



METROPOLITAN WASHINGTON AIRPORTS AUTHORITY

RECOMMENDATION PAPER FOR
EXECUTIVE AND GOVERNANCE
COMMITTEE

Federal Lease Amendment – “Sunsetting”
of New Paragraph 11.K

JANUARY 2013



Background

At its December meeting, the Board approved an amendment to the Authority's lease with the federal government (Lease).

The amendment includes adding a new paragraph 11.K to the Lease – this new paragraph 11.K calls for the Authority, over the next 12 months, to adopt policies in designated areas with the concurrence of the U.S. Secretary of Transportation or his designee.

During the Board's discussion of the amendment, the question arose whether the new paragraph 11.K should have a sunset provision – i.e., whether the paragraph should automatically terminate upon a specified date or specified event in the future – and staff was asked to present this question to the Secretary's office.



Discussion

Staff has discussed a variety of “sunset” provisions for paragraph 11.K with the Secretary’s office.

While the Secretary’s office has not agreed to a provision that would automatically remove paragraph 11.K from the Lease on a specific date, it has agreed to a modified “sunset” provision.

Under this modified provision, toward the end of 2018, the parties will engage in good faith discussions that address (i) whether paragraph 11.K should terminate at the end of 2018 or continue in effect, and (ii) if the latter, whether the paragraph should nonetheless sunset on a specified date in the future.



Conclusion

Staff believes this provision is a reasonable way of addressing the “sunsetting” of new Lease paragraph 11.K.

Staff therefore recommends that the Board (i) approve adding this modified “sunset” provision to new paragraph 11.K of the Lease, and (ii) authorize the Chairman to execute the lease amendment that was approved at the December meeting, with the addition of this “sunset” provision to paragraph 11.K.

RECOMMENDATION PAPER
TO EXECUTIVE AND GOVERNANCE COMMITTEE

REVISION TO AMENDMENT OF LEASE AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA AND THE AIRPORTS AUTHORITY

JANUARY 2013

RECOMMENDATION

That the Executive and Governance Committee recommend to the Board of Directors that it approve a revision to the amendment it approved in December 2012 to the lease agreement between the United States and the Airports Authority, that it approve that amendment to the lease agreement as so revised, and that it authorize the Chairman to execute the amendment, as revised, on behalf of the Airports Authority.

BACKGROUND

The Airports Authority and the United States are parties to a lease agreement (“Lease”) that was executed soon after the Airports Authority was created in the mid-1980s. The Lease was entered by the Secretary of Transportation on behalf of the United States pursuant to the Metropolitan Washington Airports Act of 1986. In that statute, Congress approved the creation of the Airports Authority by Virginia and the District of Columbia, using the vehicle of an interstate compact, and authorized the Secretary to lease the federally owned land comprising Dulles International and Reagan National Airports to the newly established Airports Authority. The Lease became effective in June 1987. The original term of the Lease was for 50 years; an amendment has extended the term to 80 years (to 2067).

In response to the DOT Inspector General’s audit of the Airports Authority and the 2012 FAA Reauthorization Act, in November 2012 the Secretary of Transportation proposed an amendment to the Lease which would revise the Lease in three ways: (1) to require the Airports Authority to “adopt, maintain, and adhere” to policies and procedures in the areas of “procurement and contracting, human resources . . . , budget (as relates to federal funds), travel, ethics, governance, and transparency” with the concurrence of the Secretary or his designee; (2) to require the Airports Authority to provide the Secretary and his representatives access to the Authority’s “personnel, books, records, contracts, and documents for the purpose of assuring compliance with” the Lease; and (3) to revise the Lease’s definition of “Airport Purposes” to add a provision enacted at the Airports Authority’s request as a part of the 2012 FAA Reauthorization Act.

At its December 2012 meeting, the Board considered and approved the Secretary’s proposed Lease amendment but, in connection with the first revision noted above – a

revision which adds a new paragraph 11.K to the Lease – requested that staff discuss with the Secretary’s office the possibility of adding a sunset provision to the new paragraph 11.K.

DISCUSSION

Since last month’s meeting, staff has discussed adding a sunset provision to the Lease’s new paragraph 11.K with the Secretary’s office. While the Secretary’s office has not been amenable to a direct sunset provision (i.e., one that would automatically terminate the new paragraph 11.K upon a specified date or event), it has agreed to a “qualified” sunset provision that is set forth in the attached lease amendment document. (See the redlined sentence at the conclusion of the amendment’s section 4, which contains the new Lease paragraph 11.K.)

