Use Agreement No. 10-0096 with TACA International Airlines, S.A. (TACA) to (1) extend the term by two years, expiring on June 30, 2023 (Extension Term); (2) reserve the rights of City and TACA with respect to any lawsuit presented by the airlines against the 2020 Healthy Airport Ordinance; and (3) update certain standard legal provisions required by applicable local, state, and federal laws (the TACA Lease Modification). All other terms and conditions of TACA's 2011 Lease (TACA Lease) will remain unmodified. Following the Commission's approval, Staff will forward the TACA Lease Modification to the Board of Supervisors for approval, as required under Section 9.118 of the Charter (Charter) of the City and County of San Francisco (City).

Background

Of the 65 airlines with agreements at the Airport, 54 are Signatory Airlines, meaning they are parties to the 2011 Lease, which is a standardized form of lease and took effect on July 1, 2011 for a 10-year term that will expire on the Current Expiration Date. The 2011 Lease grants Signatory Airlines landing rights and rental of certain

THIS PRINT COVERS CALENDAR ITEM NO. 9

AIRPORT COMMISSION CITY AND COUNTY OF SAN FRANCISCO

LONDON N. BREED MAYOR LARRY MAZZOLA PRESIDENT ELEANOR JOHNS VICE PRESIDENT RICHARD J. GUGGENHIME EVERETT A. HEWLETT, JR. MALCOLM YEUNG IVAR C. SATERO AIRPORT DIRECTOR

premises at the Airport. On March 16, 2010, by Resolution No. 10-0096, the Commission awarded the TACA Lease. On May 21, 2010, by Resolution No. 208-10, the Board of Supervisors approved the TACA Lease.

Staff and Signatory Airlines had been negotiating a new lease and use agreement intended to commence immediately following the Current Expiration Date. However, the COVID-19 pandemic interrupted the negotiations and rendered it impractical in reaching an agreement on a comprehensive replacement lease and use agreement that could be implemented before the Current Expiration Date.

Over the past few months, Staff and Signatory Airlines have reached an agreement on an extension to the 2011 Lease that would allow Signatory Airlines to continue operating at the Airport under the current lease arrangement while Staff and Signatory Airlines negotiate a new lease and use agreement currently contemplated to take effect July 1, 2023. The terms of the 2011 Lease Modification with each Signatory Airline are identical and are as follows:

1. Term Extension: Two years commencing on July 1, 2021 and expiring on June 30, 2023.
2. Healthy Airport Ordinance: Each 2011 Lease Modification includes language that preserves the rights of City and each Signatory Airlines in any litigation challenging the Healthy Airport Ordinance.
3. Updates to Legal Provisions: Each 2011 Lease Modification updates the 2011 Lease to comply with all applicable local, state, and federal laws, including City contracting provisions, such as the Vending Machines: Nutritional Standards and Calorie Labeling Requirements, Local Hire, Prohibition on Alcoholic Beverage Advertising, Resource-Efficient Building Ordinance, and All-Gender Toilet Facilities.

The identical form of the 2011 Lease Modification has been offered to all Signatory Airlines that wish to maintain their signatory status at the Airport. The Commission approved the 2011 Lease Modifications for the 39 Signatory Airlines listed on Attachment 1 in two separate groups, with the first group approved on February 9, 2021, and the second group approved on March 16, 2021. All of these 2011 Lease Modifications were forwarded on March 19, 2021 to the Board of Supervisors for approval under Section 9.118 of the Charter.

On May 10, 2020, Avianca and certain subsidiaries, including TACA, filed for protection under Chapter 11 of the Bankruptcy Code (Code). As a result of this filing, TACA delayed executing the TACA Lease Modification in order to comply with the requirements of the Code. On December 6, 2020, TACA assumed the Lease under the Code and has now executed the TACA Lease Modification. Since then, TACA has maintained its financial obligations under the TACA Lease.

TACA, who has operated at SFO since June 1991, resumed service to SFO on September 9, 2020, and has continued to increase its flights. Effective April 14, 2021, frequency of service between San Francisco and San Salvador will increase from four flights per week to seven flights per week.

Environmental Review

On November 18, 2020, the San Francisco Planning Department, Environmental Planning Division, determined that the Lease Modifications are exempt from review under the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000, *et seq.*) and Section 15061(b)(3) of the CEQA Guidelines as a common sense exemption. This exemption determination is available from the Planning Department under File No. 2020-010550ENV. This action constitutes the Approval Action for all of the 2011 Lease Modifications for the purposes of CEQA, including the TACA Lease Modification pursuant to Section 31.04(h) of the San Francisco Administrative Code.

