



Report to the Strategic Development Committee

Approval of Proposed Amendment to
Use & Lease Agreement at Dulles Airport

September 2018



PURPOSE

Staff recommends that the Strategic Development Committee approve, and recommend that the Board of Directors approve, a proposed amendment to the Airport Use Agreement and Premises Lease for Dulles International Airport (Dulles Agreement) and its execution by the President and CEO on behalf of the Airports Authority.

The proposed amendment is attached to the recommendation paper that has been prepared for the Committee.



BACKGROUND

As addressed in the last agenda item, the sale of the 424 acre parcel at Dulles Airport – known as the Western Lands – will produce gross proceeds of \$236.5 million.

After deducting from these proceeds the cost the Airports Authority has incurred in marketing and selling this property, as well as the cost it will incur in defeasing the bonds which financed the original purchase of the property, it is estimated that the net proceeds from the Western Lands sale will be approximately \$207 million.



BACKGROUND (Continued)

Under the current Dulles Agreement, the term "Revenues" is defined to mean all revenues that the Airports Authority receives or accrues in any fiscal year, except specific categories of revenues that are specifically excluded by the definition.

None of the current exclusions includes lump-sum payments that are received from the sale of Airports Authority real estate.

As a result, under the current Dulles Agreement, the entire amount of the net proceeds from the sale of the Western Lands would be considered Revenues in 2018 and, under the terms of the agreement, would be distributed, in a single year, between the airlines at Dulles which have signed the agreement and the Airports Authority.



DISCUSSION

To avoid this single-year distribution of the Western Lands net sale proceeds, an amendment is proposed to the Dulles Agreement which provides for the following:

1. It amends the definition of “Revenues” to expressly exclude the net proceeds derived from the sale of the Western Lands.
2. It requires the Airports Authority: (i) to create a separate account into which it will place these net sale proceeds; (ii) to retain the net proceeds (along with all investments made with the proceeds) in this separate account; and (iii) to maintain and manage the account.



DISCUSSION (Continued)

3. It requires that any distribution the Airports Authority makes from this separate account be used solely for the purpose of reducing the costs it otherwise would include in calculating the rentals, fees and charges it assesses airlines operating at Dulles.
4. It requires the Airports Authority each year to distribute the interest and dividend earnings received during the year from investment assets held in the account, and requires that this distribution be solely for the “airline cost reduction” purpose stated in paragraph 3.



DISCUSSION (Continued)

5. It authorizes, but does not require, the Airports Authority, in its discretion, to make distributions from the account that exceed the account's interest and dividend earnings, and requires that any such "larger" distributions be used solely for the "airline cost reduction" purpose stated in paragraph 3.
6. Finally, it provides that, following expiration of the Dulles Agreement at the end of 2024, the management of this separate account, as well as the utilization and distribution of funds in the account, will be governed by the terms of the new Airport Use Agreement and Premises Lease then in effect at Dulles.



DISCUSSION (Continued)

This amendment, if approved by the Board, will be presented for signature to each airline operating at Dulles that is a party to the current Dulles Agreement.

The amendment will become effective as to each airline upon the earlier of (i) the date on which the airline executes the amendment or (ii) the date on which the amendment is executed by airlines operating at Dulles which collectively accounted for at least 51% of the landing fees and terminal rentals paid by all airlines during 2017.



RECOMMENDATION

It is recommended that the Strategic Development Committee approve, and recommend that the Board approve, the proposed amendment to the Dulles Agreement, and authorize the amendment's execution by the President and CEO on behalf of the Airports Authority.



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Proposed Resolution

Approving an Amendment to the Airport Use Agreement and Premises Lease for Washington Dulles International Airport

WHEREAS, The Airports Authority's sale of the 424-acre parcel at Washington Dulles International Airport (Dulles International), known as the Western Lands, will produce substantial sum of net proceeds;

WHEREAS, Under the current Airport Use Agreement and Premises Lease for Washington Dulles International Airport (Dulles Agreement), the term "Revenues" is defined to mean all revenues that the Airports Authority receives or accrues in any fiscal year, except specific categories of revenues that are specifically excluded by the definition;

WHEREAS, None of the current exclusions includes lump-sum payments that are received from the sale of real estate at Dulles International that is owned by the Airports Authority;