In this sunset provision, the parties agree that, before December 31, 2018, they will in good faith discuss whether paragraph 11.K should continue in effect after 2018 and, if so, whether to set a future date on which the paragraph would terminate; they further agree that, absent an agreement regarding the sunseting of paragraph 11.K, the paragraph would continue in effect.

This provision gives the parties an opportunity in the future to take a fresh look at paragraph 11.K, at how it has operated over the years, and at the need for it to continue. Staff believe it represents a reasonable way of addressing the “sunseting” of paragraph 11.K.

CONCLUSION

It is recommended that the Committee recommend to the Board of Directors that it approve the revision outlined above to the Lease amendment it approved in December 2012, that it approve that amendment to the Lease as so revised, and that it authorize the Chairman to execute the amendment, as revised, on behalf of the Airports Authority.

Prepared by

Office of General Counsel
January 2013

Attachment

AMENDMENT NO. 4

to the

LEASE

of the

METROPOLITAN WASHINGTON AIRPORTS

between

THE UNITED STATES OF AMERICA

acting by and through

THE SECRETARY OF TRANSPORTATION

and

THE METROPOLITAN WASHINGTON AIRPORTS AUTHORITY

WHEREAS, the Metropolitan Washington Airports Authority (the “Airports Authority”) and the United States of America, acting by and through the Secretary of Transportation (the “Secretary”), entered into a lease dated March 2, 1987 (the “Lease”), whereby the Secretary leased to the Airports Authority Ronald Reagan Washington National Airport and Washington Dulles International Airport (the “Metropolitan Washington Airports”) for a term of fifty (50) years, effective June 7, 1987, which term was extended for an additional thirty (30) years by Amendment No. 3 to the Lease, dated April 30, 2003; and

WHEREAS, the Airports Authority has a continuing obligation under the Lease to comply with the “Act,” which is currently defined in the Lease as the Metropolitan Washington Airports Act of 1986, Title VI of Public Law 99-591, as amended by Title VII of Public Law 102-240 and by Title IX of Public Law 104-264; and

WHEREAS, the Act has been amended since the 104th Congress, including on February 14, 2012, by Titles I and IV of Public Law 112-95 (FAA Modernization and Reform Act of 2012), and the Secretary and the Airports Authority wish to modify the definition of “Act” in the Lease to clarify that the Airports Authority’s obligation extends to the Act, as amended as of the execution date of this Amendment, and to make other conforming changes to the Lease; and

WHEREAS, the Secretary and the Airports Authority are committed to strengthening the content and oversight of the Airports Authority’s internal policies and procedures, and the Secretary and the Airports Authority wish to modify the Lease to clarify the provisions related to Airports Authority policies and procedures and to make other conforming changes to the Lease;

IT IS NOW, THEREFORE, AGREED that the Lease, as amended, is further amended as follows:

1. Article 1, Definitions, paragraph 1.A. “Act,” as previously amended, is amended by striking the word “and” between “Public Law 102-240” and “by Title IX,” by inserting a comma after “Public Law 102-240”, and by inserting after “Public Law 104-264” a comma and then the words “by Title II of Public Law 106-181, by Section 4, Division C of Public Law 112-55, and by Titles I and IV of Public Law 112-95”.
2. Article 1, Definitions, paragraph 1.D. “Airport Purposes” is amended by inserting before the period a comma and then the words “or for a business or activity not inconsistent with the needs of aviation that has been approved by the Secretary”.
3. Article 8, Access to Premises, is amended to insert, at the end of such Article 8, the following language: “The Airports Authority shall further provide the Secretary and her authorized representatives and agents full access at any time during normal business hours, after reasonable notice, to the Airports Authority’s personnel, books, records, contracts, and documents for the purpose of assuring compliance with the terms of this Lease.”
4. Article 11, Continuing Obligations, is amended to add a new paragraph 11.K. to read as follows: “11.K. Airport Authority Policies and Procedures. The Authority shall adopt, maintain and adhere to policies and procedures in the areas of procurement and contracting, human resources (including hiring and adverse action), budget (as relates to federal funds), travel, ethics, governance, and transparency (including open meetings and executive sessions). These policies and procedures should be substantially similar to those of similar public entities and should strive to reflect a standard of ‘best practices.’ The Authority shall develop these policies and procedures, and any amendments thereto, in consultation with the Secretary of Transportation or the Secretary’s designee. Prior to the adoption of such policies and procedures, or amendments, the Authority shall obtain the concurrence of the Secretary or the Secretary’s designee. The Authority shall adopt a new or revised policy in each of these areas within 12 months of the execution date of this Amendment.” The parties agree that, prior to December 31, 2018, they will in good faith discuss whether this paragraph 11.K shall continue in effect following that date

