

AGENDA REPORT

Resolution: Approval of the Proposed Business Terms and Conditions to be Incorporated into a *Second Supplemental Agreement* with KaiserAir, Inc. for the Premises and Facilities, including Hangar 3 West, Hangar 4, and Related Airfield Aircraft Apron and Motor Vehicle Parking Spaces, for an additional Term of Four Years and Eleven Months through December 31, 2023 and Rental of \$107,546 per Month, at the North Field, Oakland International Airport and Making Findings and Determining to Terminate Negotiations and Proceedings for the Redevelopment of Hangars 2, 230C & 230D, and the Adjacent Aircraft Apron and Vehicle Parking Lot. **(Aviation)**

MEETING DATE: 9/27/2018

AMOUNT: \$1.29 Million Annual Rental Revenue

PARTIES INVOLVED: KaiserAir, Inc. – Oakland, California
Ronald Guerra, President & Owner
Gregg Rorabaugh, Vice President
Howard Fields, Representative

SUBMITTED BY: Bryant L. Francis C.M., Director of Aviation

APPROVED BY: J. Christopher Lytle, Executive Director

ACTION TYPE: Resolution

EXECUTIVE SUMMARY

Aviation Staff requests the Board's approval of the proposed business terms and conditions to be incorporated into a *Second Supplemental Agreement* with KaiserAir, Inc. for its premises and facilities at the North Field at Oakland International Airport. Staff proposes a four year and eleven month extension of the existing length of term through December 31, 2023, plus an update to many of the provisions contained in the original *Lease* between KaiserAir, Inc. and the Port. Further, Staff will use these proposed terms and conditions to negotiate the *Second Supplemental Agreement* and will return to the Board for adoption of an ordinance to approve the final, negotiated terms and conditions. Additionally, Staff recommends the termination of negotiations with KaiserAir for the redevelopment of Hangars 2, 230C & 230D, and the adjacent aircraft apron and vehicle parking lot and the disapproval of KaiserAir's Port Development Permit Application No. 5109.

BACKGROUND

KaiserAir, Inc. ("KaiserAir") and the Port of Oakland ("Port") entered into a long-term *Lease* dated December 1, 1998 for premises on the North Field of Oakland International Airport ("OAK") used for aircraft apron, hangar, office, shop, storage, and vehicle parking, serving as a

Fixed Base Operator (“FBO”)¹ and commonly referred to as Hangar 3 West and Hangar 4. The initial term of the *Lease* was ten years, subject to KaiserAir’s option to extend, with an effective date of February 1, 1999. Pursuant to a *First Supplemental Agreement*, among other issues, the exercise of the option was acknowledged by the Port and KaiserAir, which extended the term through January 31, 2019. KaiserAir currently pays rent of \$51,575.50 per month.

Coincidentally, in 2016, the Port issued a limited, Request for Expressions of Interest and conducted a competitive process on nearby properties identified as Hangars 2, 230C & 230D, and the adjacent aircraft apron and vehicle parking lot (“Hangars 2+ Premises”). After submitting the higher ranked proposal, Port staff and KaiserAir have been working to maximize the utilization and revenue for these properties and the Port and KaiserAir have been negotiating a proposed lease (the “Hangars 2+ Lease”). Pursuant to its proposal, KaiserAir intends for the Hangars 2+ Premises to serve as space for expansion of its FBO and airline businesses, and/or as an alternate location for these businesses should the Hangar 3 West and Hangar 4 Premises not be available to KaiserAir after the January 31, 2019 expiration of the *Lease*.



KaiserAir Existing Lease Premises is highlighted yellow: Hangar 4 on left; Hangar 3 West on Right. Hangars 2+ Premises Highlighted Blue.

ANALYSIS

For multiple reasons, the Port and KaiserAir have not been able to move forward with redevelopment of the Hangars 2+ Premises. To minimize disruption of its FBO and airline operations, KaiserAir has requested a shorter-term extension of the *Lease* term.

