



City of Chicago



O2013-8554

Office of the City Clerk

Document Tracking Sheet

Meeting Date: 11/13/2013

Sponsor(s): Emanuel (Mayor)

Type: Ordinance

Title: Amendment to Midway International Airport use agreement
and Facilities Lease

Committee(s) Assignment: Committee on Aviation

AVIAT.



OFFICE OF THE MAYOR
CITY OF CHICAGO

RAHM EMANUEL
MAYOR

November 13, 2013

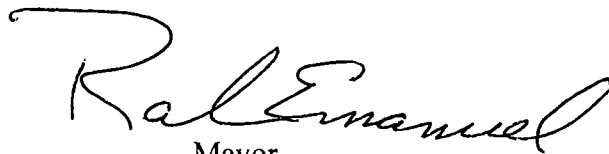
TO THE HONORABLE, THE CITY COUNCIL
OF THE CITY OF CHICAGO

Ladies and Gentlemen:

At the request of the Commissioner of Aviation, I transmit herewith an ordinance authorizing an amendment to the Midway International Airport use agreement and facility lease.

Your favorable consideration of this ordinance will be appreciated.

Very truly yours,


Mayor

ORDINANCE

AUTHORIZING AMENDMENT OF CHICAGO MIDWAY INTERNATIONAL AIRPORT AIRPORT USE AGREEMENT AND FACILITIES LEASE

WHEREAS, the City of Chicago (the “*City*”) is a body politic and corporate under the laws of the State of Illinois and a home rule unit of local government under Article VII of the 1970 Constitution of the State of Illinois; and

WHEREAS, the City owns and operates the airport known as Chicago Midway International Airport situated in the City of Chicago, County of Cook, State of Illinois (“*Midway Airport*”); and

WHEREAS, the City entered into the Amended and Restated Airport Use Agreements and Facility Leases (the “*Airport Use Agreements*”) with certain airlines (the “*Airline Parties*”) effective January 1, 2013; and

WHEREAS, the City submitted to the Federal Aviation Administration (the “*FAA*”) a fiscal Year 2013 Competition Plan Update for Chicago Midway International Airport (the “*Plan Update*”), and, by a letter dated July 3, 2013 (the “*Letter*”), the FAA informed the City that the FAA found the Plan Update to be in accordance with the requirements of 49 U.S.C. Sections 40117(k) and 47106(f) and conditionally approved the Plan Update, subject to certain conditions specified in the Letter (the “*Conditions*”); and

WHEREAS, the City and the Airline Parties desire to amend the Airport Use Agreement to comply with the Conditions specified by the FAA in the Letter;

NOW, THEREFORE, Be It Ordained by the City Council of the City of Chicago:

SECTION 1. Incorporation of Recitals. The above recitals are expressly incorporated in and made a part of this ordinance as though fully set forth herein.

SECTION 2. Authorization of Amendment. The Mayor, upon the recommendation of the Commissioner of the Chicago Department of Aviation (the “*Commissioner*”) and the approval of the Corporation Counsel as to form and legality, is authorized to enter into an Amendment to the Airport Use Agreements entered into with each of the Airline Parties. The City Clerk is authorized and directed to attest and to affix the official seal of the City upon each of the Amendments. Each Amendment shall be in substantially the same form as the amendment attached as *Exhibit A* to this ordinance, with such changes as are not inconsistent with this ordinance and are approved by the Mayor, the Mayor’s execution of the Amendments to constitute conclusive evidence of the City Council of the City of Chicago’s approval of any and all such changes. The Commissioner is hereby authorized to approve the Amendment.

SECTION 3. Execution of Documentation; Additional Authorizations.

(a) The Mayor, the Commissioner and the Corporation Counsel (the “*Authorized Officers*”), and any other City officer as shall be designated by the Authorized Officers are each

EXHIBIT A

CHICAGO MIDWAY INTERNATIONAL AIRPORT

**FIRST AMENDMENT TO
AMENDED AND RESTATED
AIRPORT USE AGREEMENT
AND FACILITIES LEASE**

This amendment to the Amended and Restated Airport Use Agreement and Facilities Lease (this "*Amendment*") is made and entered into as of the _____ day of _____, 2013 by and between the **CITY OF CHICAGO**, a municipal corporation and home-rule unit of local government existing under the Constitution of the State of Illinois (the "*City*"), and the airline named on the signature page hereof (the "*Airline*").