and, if so, whether the paragraph should sunset on a specified future date; absent an agreement of the parties to the contrary, which is reflected in an amendment to this Lease, this paragraph 11.K shall continue in effect following December 31, 2018.”

5. All other provisions of the Lease remain unchanged.

ENTERED INTO THIS ____ DAY OF _____, 2012.

For the United States of America:

For the Metropolitan Washington Airports
Authority:

Ray LaHood
Secretary of Transportation

Michael A. Curto
Chairman

Amendment No. 4 to the Lease of the Metropolitan Washington Airports
between the United States of America, acting by and through
the Secretary of Transportation, and the
the Metropolitan Washington Airports Authority

APPROVED, pursuant to section 3, Chapter 598, Virginia Acts of Assembly, 1985
Session:

The Honorable Robert F. McDonnell
Governor of Virginia

APPROVED, pursuant to section 4 of D.C. Law 6-67:

The Honorable Vincent C. Gray
Mayor of the District of Columbia

Proposed Resolution

Approving Amendment Number 4 to the Lease Agreement Between
the United States of America and
the Metropolitan Washington Airports Authority,
and Rescinding Resolution No. 12-38

WHEREAS, the Airports Authority leases the land at Washington Dulles International and Ronald Reagan Washington National Airports from the United States pursuant to a lease agreement executed by the parties in 1987 (Lease);

WHEREAS, the Lease was executed on behalf of the United States by the U.S. Secretary of Transportation (Secretary), pursuant to the Metropolitan Washington Airports Act of 1986 in which Congress agreed to lease the two federally-owned airports to the Airports Authority and authorized the Secretary to negotiate and execute the Lease;

WHEREAS, since 1987 the Lease has been amended on three occasions;

WHEREAS, the Secretary has proposed a fourth amendment to the Lease which calls for the Airports Authority to establish policies and procedures in a number of identified areas, and to do so in consultation with and with the concurrence of the Secretary or his designee;

WHEREAS, the amendment also calls for the Airports Authority, upon the receipt of reasonable notice, to provide access to the Secretary and his representatives to personnel and records of the Airports Authority;

WHEREAS, the amendment amends the Lease's definition of "Airport Purposes" to implement an amendment of that same term enacted by Congress as part of the 2012 FAA Reauthorization Act;

WHEREAS, at its December 2012 meeting, the Executive and Governance Committee considered the Secretary's proposed amendment and recommended its approval to the Board of Directors;

WHEREAS, at its December 2012 meeting, the Board adopted Resolution No. 12-38 approving the Secretary's proposed Lease amendment;

WHEREAS, following the December 2012 meeting, a revision to the approved amendment has been proposed which provides for the Airports Authority and Secretary, in the latter part of 2018, to address the “sunsetting” of Lease paragraph 11.K (Paragraph 11.K Revision), a paragraph which is added to the Lease by the Secretary’s proposed amendment; and

WHEREAS, the Executive and Governance Committee has considered the Paragraph 11.K Revision, has recommended its approval to the Board of Directors, and has further recommended that the Board rescind Resolution No. 12-38 and adopt this new resolution approving the Secretary’s proposed Lease amendment, as revised by the addition of the Paragraph 11.K Revision, which revised Lease amendment is attached hereto; now, therefore, be it

RESOLVED, that Resolution No. 12-38 is rescinded, that the amendment to the Lease proposed by the Secretary, as revised by the addition of the Paragraph 11.K Revision, is approved, and that the Chairman of the Board is authorized to execute the amendment, as revised, on behalf of the Airports Authority.

