

AIRPORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO
RESOLUTION NO. 21-0063

**DETERMINATION TO PROCEED WITH AND APPROVAL OF MODIFICATION NO. 2 TO
LEASE AND USE AGREEMENT NO. 11-0011 WITH HAWAIIAN AIRLINES, INC. AT
SAN FRANCISCO INTERNATIONAL AIRPORT**

- WHEREAS, by Airport Commission Resolution No. 11-0011, adopted January 18, 2011, and Board of Supervisors Resolution No. 156-11, adopted April 7, 2011, Hawaiian 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. 14-0053, adopted March 18, 2014, and Board of Supervisors Resolution No. 354-14, adopted October 1, 2014, approved Modification No. 1 to the 2011 Lease adding approximately 538 square feet of Category II Exclusive Use Space to the premises; 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, 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); now, therefore, be it

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RESOLVED, that the Commission hereby affirms and incorporates, by reference, the Planning Department's determination that the Lease Modification is exempt from review under CEQA; and, be it further

RESOLVED, that the above recitals are true and correct; and, be it further

RESOLVED, that the Commission hereby determines to proceed with the Lease Modification; and, be it further

RESOLVED, that this Commission approves Modification No. 2 to Lease and Use Agreement No. 11-0011 with Hawaiian 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.

Page 2 of 2

I hereby certify that the foregoing resolution was adopted by the Airport Commission
= **MAR 16 2021**
at its meeting of _____

Secretary



San Francisco International Airport

MEMORANDUM

March 16, 2021

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

21-0051
 through
 21-0068
 = MAR 16 2021

FROM: Airport Director

SUBJECT: Determination to Proceed with the Lease Modifications Extending Each of the 2011 Lease and Use Agreements for Two Years

DIRECTOR'S RECOMMENDATION: DETERMINE TO PROCEED WITH MODIFICATIONS TO EACH OF THE 2011 LEASE AND USE AGREEMENTS, WHICH INCLUDES EXTENDING THE TERM THROUGH JUNE 30, 2023, AND ADOPT RESOLUTIONS AUTHORIZING SAID MODIFICATIONS TO THE 2011 LEASE AND USE AGREEMENTS OF 18 AIRLINES.

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, expiring 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 (each a Lease Modification, and collectively, Lease Modifications). 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 and collectively, Signatory Airlines), 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

THIS PRINT COVERS CALENDAR ITEM NO. 3

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
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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 include 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.

The Lease Modification has been offered to all Signatory Airlines that wish to maintain their signatory status at the Airport. On February 9, 2021, pursuant to Resolution Nos. 21-0013 through 21-0033, the Commission approved the first group of Lease Modifications for 21 Signatory Airlines listed on Attachment 1 (collectively, the February 9 Lease Modifications).

Subsequently, 18 additional Signatory Airlines, listed on Attachment 2, have executed Lease Modifications, which are the subject of this memorandum and submitted for approval by the Commission on March 16, 2021 (collectively, the March 16 Lease Modifications).

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 Modification 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 the Board of Supervisors.

There are 11 Signatory Airlines who have opted not to sign the Lease Modification. Therefore, these 2011 Leases 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 a 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.

Environmental Review

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 (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 Lease Modifications for the purposes of CEQA (including, for the avoidance of doubt, all of the February 9 Lease Modifications listed on Attachment 1 and the March 16 Lease Modifications listed on Attachment 2) pursuant to Section 31.04(h) of the San Francisco Administrative Code.

Recommendation

I recommend the Commission determine to proceed with the Lease Modifications and adopt the accompanying Resolutions approving separate modifications to the 2011 Lease with the Signatory Airlines listed on Attachment 2, 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 request the Board of Supervisors' approval of each 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**FEBRUARY 9 LEASE MODIFICATIONS**

Airline	Lease No.	Mod. No.	Commission Resolution No.
1) ABX Air, Inc.	11-0005	1	21-0013
2) Air France	10-0076	2	21-0014
3) All Nippon Airways Corporation, Limited	10-0077	1	21-0015
4) American Airlines, Inc.	10-0078	1	21-0016
5) Ameriflight, LLC	11-0010	1	21-0017
6) China Airlines Limited	10-0082	2	21-0018
7) China Eastern Airlines Corporation Limited	13-0065	1	21-0019
8) China Southern Airlines Company Limited	15-0253	1	21-0020
9) Delta Air Lines, Inc.	10-0083	2	21-0021
10) EVA Airways Corporation	10-0085	1	21-0022
11) JetBlue Airways Corporation	12-0027	1	21-0023
12) Kalitta Air, LLC	10-0277	1	21-0024
13) KLM Royal Dutch Airlines	10-0089	1	21-0025
14) Nippon Cargo Airlines Company, Ltd	10-0278	1	21-0026
15) Scandinavian Airlines of North America Inc.	13-0066	1	21-0027
16) Southwest Airlines Company	10-0095	1	21-0028
17) Swiss International Air Lines Ltd.	11-0182	1	21-0029
18) Turkish Airlines, Inc. (Turk Hava Yollari Anonim Ortakligi)	16-0301	1	21-0030
19) United Airlines, Inc.	10-0097	2	21-0031
20) Virgin Atlantic Airways Limited Company	10-0099	1	21-0032
21) WestJet, an Alberta Partnership	11-0239	1	21-0033

ATTACHMENT 2**MARCH 16 LEASE MODIFICATIONS**

Airline	Lease No.	Mod. No.
1) Aer Lingus, Limited	16-0298	1
2) Air Canada	11-0007	1
3) Air China Limited	10-0075	1
4) Air India Limited	17-0183	1
5) Air New Zealand Limited	11-0009	1
6) Alaska Airlines, Inc.	10-0274	2
7) Asiana Airlines	10-0079	1
8) British Airways Plc	10-0080	1
9) Deutsche Lufthansa, AG, dba, Lufthansa German Airlines	10-0091	1
10) Emirates	10-0084	2
11) Federal Express Corporation	10-0086	1
12) Frontier Airlines, Inc.	10-0087	1
13) Hawaiian Airlines, Inc.	11-0011	2
14) Japan Airlines International Company, Limited	10-0088	1
15) Korean Air Lines Co., Ltd.	10-0090	1
16) Singapore Airlines Limited	10-0094	1
17) Southern Air, Inc.	10-0279	1
18) Sun Country, Inc. dba Sun Country Airlines	12-0015	1