

File No. **111244**

Committee Item No. 6  
Board Item No. \_\_\_\_\_

### COMMITTEE/BOARD OF SUPERVISORS

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Committee: Rules

Date 12/8/11

Board of Supervisors Meeting

Date \_\_\_\_\_

#### Cmte Board

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#### OTHER

(Use back side if additional space is needed)

- Airport Commission Resolution
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

Completed by: Linda Wong

Date 12/5/11

Completed by: \_\_\_\_\_

Date \_\_\_\_\_

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

1 [Settlement of Unlitigated Performance Bond Claim – Travelers Casualty and Surety  
2 Company of America – City to Receive \$250,000]

3 **Resolution authorizing settlement of an unlitigated performance bond claim by the San**  
4 **Francisco Airport Commission ("Airport") against Travelers Casualty and Surety**  
5 **Company of America ("Travelers") relating to a lease default by Mexicana Airlines.**

6  
7 WHEREAS, In 1983, the Airport and Compania Mexicana de Aviacion S.A. de C.V.,  
8 doing business as Mexicana Airlines, a Mexico corporation ("Mexicana"), entered into a long-  
9 term Airline-Airport Lease and Use Agreement No. L83-0045 and other permits (the "Lease")  
10 enabling Mexicana to operate at the San Francisco International Airport; and

11 WHEREAS, Mexicana delivered to the Airport a performance bond (the "Bond") issued  
12 by Travelers, in the amount of \$452,804 as a security deposit under the Lease; and

13 WHEREAS, On or about August 3, 2010, Mexicana ceased operating at the Airport,  
14 defaulted on the Lease, and petitioned for voluntary bankruptcy in Mexico and in the United  
15 States; and

16 WHEREAS, The City made a demand on the Travelers surety bond for the full penal  
17 sum of the bond (\$452,804) and Travelers denied that claim; and,

18 WHEREAS, The Airport and Travelers negotiated a settlement requiring Travelers to  
19 pay the Airport \$250,000 in exchange for Travelers' right to file an indemnity claim in the  
20 Mexicana bankruptcy; now, therefore, be it;

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22 ///

23 ///

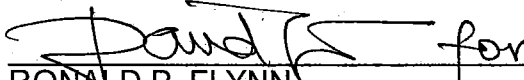
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1 RESOLVED, That the City Attorney's Office is authorized to settle the unlitigated bond  
2 claim against Travelers by the payment of \$250,000 from Travelers to the Airport, in  
3 exchange for Travelers' right to file an indemnity claim in the Mexicana bankruptcy.


4  
5 APPROVED AS TO FORM AND  
RECOMMENDED:

6 DENNIS J. HERRERA  
City Attorney

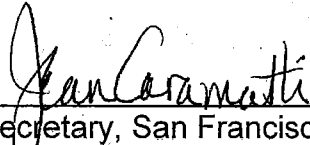
7   
8 RONALD P. FLYNN  
9 Deputy City Attorney

RECOMMENDED:

SAN FRANCISCO AIRPORT COMMISSION

10   
11 JOHN L. MARTIN *lf*  
12 Director, San Francisco International Airport

13 APPROVED:

14   
15 Secretary, San Francisco Airport Commission

AIRPORT COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 11-0226

**SETTLEMENT OF UNLITIGATED PERFORMANCE BOND CLAIM BY AIRPORT COMMISSION AGAINST TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA RELATING TO LEASE DEFAULT BY MEXICANA AIRLINES**

**WHEREAS**, in 1983, the Airport Commission and Compania Mexicana de Aviacion S.A. de C.V., doing business as Mexicana Airlines, a Mexico corporation ("Mexicana"), entered into a long-term Airline-Airport Lease and Use Agreement No. L83-0045 and other permits (the "Lease") enabling Mexicana to operate at the San Francisco International Airport (the "Airport");

**WHEREAS**, Mexicana delivered to the Airport a performance bond (the "Bond") issued by Travelers Casualty and Surety Company of America ("Travelers") on June 5, 2006, in the amount of \$452,804 as a security deposit under the Lease;

**WHEREAS**, on or about August 3, 2010, Mexicana ceased operating at the Airport and petitioned for voluntary bankruptcy in Mexico and in the United States;

**WHEREAS**, through the bankruptcy process, the Airport was able to recover \$878,882.58 in November 2010 of the amounts owed by Mexicana to the Airport;

**WHEREAS**, as of August 2011, Mexicana still owed the Airport \$353,006 in pre-petition and \$439,004.70 in post-petition unpaid rent and fees, and the Airport made a demand on the Travelers Bond for \$452,804;

**WHEREAS**, Travelers denied the Airport's claim and the parties negotiated a settlement requiring Travelers to pay the Airport \$250,000 of the pre-petition amounts due, in exchange for the right to file an indemnity claim in the Mexicana bankruptcy and the right to be reimbursed on a pro-rata basis from future amounts, if any, recovered by the Airport from Mexicana on account of such pre-petition amounts due;

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**WHEREAS**, since Travelers will be paying the Airport \$250,000 of the \$353,006 pre-petition amount due, if the Airport recovers anything on account of such pre-petition amount due from Mexicana in the bankruptcy or following the bankruptcy (if Mexicana resumes operations and cures its pre-petition amounts due), such amounts will be shared pro-rata, 70.82% to Travelers (\$250,000/\$353,006) and 29.18% to the Airport (\$103,006.24/\$353,006) until Travelers recovers its payment under the performance bond;

**AIRPORT COMMISSION**

**CITY AND COUNTY OF SAN FRANCISCO**

**RESOLUTION NO. 11-0226**

**WHEREAS**, the settlement has been recommended by the Airport Director and the City Attorney's Office; now, therefore, be it

**RESOLVED**, that this Airport Commission hereby authorizes and approves the settlement of that certain unlitigated dispute concerning Travelers' denial of the Airport's claim on the surety Bond delivered to the Airport by Mexicana as security deposit under the Lease, which settlement requires Travelers to pay the Airport TWO HUNDRED AND FIFTY THOUSAND DOLLARS AND NO CENTS (\$250,000) in exchange for the right to file an indemnity claim in the Mexicana bankruptcy and the right to be reimbursed on a pro-rata basis (70.82% to Travelers and 29.18% to the Airport) from future amounts, if any, recovered by the Airport from Mexicana on account of the pre-petition amounts due until Travelers recovers its payment under the performance bond; and be it further

**RESOLVED**, that this Airport Commission hereby approves the Settlement Agreement in substantially the form submitted at this meeting, with such changes as the Airport Director may approve after consultation with the City Attorney's office; and be it further

**RESOLVED**, that the Airport Director is authorized, for, in the name and on behalf of the Commission, to submit the proposed settlement and Settlement Agreement with Travelers to the Board of Supervisors of the City and County of San Francisco for final approval.

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I hereby certify that the foregoing resolution was adopted by the Airport Commission  
at its meeting of OCT 04 2011

JEAN CARAMATHI  
Secretary