→ Second Supplemental Agreement to Extend Term, Adjust Rent and Update Form:

Port staff does not recommend simply extending the expiration date and leave the balance of the *Lease* unchanged. In meeting the FAA’s Grant Assurances requirements; in the interest of treating similar tenancies equally (i.e., fellow FBO Signature Flight Support also operating at OAK); and, subject to updating certain terms and conditions of the *Lease*, Aviation staff is requesting the Board’s approval to negotiate the proposed terms and conditions of a *Second Supplemental Agreement* to the *Lease* for Hangar 3 West and Hangar 4 as follows:

¹ FBOs conduct a wide range of aeronautical support activities including, but not limited to fueling, maintenance and charter flights. In addition, the two FBOs located at OAK – KaiserAir and Signature Flight Support – lease hangar, aircraft apron and support space from the Port, and then sublease some of that space to corporate clients.

Lease: Refers to that certain *Lease* dated December 1, 1998 for premises on the North Field of Oakland International Airport used for aircraft apron, hangar, office, shop, storage, and vehicle parking commonly referred to as Hangar 3 West and Hangar 4, and that certain *First Supplemental Agreement* dated as of October 2, 2007. The *Lease* and the *First Supplemental Agreement* may be referred collectively as the “*Lease*”.

Premises: No change from the *Lease*.

Effective Date of Second Supplemental Agreement: February 1, 2019.

Term: Four (4) Years plus Eleven (11) Months, from the Effective Date through December 31, 2023.

Option to Extend: None.

Rent: As the current Term expires, Rent should be adjusted based on fair market rental value (“FMRV”). The Port has established fixed FMRV rates for various property types for both FBOs. As shown in the table below, total monthly Rent for the Premises would be \$107,546.37. See section below on “Title to Improvements.”

	Sq. Ft.	Annual Rate	Monthly Rate	Rent
Hangar 3 West				
Office	2,018	\$11.16	\$0.930	\$1,876.74
Hangar	12,834	8.18	0.682	8,752.79
Storage	880	4.13	0.344	302.72
Apron - Concrete	64,394	2.23	0.186	11,977.28
Apron - Asphalt	21,800	2.23	0.186	4,054.80
Hangar 3 West Monthly Rental =				<u>\$26,964.33</u>
Hangar 4				
Office	7,433	\$11.16	0.930	\$6,912.69
Hangar	37,572	8.18	0.682	25,624.10
Shop	4,860	7.98	0.665	3,231.90
Storage	7,080	4.13	0.344	2,435.52
Paved Parking	4,918	1.46	0.122	600.00
Apron - Concrete	192,762	2.23	0.186	35,853.73
Apron - Asphalt	31,850	2.23	0.186	5,924.10
Hangar 4 Monthly Rental =				<u>\$80,582.04</u>
Total Monthly Rent =				\$107,546.37

Additional Rent:	By Courtesy Notice dated July 29, 2011, the Port amended Section 4.1.1 of the <i>Lease</i> to delete the then-current fuel flowage rate structure of the higher of 19% of Gross Margin or \$0.15 per gallon and substitute a flat fee of \$0.21 per gallon. The \$0.085 per gallon flat fee for qualified "Contract" fueling remains in place. In addition, KaiserAir is no longer obligated to pay "Other Percentage Rent". These changes in "Additional Rent" should be documented in the proposed <i>Second Supplemental Agreement</i> .
Rent Credits:	The Port recognizes that KaiserAir should be making certain capital improvements to the Premises to improve security, and vehicle access and parking. Staff recommends a Rent Credit of up to \$500,000 for KaiserAir to design and construct necessary security, access and parking improvements, as such projects shall receive prior written approval from the Port.
Landing Fees:	To confirm existing practice, a new section will be added to the proposed <i>Second Supplemental Agreement</i> noting that KaiserAir will agree to use its reasonable diligence to collect all landing fees imposed by Port Ordinance for all aircraft landing at OAK which use KaiserAir's FBO. Within 15 days, KaiserAir will remit to the Port 90% of all landing fees it collects. This provision is contained in the draft Hangars 2+ Lease, and should not be objectionable to KaiserAir.
Adjustment of Minimum Rent:	Under the <i>Lease</i> , the Rent is adjusted based on changes in the Consumer Price Index in thirty (30) month intervals. It is proposed that the adjustment date be set for midway through the extended Term on July 1, 2021, or 29 months after the Effective Date.
Security Deposit:	Staff suggests updating the requirements for Security Deposits consistent with what is contained in Section 4.5 of the Hangars 2+ Lease, which KaiserAir has agreed. Further, in conformance with Port Policy No. AP509, a security deposit equal to three-times monthly billings (not just monthly Rent) applicable to the <i>Lease</i> is required. A lesser amount may be approved by the Board based on the tenant's payment history. Staff is willing to recommend a Security Deposit in the amount of \$350,000 representing two-