Health Care Accountability Ordinance

On November 20, 2020, by Ordinance No. 235-20, the City enacted amendments to the Health Care Accountability Ordinance set forth in San Francisco Administrative Code Chapter 12Q, known as the Healthy Airport Ordinance (HAO), which imposes additional health care insurance coverage requirements on companies operating at the Airport that are subject to the Quality Standards Program. The airline industry opposed the legislation on federal preemptive legal and economic grounds. In anticipation of this filing, each 2011 Lease Modification includes a negotiated provision stating the execution of the Lease Modification will not prejudice the rights of the Signatory Airlines or the City to litigate the HAO.

Proposal

TACA has assumed the TACA Lease pursuant to the Code and executed the TACA Lease Modification, which is identical to the previously-approved 2011 Lease Modifications. All other terms and conditions of the TACA Lease remain unchanged, which includes continuing the current residual rate-setting methodology for terminal rental rates and landing fees based on the Airport's Rates and Charges, as well as continuing the Annual Service Payment to the City's General Fund. The TACA Lease Modification is contingent upon approval by the Commission and the Board of Supervisors. In the event that final approval of the TACA Lease Modification is delayed beyond the Current Expiration Date, the TACA Lease will go into holdover status until such approvals are obtained.

Recommendation

I recommend the Commission adopt the accompanying Resolution approving the TACA Lease Modification, which (1) extends the term to June 30, 2023; (2) reserves the rights of City and TACA with respect to any legal challenges involving the Healthy Airport Ordinance; and (3) updates certain legal provisions required by applicable local, state, and federal laws. I further recommend directing the Commission Secretary to request the Board of Supervisors' approval of the TACA Lease Modification in accordance with Section 9.118 of the Charter of the City and County of San Francisco.



Ivar C. Satero
Airport Director

Prepared by: Kevin Bumen
Chief Commercial Officer

Attachments

ATTACHMENT 1

APPROVED LEASE MODIFICATIONS

Airline	Lease No.	Mod. No.	Commission Resolution No.
1) ABX Air, Inc.	11-0005	1	21-0013
2) Aer Lingus, Limited	16-0298	1	21-0051
3) Air Canada	11-0007	1	21-0052
4) Air China Limited	10-0075	1	21-0053
5) Air France	10-0076	2	21-0014
6) Air India Limited	17-0183	1	21-0054
7) Air New Zealand Limited	11-0009	1	21-0055
8) Alaska Airlines, Inc.	10-0274	2	21-0056
9) All Nippon Airways Corporation, Limited	10-0077	1	21-0015
10) American Airlines, Inc.	10-0078	1	21-0016
11) Ameriflight, LLC	11-0010	1	21-0017
12) Asiana Airlines	10-0079	1	21-0057
13) British Airways Plc	10-0080	1	21-0058
14) China Airlines Limited	10-0082	2	21-0018
15) China Eastern Airlines Corporation Limited	13-0065	1	21-0019
16) China Southern Airlines Company Limited	15-0253	1	21-0020
17) Delta Air Lines, Inc.	10-0083	2	21-0021
18) Deutsche Lufthansa, AG, dba, Lufthansa German Airlines	10-0091	1	21-0059
19) Emirates	10-0084	2	21-0060
20) EVA Airways Corporation	10-0085	1	21-0022
21) Federal Express Corporation	10-0086	1	21-0061
22) Frontier Airlines, Inc.	10-0087	1	21-0062
23) Hawaiian Airlines, Inc.	11-0011	2	21-0063
24) Japan Airlines International Company, Limited	10-0088	1	21-0064
25) JetBlue Airways Corporation	12-0027	1	21-0023
26) Kalitta Air, LLC	10-0277	1	21-0024
27) KLM Royal Dutch Airlines	10-0089	1	21-0025
28) Korean Air Lines Co., Ltd.	10-0090	1	21-0065
29) Nippon Cargo Airlines Company, Ltd	10-0278	1	21-0026
30) Scandinavian Airlines of North America Inc.	13-0066	1	21-0027
31) Singapore Airlines Limited	10-0094	1	21-0066
32) Southern Air, Inc.	10-0279	1	21-0067

ATTACHMENT 1

APPROVED LEASE MODIFICATIONS

Airline	Lease No.	Mod. No.	Commission Resolution No.
33) Southwest Airlines Company	10-0095	1	21-0028
34) Sun Country, Inc. dba Sun Country Airlines	12-0015	1	21-0068
35) Swiss International Air Lines Ltd.	11-0182	1	21-0029
36) Turkish Airlines, Inc. (Turk Hava Yollari Anonim Ortakligi)	16-0301	1	21-0030
37) United Airlines, Inc.	10-0097	2	21-0031
38) Virgin Atlantic Airways Limited Company	10-0099	1	21-0032
39) WestJet, an Alberta Partnership	11-0239	1	21-0033