WHEREAS, the City and the Airline are parties to that certain Chicago Midway International Airport Amended and Restated Airport Use Agreement and Facilities Lease dated as of January 1, 2013, (the "*Airport Use Agreement*");

WHEREAS, the City submitted to the Federal Aviation Administration ("*FAA*") a Fiscal Year 2013 Competition Plan Update for Chicago Midway International Airport (the "*Plan Update*"), and by a letter dated July 3, 2013 (the "*Letter*"), the FAA informed the City that the FAA found the Plan Update to be in accordance with the requirements of 49 U.S.C. sections 40117(k) and 47106(f) and conditionally approved the Plan Update, subject to certain conditions specified in the Letter (the "*Conditions*"); and

WHEREAS, the City and Airline desire to amend the Airport Use Agreement to comply with the Conditions specified by the FAA in the Letter;

NOW, THEREFORE, the parties amend the Airport Use Agreement as set forth below:

Section 1. The following language shall be added to Section 17.03 of the Airport Use Agreement following the existing language:

"The City and the Airline understand that 49 U.S.C. Section 40117 (the "*Passenger Facility Charge Statute*"), contains limitations on airport-airline contracts, leases and use agreements. Subsection 40117(f)(1) requires: A contract between an air carrier or foreign air carrier and an eligible agency made at any time may not impair the authority of the agency to impose a passenger facility charge or to use passenger facility charge revenue as provided in [the Passenger Facility Charge Statute].

To avoid any doubt that this Agreement executed by the City and the Airline does not provide for Airline Majority-in-Interest rights for disapproval or approval for imposition or use of Passenger Facility Charges for capital projects, the City and the Airline agree that any Airline Majority-in-Interest rights may not and do not apply to the City's authority to impose a Passenger Facility Charge or to use Passenger Facility Charge revenue for any of the projects, obligations or financing, including, but not limited to: (i) capital projects exceeding estimated costs under Section 10.01(a) of this Agreement; (ii) additional capital projects under Section 10.03 of this Agreement; (iii) other capital projects and obligations under Section 10.05 of this Agreement; and (iv) use of Passenger Facility Charges under this Section 17.03."

Section 2. Except to the extent that the Agreement is amended by this Amendment, the Agreement remains unamended and in full force and effect in all other respects.

IN WITNESS WHEREOF, the City has caused this Amendment to be executed on its behalf by its Mayor, pursuant to due authorization of the City Council of the City, and its seal hereunto affixed and attested by the City Clerk of the City of Chicago, and the Commissioner of the Department of Aviation, and the Airline has caused this First Amendment to be executed on its behalf by its _____ pursuant to the authorization of its Board of Directors, all as of the day and year first above written.

CITY OF CHICAGO

By: _____
Mayor

Approved as to form and legality

By: _____
Chief Assistant Corporation Counsel

Recommended by: **CHICAGO DEPARTMENT OF AVIATION**

Commissioner

Attest: _____
City Clerk

[SEAL]

[INSERT NAME OF AIRLINE]

By: _____

Its: _____
(Print Name and Title)

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authorized, individually or jointly, to execute and deliver any and all agreements, documents, instruments or certificates as the executing officer shall deem necessary, advisable or appropriate in connection with the Amendments. To the extent that this ordinance specifically provides for the Mayor's execution of a document referred to herein, the document may be executed by an Authorized Officer designated by the Mayor.

(b) In addition to the authorizations and approvals set forth in the preceding paragraphs of this ordinance, any of the Authorized Officers and any other City officer as shall be designated by any of the Authorized Officers are each hereby authorized and directed to do all such other acts and things as may be necessary, advisable or appropriate to carry out the purposes of the Amendment or otherwise to carry out the intent and purposes of this ordinance. All of the acts of each officer which are in conformity with the intent and purposes of this ordinance, whether heretofore or hereafter taken or done shall be and the same are in all respects ratified, confirmed, authorized, and approved hereby in all respects.

SECTION 4. Conflict. To the extent that any ordinance, resolution, rule, order, or provision of the Municipal Code of Chicago, or part thereof, is in conflict with the provisions of this ordinance, the provisions of this ordinance shall be controlling.

SECTION 5. Severability; Exercise of Home Rule Power. If any section, paragraph, clause or provision of this ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this ordinance. No provision of the Municipal Code of Chicago or violation of any provision of the Municipal Code shall be deemed to impair the validity of this ordinance or the documents or instruments authorized by this ordinance or render any such documents or instruments voidable at the option of the City; provided further that the foregoing shall not be deemed to affect the availability of any other remedy or penalty for any violation of any provision of the Municipal Code of Chicago. This ordinance is an exercise of the City's power as a home rule unit of local government under Article VII of the 1970 Constitution of the State of Illinois and is intended to override any conflicting provision of any Illinois statute that does not specifically preempt the exercise of home rule power by the City.

SECTION 6. Effectiveness. This ordinance shall be in full force and effect from and after the date of its passage and approval.

APPROVED
Paul N. Miller
CORPORATION COUNSEL

APPROVED
Robin E. Emmert
12/3/13
Mayor