WHEREAS, In order to avoid the net proceeds from the Western Lands sale from being considered Revenues under the Dulles Agreement, and to provide for the Airports Authority's management and utilization of these net proceeds, an amendment to the Dulles Agreement has been proposed which:

- a) Amends the definition of "Revenues" by expressly excluding from the definition all of the net proceeds derived by the Airports Authority from the sale of the Western Lands;
- b) Requires the Airports Authority (i) to create a separate account in which it will place these net sale proceeds and, thereafter, (ii) to retain these proceeds, along with all investments made with the proceeds, in this account, and (iii) to maintain and manage the account;
- c) Requires any and all distributions the Airports Authority makes from this account to be used solely for the purpose of reducing costs that the Airports Authority would otherwise include in calculating the rentals, fees and/or charges it assesses airlines operating at Dulles International;
- d) Requires that the Airports Authority annually distribute interest and divided earnings received during the year on investment assets held in

the account, and that the distribution be used solely for the purpose stated in paragraph c;

- e) Authorizes, but not requires, the Airports Authority to make distributions from the account that exceed the distribution described in paragraph d, and requires that any such “larger” distributions be used solely for the purpose stated in paragraph c; and
- f) Provides that, following the expiration of the Dulles Agreement at the end of 2024, the administration and management of the account, as well as the utilization and distribution of funds in the account, will be governed by the terms of the new Airport Use Agreement and Premises Lease then in effect at Dulles International.

WHEREAS, The proposed amendment to the Dulles Agreement has been presented to the Strategic Development Committee, and the Committee has approved the amendment and recommended that the Board of Directors approve it and authorize its execution by the President and Chief Executive Officer; now, therefore, be it

RESOLVED, That the proposed amendment -- entitled “Second Universal Amendment to the 2015 Metropolitan Washington Airports Authority Airport Use Agreement and Premises Lease, as it Applies to Washington Dulles International Airport” -- is, in the form attached to this resolution, approved; and

2. That the President and Chief Executive Officer is authorized to execute the proposed amendment.

*For Consideration by the Strategic Development Committee and
Board of Directors on September 18, 2018*

REPORT TO THE STRATEGIC DEVELOPMENT COMMITTEE
RECOMMENDATION TO APPROVE AN AMENDMENT
TO THE AIRPORT USE AGREEMENT AND PREMISES LEASE
FOR DULLES INTERNATIONAL AIRPORT

SEPTEMBER 2018

ACTION REQUESTED

The Strategic Development Committee is requested to approve, and to recommend that the Board of Directors approve, an amendment to the Airport Use Agreement and Premises Lease for Dulles International Airport (Dulles Agreement), and authorize the President and CEO to execute the amendment on behalf of the Airports Authority. The amendment addresses the manner in which the net proceeds the Airports Authority will derive from the sale of a 424 acre parcel of land situated along the western boundary of Dulles International – a parcel known as the “Western Lands” – will be characterized, managed and utilized under the Dulles Agreement. A copy of the amendment is attached as Attachment A.

BACKGROUND

In the period between 2005 and 2007, the Airports Authority acquired approximately 854 acres of privately owned land just west of the then existing boundary of Dulles International. The land was acquired in large part to support construction of a new fourth runway at the airport. Based on final engineering for this new runway, it was determined that approximately 414 of those 854 acres were required for the runway’s construction and that the remaining 440 acres would be held for possible future use by the airport.

After substantial review and analysis over a number of years following the fourth runway construction, the Airports Authority decided that 424 of these 440 acres were not required for future airport uses or for the buffering of future on-airport activities, and were situated in a manner that allowed them to be combined into a single parcel of land, which became known as the Western Lands. Subsequently, it was decided that the Airports Authority should initiate steps to learn whether there may be interest within the real estate community to buy or lease all or part of this 424 acre Western Lands parcel for uses that would be compatible with future uses and activities on the airport. In 2017, the Airports Authority retained the services of a real estate marketing company, CBRE, Inc., which then began actively marketing the Western Lands.