times monthly billings². Should KaiserAir not maintain its good payment history, then the Security Deposit will be increased to three-times average monthly billings as required by Port Policy No. AP509.

Monthly Accounting:

The *Lease* includes a requirement for Monthly Accounting of fuel sales made by KaiserAir and subject to payment of percentage of gross receipts. Staff recommends updating the Monthly Accounting section consistent with the provision in the Hangars 2+ *Lease*.

Permitted Uses – Minimum Standards:

Staff proposes to clarify the Permitted Uses definition in the *Lease* such that KaiserAir shall conduct operations as a FBO, as such terms are defined in the Port's Minimum Standards, and KaiserAir may also offer such other uses that the Port shall determine are reasonably related thereto, and not others, in accordance with the Minimum Standards. Any activities undertaken by KaiserAir not required of an FBO by the Minimum Standards, shall be subject to the Port's prior written consent and the payment by KaiserAir to the Port of such fixed fees and percentage of Gross Receipts as shall be acceptable to the Port.

Title to Improvements:

Pursuant to Section 9.1 of the *Lease*, "upon termination of this *Lease* whether by expiration of its term, cancellation or otherwise, title [of all Improvements] automatically shall pass to and vest with the Port." While ownership of KaiserAir-constructed facilities automatically reverts to the Port, during the proposed extended Term of the *Lease*, Staff recommends that the Port not adjust the calculation of Monthly Rent to include the value of any of these buildings/facilities; specifically, Port Building Nos. L411 (Terminal) and L308 (T-Hangar).

Maintenance of Improvements:

Staff does not propose any change from Paragraph 3 of the *First Supplemental Agreement*.

Wages/Labor:

The current wage and labor requirements need to be amended to insert the Port's most up-to-date provisions for Equal Opportunity, Prevailing Wage and the Maritime and Aviation Project Labor Agreement.

² Revised Security Deposit = (Monthly Rent of \$107,546) + (Average Fuel Flowage Fees of \$61,413) + (Average Port Utilities of \$5,773) = \$174,733 × 2 Months = \$349,466 ≈ \$350,000.

Indemnification and Liability Insurance:

KaiserAir has agreed to these provisions in the draft Hangars 2+ Lease.

The current Fire Insurance, Indemnification and Liability Insurance sections of the *Lease* need to be amended to the Port's most up-to-date requirements. KaiserAir has agreed to these provisions in the draft Hangars 2+ Lease.

Environmental Responsibilities:

The Toxic Materials Exhibit F now incorporated into the *Lease* needs to be amended to incorporate the Port's most up-to-date environmental responsibilities; including, but not limited to, including, but not limited to, Port Ordinance Nos. 4311 (Storm Water Ordinance) and 4345 (Environmental Ordinance), and Sustainability.

Required Provisions; Equal Opportunity; Nondiscrimination and Affirmative Action

The Port's Equal Opportunity, Nondiscrimination and Affirmative Action provisions need to be incorporated in the *Second Supplement Agreement*. KaiserAir has agreed to these provisions in the draft Hangar 2+ Lease.

Certified Access Specialist ("CASp", as defined in California Civil Code Section 55.52):

Staff is recommending that the following provision be added into the proposed *Second Supplemental Agreement*:

A Certified Access Specialist ("CASp", as defined in California Civil Code Section 55.52) has not inspected the Premises. Lessee acknowledges the foregoing information and agrees that such statement is merely a statement of fact and is not an admission, covenant, representation, or warranty made by the Port for the benefit of Lessee and Lessee's employees, agents, contractors, customers, or other invitees as to the condition of the Premises, or any other property owned or controlled by the Port. As may be required by California Civil Code Section 1938, the Port provides the following notification:

"A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the

lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.”

