

PORT ORDINANCE NO. 4617

ORDINANCE APPROVING AN AMENDMENT TO AIRLINE OPERATING AGREEMENT EACH WITH NINETEEN PASSENGER AND CARGO AIRLINES AND AN AMENDMENT TO SPACE/USE PERMIT WITH NINE OF THOSE PASSENGER AIRLINES SERVING OAKLAND INTERNATIONAL AIRPORT, FOR A TERM OF FIVE YEARS AND GENERATING ANTICIPATED REVENUES OF APPROXIMATELY \$128 MILLION IN FY 2021-22.

WHEREAS, the Board of Port Commissioners of the City of Oakland ("Board") has reviewed and evaluated the Agenda Report Item 6.3, dated September 30, 2021, ("Agenda Report") and related agenda materials, has received the expert testimony of Port of Oakland ("Port") staff, and has provided opportunities for and taken public comment; and

WHEREAS, that in acting upon this matter, the Board has exercised its independent judgment based on substantial evidence in the record and adopts and relies upon the facts, data, analysis, and findings set forth in the Agenda Report, and in related agenda materials and in testimony received; now, therefore

BE IT ORDAINED by the Board of Port Commissioners of the City of Oakland as follows:

Section 1. The Board hereby finds and determines that this action has been determined to be categorically exempt from requirements of the California Environmental Quality Act ("CEQA") Guidelines pursuant to Section 15301, Existing Facilities, which exempts the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment or topographical features, involving negligible or no expansion of existing or former use. No changes to the premises or use are proposed.

Section 2. The Board hereby approves the terms and conditions of (i) the Amendment to Airline Operating Agreement ("AOA Amendment") each with the nineteen airlines listed in Exhibit "A" and (ii) the Amendment to Annex "A" Space/Use Permit ("SUP Amendment") each with nine of the nineteen airlines listed in Exhibit "A", for a term expiring on September 30, 2026, at the rates set forth in the Port's annual Rates and Charges Ordinance and the terms and conditions set forth in the Agenda Report, including the deviation from the Port's Environmental Ordinance (Port Ordinance No. 4345) as described in the Agenda Report.

Section 3. The Board hereby authorizes the Executive Director to execute the AOA Amendment each with the nineteen airlines and the SUP Amendment each with nine of the nineteen airlines, subject to the Port Attorney's approval as to form and legality.

Section 4. The Board hereby waives the standard three month rent/performance deposit requirements set forth in Port Policy No. AP 509 ("AP 509") to reduce the total security deposits due for these

agreements to approximately (but not less than) two times the average billings (excluding passenger facility charges) due under the agreements (rounded up to the nearest \$1,000) and only for existing signatory airlines (any future airline wishing to enter into an agreement with the Port will need to meet the requirements of AP 509).

Section 5. This ordinance is not evidence of and does not create or constitute (a) a contract or lease, entitlement, or property interest, or (b) any obligation or liability on the part of the Board or any officer or employee of the Port. Unless and until separate written agreement(s) are duly executed on behalf of the Board as authorized by this ordinance, is signed and approved as to form and legality by the Port Attorney, and is delivered to the other contracting party, there shall be no valid or effective agreement(s).

Section 6. This ordinance shall take effect on the date of its final adoption; provided, however, that if a petition protesting the adoption of this ordinance is timely and duly submitted to the elections official of the City of Oakland in the manner required under California Elections Code § 9237, the effective date of this ordinance shall be suspended, and all actions authorized by this ordinance shall be null and void.

The Board of Port Commissioners, Oakland, California, September 30, 2021. Passed to print for one day by the following vote: Ayes: Commissioners Butner, Colbruno, Lee, Leslie, Martinez, Story and President Cluver - 7. Noes: 0.

Daria Edgerly

Secretary of the Board

Exhibit A

1. ABX Air, Inc.
2. Alaska Airlines, Inc.*
3. Allegiant Air, LLC*
4. Contour Airlines*
5. Delta Air Lines, Inc.*
6. Federal Express Corporation
7. Frontier Airlines, Inc.*
8. Hawaiian Airlines, Inc.*
9. Horizon Air Industries
10. JSX/JetSuiteX Air
11. Mesa Airlines, Inc.
12. Redding Aero Enterprises, Inc.
13. SATA Internacional
14. SkyWest Airlines, Inc.
15. Southwest Airlines Co.*
16. Spirit Airlines, Inc.*
17. Surf Air
18. United Parcel Service, Inc.
19. Volaris*

*SUP Amendment