CBRE’s marketing activities resulted in a number of offers to purchase or lease the Western Lands. The Airports Authority’s review of these offers and CBRE’s negotiations with offerors have culminated in an executed contract for the purchase and sale of the Western Lands which, at closing, will produce gross proceeds of \$236.5 million. After deducting from these proceeds the costs the Airports Authority has incurred in marketing and selling the Western Lands, as well as the costs it will incur in defeasing the bonds that were issued to finance the original Western Lands purchase, it is anticipated that the sale’s net proceeds will be on the order of \$207 million.

DISCUSSION

The receipt of this substantial sum in a single year presents a significant issue under the current Dulles Agreement since, under its terms, the entire sum would be considered “Revenues” in that single year and, as a result, would essentially be distributed in its entirety between the airlines and the Airports Authority.

The proposed amendment to the Dulles Agreement addresses this issue by revising the Dulles Agreement in the following ways:

1. It amends the definition of “Revenues” by expressly excluding from the definition all of the net proceeds derived by the Airports Authority from the sale of the Western Lands;
2. It requires the Airports Authority (i) to create a separate account in which it will place these net sale proceeds and, thereafter, (ii) to retain these proceeds, along with all investments made with the proceeds, in this account, and (iii) to maintain and manage the account;
3. It requires that any and all distributions the Airports Authority makes from this account be used solely for the purpose of reducing costs that the Airports Authority otherwise would include in calculating the rentals, fees and/or charges it assesses airlines operating at Dulles International;
4. It requires that the Airports Authority annually distribute interest and dividend earnings received during the year on investment assets held in the account, and that the distribution be used solely for the purpose stated in paragraph 3;
5. It authorizes, but does not require, the Airports Authority to make distributions from the account that exceed the distribution described in paragraph 4, and requires that any such “larger” distributions be used solely for the purpose stated in paragraph 3; and
6. It provides that, following the expiration of the Dulles Agreement at the end of 2024, the administration and management of the account, as well as the utilization and distribution of funds in the account, will be governed by the terms of the new Airport Use Agreement and Premises Lease then in effect at Dulles International.

This amendment, if approved by the Board of Directors, will be presented for signature to each airline operating at Dulles International that is a party to the current Dulles Agreement, and the amendment will become effective upon the earlier of the date on which the airline executes the amendment or the date on which the amendment is executed by airlines operating at Dulles International which collectively accounted for at least 51% of the landing fees and terminal rentals paid by all airlines during 2017.

CONCLUSION

It is recommended that the Committee approve, and recommend that the Board of Directors approve, the attached amendment to the Dulles Agreement, and authorize the President and CEO to execute the amendment on behalf of the Airports Authority.

Prepared by:

Office of the General Counsel
September 2018

Attachment

ATTACHMENT

SECOND UNIVERSAL AMENDMENT TO THE
2015 METROPOLITAN WASHINGTON AIRPORTS AUTHORITY
AIRPORT USE AGREEMENT AND PREMISES LEASE,
AS IT APPLIES TO WASHINGTON DULLES INTERNATIONAL AIRPORT

This Second Universal Amendment to the 2015 Metropolitan Washington Airports Authority Airport Use Agreement and Premises Lease, As It Applies to Washington Dulles International Airport ("Second Amendment"), is entered into by the Metropolitan Washington Airports Authority ("Authority") and the undersigned airline ("Airline").

RECITALS

- A. The Authority and the Airline have entered into the 2015 Airport Use Agreement and Premises Lease ("2015 Agreement") effective January 1, 2015.
- B. The 2015 Agreement addresses the relationship between the Authority and numerous airlines operating at Ronald Reagan Washington National Airport ("National") and at Washington Dulles International Airport ("Dulles"), including the Airline.
- C. The 2015 Agreement initially provided that, for airlines operating at National, the 2015 Agreement would expire on December 31, 2024, and, for airlines operating at Dulles, it would expire on December 31, 2017. The First Universal Amendment to the 2015 Agreement, As It Applies to Washington Dulles International Airport, as executed by the Authority and the Airline, amended the 2015 Agreement to extend its expiration date to and including December 31, 2024.
- D. The Authority and the Airline now wish to amend the 2015 Agreement as it relates to the operations of the Airline and other airlines at Dulles by amending the 2015 Agreement's definition of "Revenues" to exclude proceeds from the Authority's sale of certain Authority-owned land at Dulles and adding new provisions which, among other things, provide for the Authority's use of the proceeds it obtains from the sale of such land.
- E. The Authority and the Airline intend that this Second Amendment shall apply only to the Airline and other airlines operating at Dulles.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the Authority and the Airline hereby agree to amend the 2015 Agreement, as it applies to the operations of the Airline and other airlines at Dulles, as follows (capitalized terms in the following paragraphs have the meaning given them in the 2015 Agreement).