→ Terminate Redevelopment of Hangars 2+ Premises:

In addition to extending the term by almost five years, increasing Rent to be reflective of FMRV, and updating many important provisions from a twenty-plus year-old lease form, staff also recommends terminating all negotiations leading to KaiserAir’s redevelopment of the Hangars 2+ Premises.

On June 30, 2016, KaiserAir submitted a Port Development Permit Application (No. 5109) for the redevelopment of the Hangars 2+ Premises, which included payment of fees based on the Engineering Master Fee Schedule. On August 8, 2016, the Port Permit Coordinator sent a memorandum to KaiserAir (“2016 Permit Memo”) in response to KaiserAir’s questions regarding the Port’s land use authority and permit fees. The 2016 Permit Memo outlined the permitting and environmental review process, a timeline for completion of review and approval, and the required fees. The timeline projected the completion of the CEQA Environmental Impact Report (“EIR”) process by June 2017, and Board approval in summer/fall of 2018. It also outlined the required fee of \$28,975, which was later revised on September 19, 2016 to be \$34,300³. To date, the Port has not received any report of analysis necessary for the CEQA environmental review process or draft EIR. Additionally, KaiserAir has paid only \$10,975 of the \$34,300 due⁴.

Port staff has put significant work and effort into assisting KaiserAir to complete the permit process. In June 2016, KaiserAir began engaging with the Environmental Programs and Planning (“EP&P”) staff on the environmental process for redevelopment of the Hangars 2+ Premises. Based on the proposed improvements, EP&P determined an EIR was needed to address the potential significant environmental impacts from the project. On August 8, 2016, EP&P staff issued a Notice of Preparation for an Environmental Impact Review and conducted a public scoping workshop on August 18, 2016. On September 12, 2016, EP&P staff presented the proposed project to the City of Oakland’s Landmarks Preservation Board to discuss the potential impact to historic resources from the proposed project which includes demolition of Hangar 2. Following these presentations, EP&P staff assisted KaiserAir and its environmental consultant on its Phase I site assessment and cultural resources review up to March 2017; however, the Port has seen little to no activity related to the environmental process since then. Also, the Port has not received a consultant report or any draft administration EIR to review.

³ The Engineering Master Fee Schedule includes an environmental review fee based on 25% of the consultant cost to prepare an Environmental Impact Report (“EIR”) under CEQA. Port staff initially estimated the cost to be at least \$100,000 to prepare the EIR. Subsequent to Port’s 2016 Permit Memo, KaiserAir received a consultant estimate of \$137,199, therefore the Port adjusted the fees to include the difference.

⁴ Full payment of the fees is required when a Port Development Permit Application is submitted. For KaiserAir, the Port modified the fee program for KaiserAir to pay in five quarterly installments.

For the reasons stated above, staff has determined that KaiserAir has not timely or diligently completed its Port Development Permit Application. Therefore, staff recommends, in addition to approving the proposed terms and conditions of a *Second Supplemental Agreement* for KaiserAir's existing occupancy, terminating all negotiations with KaiserAir, and disapproving its Port Development Permit Application No. 5109.

Staff will continue to work with KaiserAir to occupy any of the vacant premises in and around Hangars 2, 230C & 230D for any temporary or short term operational needs – and any other vacant, available properties – on a short-term, as-is basis, at rental based on FMRV. Staff has consistently assisted KaiserAir in accommodating extra aircraft operations and parking for its own needs and special events (sports charters, NASCAR racing at Sears Point, Super Bowl 50, etc.). In addition, KaiserAir recently conducted geotechnical investigations of the subsurface of the Hangars 2+ Premises for its future construction planning and design. Staff recommends the Port's reimbursement to KaiserAir for documented, third-party geotechnical consulting services in an amount not to exceed \$50,000, provided that KaiserAir deliver all completed reports and proof of payment. Staff believes the information contained in these reports would be a benefit for any future development of the Hangars 2+ Premises.