*For Consideration by the Executive and Governance Committee
and the Board of Directors on January 16, 2013*

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METROPOLITAN WASHINGTON AIRPORTS

between

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acting by and through

THE SECRETARY OF TRANSPORTATION

and

THE METROPOLITAN WASHINGTON AIRPORTS AUTHORITY

WHEREAS, the Metropolitan Washington Airports Authority (the “Airports Authority”) and the United States of America, acting by and through the Secretary of Transportation (the “Secretary”), entered into a lease dated March 2, 1987 (the “Lease”), whereby the Secretary leased to the Airports Authority Ronald Reagan Washington National Airport and Washington Dulles International Airport (the “Metropolitan Washington Airports”) for a term of fifty (50) years, effective June 7, 1987, which term was extended for an additional thirty (30) years by Amendment No. 3 to the Lease, dated April 30, 2003; and

WHEREAS, the Airports Authority has a continuing obligation under the Lease to comply with the “Act,” which is currently defined in the Lease as the Metropolitan Washington Airports Act of 1986, Title VI of Public Law 99-591, as amended by Title VII of Public Law 102-240 and by Title IX of Public Law 104-264; and

WHEREAS, the Act has been amended since the 104th Congress, including on February 14, 2012, by Titles I and IV of Public Law 112-95 (FAA Modernization and Reform Act of 2012), and the Secretary and the Airports Authority wish to modify the definition of “Act” in the Lease to clarify that the Airports Authority’s obligation extends to the Act, as amended as of the execution date of this Amendment, and to make other conforming changes to the Lease; and

WHEREAS, the Secretary and the Airports Authority are committed to strengthening the content and oversight of the Airports Authority’s internal policies and procedures, and the Secretary and the Airports Authority wish to modify the Lease to clarify the provisions related to Airports Authority policies and procedures and to make other conforming changes to the Lease;

IT IS NOW, THEREFORE, AGREED that the Lease, as amended, is further amended as follows:

1. Article 1, Definitions, paragraph 1.A. “Act,” as previously amended, is amended by striking the word “and” between “Public Law 102-240” and “by Title IX,” by inserting a comma after “Public Law 102-240”, and by inserting after “Public Law 104-264” a comma and then the words “by Title II of Public Law 106-181, by Section 4, Division C of Public Law 112-55, and by Titles I and IV of Public Law 112-95”.
2. Article 1, Definitions, paragraph 1.D. “Airport Purposes” is amended by inserting before the period a comma and then the words “or for a business or activity not inconsistent with the needs of aviation that has been approved by the Secretary”.
3. Article 8, Access to Premises, is amended to insert, at the end of such Article 8, the following language: “The Airports Authority shall further provide the Secretary and her authorized representatives and agents full access at any time during normal business hours, after reasonable notice, to the Airports Authority’s personnel, books, records, contracts, and documents for the purpose of assuring compliance with the terms of this Lease.”
4. Article 11, Continuing Obligations, is amended to add a new paragraph 11.K. to read as follows: “11.K. Airport Authority Policies and Procedures. The Authority shall adopt, maintain and adhere to policies and procedures in the areas of procurement and contracting, human resources (including hiring and adverse action), budget (as relates to federal funds), travel, ethics, governance, and transparency (including open meetings and executive sessions). These policies and procedures should be substantially similar to those of similar public entities and should strive to reflect a standard of ‘best practices.’ The Authority shall develop these policies and procedures, and any amendments thereto, in consultation with the Secretary of Transportation or the Secretary’s designee. Prior to the adoption of such policies and procedures, or amendments, the Authority shall obtain the concurrence of the Secretary or the Secretary’s designee. The Authority shall adopt a new or revised policy in each of these areas within 12 months of the execution date of this Amendment. The parties agree that, prior to December 31, 2018, they will in good faith discuss whether this paragraph 11.K shall continue in effect following that date

and, if so, whether the paragraph should sunset on a specified future date; absent an agreement of the parties to the contrary, which is reflected in an amendment to this Lease, this paragraph 11.K shall continue in effect following December 31, 2018.”

5. All other provisions of the Lease remain unchanged.

ENTERED INTO THIS ____ DAY OF _____, 2012.

For the United States of America:

For the Metropolitan Washington Airports
Authority:

Ray LaHood
Secretary of Transportation

Michael A. Curto
Chairman

Amendment No. 4 to the Lease of the Metropolitan Washington Airports
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