1. The definition of "Revenues" in Section 3.01 of the 2015 Agreement is amended by deleting the term "and" following the conclusion of clause (viii), and then inserting after the term "(ix)" the following: "the proceeds from the sale of the Western Lands (as such lands are defined in Paragraph 9.08.1), together with any interest income on, and any profit realized from, the investment of moneys in the Western Lands Account (as such account is defined in Paragraph 9.08.1); and (x)". As amended, the definition of "Revenues," applicable only to the operations of the Airline and other airlines at Dulles, reads as follow:

Revenues shall mean all revenues of the Authority received or accrued, except (i) interest income on, and any profit realized from, the investment of moneys in any fund or account to the extent that such income or profit is not transferred to, or retained in, the Revenue Fund or the Bond Fund created by the Senior Indenture or the Bond Funds created by the Subordinated Indenture; (ii) interest income on, and any profit realized from, the investment of moneys in any fund or account funded from the proceeds of Special Facility bonds; (iii) amounts received by the Authority from, or in connection with, Special Facilities, unless such funds are treated as Revenues by the Authority; (iv) amounts received by the Authority from, or in connection with, the Dulles Toll Road, unless such funds are treated as Revenues by the Authority; (v) the proceeds of any passenger facility charge or similar charge levied by, or on behalf of, the Authority, unless such funds are treated as Revenues by the Authority; (vi) grants-in-aid, donations, and or bequests; (vii) insurance proceeds which are not deemed to be revenues in accordance with generally accepted accounting principles; (viii) the proceeds of any condemnation awards; (ix) the proceeds of the sale of the Western Lands (as such lands are defined in Paragraph 9.08.1), together with any interest income on, and any profit realized from, the investment of moneys in the Western Lands Account (as such account is defined in Paragraph 9.08.1); and (x) any other amounts which are not deemed to be revenues in accordance with generally accepted

accounting principles or which are restricted as to their use.

2. The 2015 Agreement is amended by adding a new Section 9.08, to read as follows:

9.08 Proceeds from Sale of Western Lands.

9.08.1 Definitions. The following terms, as used in the definition of Revenues in Section 3.01 and in this Section 9.08, shall have the following meanings:

Western Lands shall mean the parcel of Authority-owned land consisting of approximately 424 acres along the western boundary of Dulles that was sold by the Authority in 2018.

Western Lands Account shall mean an account established by the Authority separate from all other funds and accounts maintained by the Authority for the sole purpose of holding the Western Lands Proceeds and any and all investment assets acquired by the Authority using the Western Lands Proceeds.

Western Lands Account Interest Earnings shall mean the interest income and dividends realized on investment assets held in the Western Lands Account.

Western Lands Account Withdrawal shall mean any cash withdrawn by the Authority from the Western Lands Account.

Western Lands Proceeds shall mean the sum of cash obtained by the Authority from the sale of the Western Lands less all costs incurred by the Authority (i) in the course of selling the Western Lands and (ii) in defeasing the airport revenue bonds whose proceeds were used to fund the initial acquisition of the Western Lands.

9.08.2 Establishment, Maintenance and Management of Western Lands Account. No later than 30 days following the sale of the Western Lands, the Authority shall establish the Western Lands Account and shall maintain and manage the Western Lands Account during the Period of Agreement, as addressed in Article 2.

9.08.3 Western Lands Account Withdrawals in Fiscal Years 2018 through 2024.

9.08.3.1 Any and all Western Lands Account Withdrawals by the Authority in Fiscal Years 2018 through 2024 shall be used solely for the purpose of reducing costs that the Authority otherwise would include in calculating the rentals, fees and/or charges it assesses the Airline and Other Signatory Airlines at Dulles under Articles 8 and 9 of this Agreement.