→ Limited Action on Extending Term, Adjusting Rent and/or Updating Form:

The *Lease* specifically allows KaiserAir – with the written consent of the Port – to remain in possession of the Premises on a month-to-month holding over basis. In addition, during such holdover, the Port may adjust the Rent on seven days' written notice.

In the absence of negotiating a *Second Supplemental Agreement* to extend the term, adjust the Rent and update the form of agreement, Staff recommends that Rent be adjusted based on the Monthly Rates listed in the above table so that both FBOs will be paying equivalent rents based on a fair and equitable basis. If this action is taken, the Port would also charge KaiserAir the applicable facilities Monthly Rate for Building Nos. L308 and L411, as title to these buildings will pass to the Port as of January 31, 2019.

→ No Action on Extending Term, Adjusting Rent and/or Updating Form:

As noted immediately above, the *Lease* specifically allows KaiserAir – with the written consent of the Port – to remain in possession of the Premises on a month-to-month holding over basis. The Board may choose to withhold its consent to extend the term on a month-to-month holdover basis and allow the *Lease* to expire on January 31, 2019.

BUDGET & STAFFING

During the development of the FY2018-19 Operating Budget, for the Hangar 3 West/Hangar 4 *Lease*, Staff projected a 30-month CPI rental (not FMRV) adjustment yielding approximately \$672,000 in hangar and aircraft parking revenue. If rental is adjusted based on the suggested FMRV Rates, revenue for February through June would be greater than included in the Budget by approximately \$45,350 per month, or a total of \$226,750 additional revenue for FY2018-19.

There is no staffing impact.

MARITIME AVIATION PROJECT LABOR AGREEMENT (MAPLA)

The matters included in this Agenda Report do not fall within the scope of the Port of Oakland Maritime and Aviation Project Labor Agreement (MAPLA) and the provisions of the MAPLA do not apply.

STRATEGIC PLAN

The action described herein would help the Port achieve the following goals and objectives in the Port's Strategic Business Plan (2018-2022).

<https://www.portofoakland.com/wp-content/uploads/Port-of-Oakland-Strategic-Plan.pdf>

Goal: Grow Net Revenues

Goal: Modernize and Maintain Infrastructure

LIVING WAGE

Living wage requirements, in accordance with the Port's Rules and Regulations for the Implementation and Enforcement of the Port of Oakland Living Wage Requirements (the "Living Wage Regulations"), apply to this agreement as the tenant employs 21 or more employees working on Port-related work and the tenancy agreement is greater than \$50,000.

SUSTAINABILITY

Staff reviewed the Port's 2000 Sustainability Policy and did not complete the Sustainability Opportunities Assessment Form. There are no sustainability opportunities related to this proposed action because it does not involve a development project, purchasing of equipment, or operations that presents sustainability opportunities. If and when KaiserAir develops improvement plans for the Premises, sustainability options must be included.

ENVIRONMENTAL

The Board action to approve the terms and conditions for extending the *Lease* for four years and eleven months as described above is categorically exempt from the California Environmental Quality Act (CEQA) Guidelines pursuant to Section 15301, Existing Facilities. CEQA does not apply to 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 use beyond that existing at the time of the lead agency's determination.

The Board action to terminate negotiations with KaiserAir for the redevelopment of the Hangars 2+ Premises and disapprove KaiserAir's Port Development Permit Application No. 5109 is considered not a "Project" under CEQA. CEQA Guidelines Section 15378(a) states that "Project" means the whole of an action that has a potential for resulting in either direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. The general rule in Section 15061(b)(3) of the Guidelines additionally states that CEQA applies only to activities that have a potential for causing a significant effect on the

environment. Because it can be seen with certainty that terminating negotiations and disapproving KaiserAir's Port Development Permit No. 5109 may have a significant effect on the environment, the action is not a "Project" under CEQA, and is not subject to CEQA under the General Rule Exclusion. No additional environmental review is required to take the action recommended in this Agenda Report.

