

AIRPORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO
RESOLUTION NO. 21-0031

APPROVAL OF MODIFICATION NO. 2 TO LEASE AND USE AGREEMENT NO. 10-0097
WITH UNITED AIRLINES, INC. AT SAN FRANCISCO INTERNATIONAL AIRPORT

WHEREAS, by Airport Commission Resolution No. 10-0097, adopted March 16, 2010, and Board of Supervisors Resolution No. 208-10, adopted May 21, 2010, United Airlines, Inc. (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, Airport Commission Resolution No. 14-0052, adopted March 18, 2014, and Board of Supervisors Resolution No. 355-14, adopted October 1, 2014, approved Modification No. 1 to the 2011 Lease increasing the premises by approximately 92,331 square feet of Exclusive Use Space to the premises; and

WHEREAS, the COVID-19 pandemic interrupted negotiations and rendered impractical a comprehensive replacement lease and use agreement before 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; now, therefore, be it

RESOLVED, that this Commission approves Modification No. 2 to Lease and Use Agreement No. 10-0097 with United Airlines, Inc., 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.

I hereby certify that the foregoing resolution was adopted by the Airport Commission

at its meeting of

≡ FEB - 9 2021

Secretary



San Francisco International Airport

MEMORANDUM

February 9, 2021

21-0013

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

through

21-0033

FROM: Airport Director

— FEB - 9 2021

SUBJECT: Lease Modifications Extending the 2011 Lease and Use Agreements for Two Years

DIRECTOR'S RECOMMENDATION: ADOPT RESOLUTIONS AUTHORIZING A MODIFICATION TO THE 2011 LEASE AND USE AGREEMENTS FOR 21 AIRLINES, 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 will expire on June 30, 2021 (Current Expiration Date). Although Airport staff and the signatory airlines have been negotiating a replacement lease and use agreement for a new full lease term, 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 and not in their mutual best interest, and elected to extend the 2011 Lease for a period of two years. Staff requests the Airport Commission (Commission) approve separate modifications with each signatory airline to its 2011 Lease to (1) extend the term by two years, to expire on June 30, 2023 (Extension Term); (2) reserve the rights of City and the signatory airlines 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 (Lease Modification). All other terms and conditions will remain unmodified. The Lease Modifications must receive the approval of the Commission and of the Board of Supervisors as required under Section 9.118 of the Charter of the City and County of San Francisco.

Background

Of the 65 airlines with agreements at the Airport, 54 are signatory airlines, meaning they are parties to the 2011 Lease (each, a Signatory Airline), which took effect on July 1, 2011 for a

THIS PRINT COVERS CALENDAR ITEM NO. **2**

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
--------------------------	----------------------------	---------------------------------	-----------------------	-------------------------	---------------	------------------------------------

10-year term and will expire on the Current Expiration Date. The 2011 Lease grants Signatory Airlines landing rights and rental of certain premises at the Airport.

Staff and Signatory Airlines have 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 impractical reaching 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 discussed 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.

On November 20, 2020, by Ordinance No. 235-20, the City and County of San Francisco enacted amendments to the Health Care Accountability Ordinance set forth in San Francisco Administrative Code Chapter 12Q, known as the Healthy Airport Ordinance, 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. We anticipate litigation challenging the Healthy Airport Ordinance may be filed and the 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 and defend the Healthy Airport Ordinance.

Proposal

Staff and Signatory Airlines have negotiated the terms for the Lease Modification as follows:

1. **Term Extension:** Two years commencing on July 1, 2021 and expiring on June 30, 2023.
2. **Healthy Airport Ordinance:** The Lease Modifications includes language that preserves the rights of City and Signatory Airlines in any litigation challenging the Healthy Airport Ordinance.
3. **Updates to Legal Provisions:** The 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.

All other terms and conditions of the 2011 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 Lease Modification will be effective July 1, 2021 but is contingent upon approval by the Commission and Board of Supervisors.

2011 Leases for Signatory Airlines who forego the Lease Modification will expire on the Current Expiration Date as scheduled. These Signatory Airlines may continue operating at the Airport by separately entering into an Airline Operating and Space Permit with higher payment, in the form of a 25% Premium for all landing fees, and a higher security deposit requirement, increased from two months to six months of anticipated rental and landing fees.

To ensure all Signatory Airlines have a chance to participate in the Lease Modification while meeting the processing time required to obtain full City approvals, Staff will bring any additional Lease Modifications before the Commission before May 2021 and to the Board of Supervisors thereafter.

Recommendation

I recommend adoption of the accompanying Resolutions approving separate modifications to the 2011 Leases with the Signatory Airlines listed on Attachment 1, which (1) extends the term to June 30, 2023; (2) reserves the rights of City and the Signatory Airlines 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 such lease modifications 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**SIGNATORY AIRLINES TO THE 2011 LEASE AND USE AGREEMENT**

Airline	Lease No.	Mod. No.
1) ABX Air, Inc.	11-0005	1
2) Air France	10-0076	2
3) All Nippon Airways Corporation, Limited	10-0077	1
4) American Airlines, Inc.	10-0078	1
5) Ameriflight, LLC	11-0010	1
6) China Airlines Limited	10-0082	2
7) China Eastern Airlines Corporation Limited	13-0065	1
8) China Southern Airlines Company Limited	15-0253	1
9) Delta Air Lines, Inc.	10-0083	2
10) EVA Airways Corporation	10-0085	1
11) JetBlue Airways Corporation	12-0027	1
12) Kalitta Air, LLC	10-0277	1
13) KLM Royal Dutch Airlines	10-0089	1
14) Nippon Cargo Airlines Company, Ltd	10-0278	1
15) Scandinavian Airlines of North America Inc.	13-0066	1
16) Southwest Airlines Company	10-0095	1
17) Swiss International Air Lines Ltd.	11-0182	1
18) Turkish Airlines, Inc. (Turk Hava Yollari Anonim Ortakligi)	16-0301	1
19) United Airlines, Inc.	10-0097	2
20) Virgin Atlantic Airways Limited Company	10-0099	1
21) WestJet, an Alberta Partnership	11-0239	1