9.08.3.2 For each of Fiscal Years 2018 through 2024, the Authority shall make one or more Western Lands Account Withdrawals that are collectively no less in amount than the Western Lands Account Interest Earnings in such Fiscal Year. The Authority may, in its discretion and solely for the purpose described in Paragraph 9.08.3.1, make Western Lands Account Withdrawals for any of Fiscal Years 2018 through 2024 that exceed the minimum amount of withdrawals set out in the prior sentence.

9.08.3.3 The Western Lands Account Withdrawals made by the Authority in each of Fiscal Years 2018 through 2024 under Paragraph 9.08.3.2 shall be applied by the Authority as credits in the calculation of Signatory Airline rates for rentals, fees and/or charges at Dulles in each such Fiscal Year, and shall be allocated, as reasonably determined by the Authority in its discretion, either (i) to the Airline Supported Areas at Dulles in proportion to the Total Requirements of each of the Cost Centers and Sub-Centers within these Airlines Supported Areas or (ii) to the Airfield Cost Center at Dulles.

9.08.4 Western Lands Account Withdrawals After Fiscal Year 2024. The Authority's management of the Western Lands Account, the Authority's withdrawals from the Western Lands Account, and the Authority's use of such withdrawals in Fiscal Years after Fiscal Year 2024 shall be governed by the terms of the airport use agreement then in effect between the Authority and Signatory Airlines at Dulles.

3. Paragraph 9.05.2 of the 2015 Agreement is amended by deleting the period at the close of the paragraph's first sentence, inserting a semicolon in its place, and then adding the following: "provided, that the calculation of Net Remaining Revenue at Dulles for any Fiscal Year shall (x) combine the sum Revenues of that Fiscal Year and Transfers (if any) from the

prior Fiscal Year with all Western Lands Account Withdrawals applied by the Authority, pursuant to Paragraph 9.08.3.3, as credits in computing Signatory Airline rates for rentals, fees and/or charges in the Fiscal Year, and shall then apply the reductions described in clauses (i) through (vi) in this paragraph." As amended, Paragraph 9.05.2 reads as follow:

9.05.2 For any Fiscal Year, Net Remaining Revenue at each Airport is hereby defined to mean the total of Revenues for such Fiscal Year plus Transfers, if any, from the prior Fiscal Year, less (i) O&M Expenses; (ii) required deposits to maintain the O&M Reserve; (iii) Debt Service; (iv) Federal Lease payment; (v) required deposits to any Debt Service Reserve Fund; and (vi) required deposits to the Emergency R&R Fund; all as calculated in accordance with Schedules N-F-5 and D-F-10 for the then current Fiscal Year; provided, that the calculation of Net Remaining Revenue at Dulles for any Fiscal Year shall (x) combine the sum of Revenues of that Fiscal Year and Transfers, if any, from the prior Fiscal Year with all Western Lands Account Withdrawals applied by the Authority, pursuant to Paragraph 9.08.3.3, as credits in computing Signatory Airline rates for rentals, fees and/or charges in the Fiscal Year, and (y) then apply the reductions described in clauses (i) through (vi) in this paragraph.

4. This Second Amendment amends certain sections and paragraphs of the 2015 Agreement. All sections and paragraphs of the 2015 Agreement that are not amended by this Second Amendment shall remain in full force and effect. In the event of any conflict between the sections and paragraphs of the 2015 Agreement which have been amended by this Second Amendment and other sections and paragraphs of the 2015 Agreement, the sections and paragraphs, as amended by this Second Amendment, shall control.

5. This Second Amendment shall be effective as to the Airline on the earlier of (i) the date it is executed by the Airline or (ii) the date on which it has been executed by Scheduled Air Carriers operating at Dulles that collectively accounted for at least fifty-one percent (51%) of the Landing Fees and Terminal Rentals paid by all Signatory Airlines operating at Dulles during Fiscal Year 2017.

6. This Second Amendment may be executed in multiple identical counterparts, each of which shall constitute an

original and all of which shall collectively constitute a single agreement.

[Signatures on following page]

IN WITNESS WHEREOF, the Authority and the Airline have executed this Second Amendment as follows:

METROPOLITAN WASHINGTON AIRPORTS AUTHORITY

By: _____
John E. Potter
President and Chief Executive Officer

Date

AIRLINE: _____

By: _____

Date

Name: _____

Its: _____