GENERAL PLAN

Pursuant to Section 727 of the City of Oakland Charter, this project has been determined to conform to the policies for the transportation designation of the Oakland General Plan.

OWNER-CONTROLLED INSURANCE PROGRAM (OCIP)

The Owner Controlled Insurance Program (OCIP) does not apply to the matters addressed by this Agenda Report as they are not capital improvement construction projects.

OPTIONS

1. Approve the proposed terms and conditions detailed above to be incorporated into a *Second Supplemental Agreement* with KaiserAir, Inc. for its premises and facilities at the North Field at Oakland International Airport and authorize Staff to negotiate based on these proposed terms and conditions. In addition, approve the termination of negotiations with KaiserAir for the redevelopment of the Hangars 2+ Premises and disapprove KaiserAir's Port Development Permit Application No. 5109. Authorize the Port's reimbursement to KaiserAir for documented, third-party environmental and geotechnical consulting services in an amount not to exceed \$50,000, provided that KaiserAir deliver all completed reports and proof of payment. This is Staff's recommendation.
2. Approve alternative terms and conditions to be incorporated into a *Second Supplemental Agreement* with KaiserAir, Inc. for its premises and facilities at the North Field at Oakland International Airport and instruct Staff to negotiate based on these Board-suggested terms and conditions: approve the termination of negotiations with KaiserAir for the redevelopment of the Hangars 2+ Premises; and, disapprove KaiserAir's Port Development Permit Application No. 5109.
3. Do not approve the proposed terms and conditions to be incorporated into a *Second Supplemental Agreement* with KaiserAir, Inc. for its premises and facilities at the North Field at Oakland International Airport and instead instruct Staff to provide written consent to KaiserAir to allow for continued occupancy of the Premises on a month-to-month holding-over basis commencing February 1, 2019 and provide written notice to KaiserAir of rental adjustment based on the Monthly Rates detailed in the ANALYSIS section above, including charging KaiserAir the applicable facilities Monthly Rate for Building Nos. L308 and L411, as title to these buildings will pass to the Port as of January 31, 2019. In addition, approve the termination of negotiations with KaiserAir for the redevelopment of the Hangars 2+ Premises and disapprove KaiserAir's Port Development Permit Application No. 5109.

4. Do not approve the proposed terms and conditions to be incorporated into a *Second Supplemental Agreement* with KaiserAir, Inc. for its premises and facilities at the North Field at Oakland International Airport, do not consent to KaiserAir holding over and instead allow the *Lease* to expire as scheduled on January 31, 2019. In addition, approve the termination of negotiations with KaiserAir for the redevelopment of the Hangars 2+ Premises and disapprove KaiserAir's Port Development Permit Application No. 5109.

RECOMMENDATION

It is recommended that the Board pass a resolution:

- Approving the proposed terms and conditions detailed above to be incorporated into a *Second Supplemental Agreement* with KaiserAir, Inc. for its premises and facilities at the North Field at Oakland International Airport and authorize Staff to negotiate based on these proposed terms and conditions; and in the absence of successfully negotiating a *Second Supplemental Agreement*,
- Instructing Staff to provide written consent to KaiserAir to allow for continued occupancy of the Premises on a month-to-month holding-over basis commencing February 1, 2019 and provide written notice to KaiserAir of rental adjustment based on the Monthly Rates detailed in the ANALYSIS section above, and charging KaiserAir the applicable facilities Monthly Rate for Building Nos. L308 and L411, as title to these buildings will pass to the Port as of January 31, 2019;
- Approving the termination of negotiations with KaiserAir for the redevelopment of the Hangars 2+ Premises;
- Disapprove KaiserAir's Port Development Permit Application No. 5109; and,
- Authorizing the Port's reimbursement to KaiserAir for documented, third-party environmental and geotechnical consulting services in an amount not to exceed \$50,000, provided that KaiserAir deliver all completed reports and proof of payment.

Subject to approval by the Port Attorney as to form and legality, and with the understanding that Staff will return to the Board to seek adoption of an ordinance to approve the final, negotiated terms and conditions of a *Second Supplemental Agreement* with KaiserAir, Inc.