

## AGENDA REPORT

**Ordinance:** Approve the Terms and Conditions of an *Amended and Restated Space/Use Permit* with each of the Four Food & Beverage Concessionaires Operating at Oakland International Airport; Specifically: HFF OAK Venture, LLC; Rylo Management; Soaring Food Group II, LLC; and, SSP America OAK, LLC to Modify each Existing *Space/Use Permit* ("SUP") including: (1) Adopting Construction Schedules and Commencement of Payment of Minimum Annual Guarantee based on the Percentage of Enplaned Passengers Compared to CY2019; (2) Extending the Term of Each SUP through March 31, 2033 plus Two One-Year Options for the Port to Extend (Latest Expiration of March 31, 2035); (3) Adjusting the Calculation of Minimum Annual Guarantee; (4) Adding a New 15% Tier for Food Sales to the Percentage of Gross Revenues Calculation Effective January 1, 2026; (5) Setting the Date for Contributions to the Marketing Fund; (6) Adjusting and Setting the Date for Contributions to the Mid-Term Refurbishment Fund; (7) Deleting One Unit from the Definition of Assigned Space with HFF OAK Venture, LLC; (8) Authorizing the Executive Director to Approve a Change in Concept; and (9) Authorizing the Executive Director to Execute each *Amended and Restated Space/Use Permit* and Any Other Documents Necessary to Effect These Modifications; all for the Food & Beverage Concessions Program at Oakland International Airport. **(Aviation)**

**MEETING DATE:** 4/22/2021

**AMOUNT:** \$2.131 Million Revenue for FY2020-21

**PARTIES INVOLVED:**

**HFF OAK Venture, LLC – Package #2**  
Glenn Meyers, CEO; Sausalito, CA  
High Flying Foods (89% Managing Partner)  
Andalé Management Group  
(8% ACDBE Partner)  
RDJ Enterprises  
(3% ACDBE Partner)  
NNF Grewal/Subway (ACDBE Subtenant)

**Rylo Management (ACDBE) – Package #4**  
Gina Graziano, CEO; San Rafael, CA

**Soaring Food Group II, LLC (ACDBE) – Package #3**  
Joseph G. Cook, CEO; Berkeley, CA

**SSP America OAK, LLC – Package #1**  
Pat Murray, Executive Vice President; Ashburn, VA  
SSP America, Inc. (70% Managing Partner)  
Shonda Scott, 360 Total Concept Consulting  
(20% ACDBE Partner)  
Nikki Shaw, Wystone Starlight Concessions  
(10% ACDBE Partner)

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

**APPROVED BY:**

Danny Wan, Executive Director

**ACTION TYPE:**

Ordinance

**EXECUTIVE SUMMARY**

With the drastic impacts of the COVID-19 Pandemic on the aviation industry, including airport concessions and the F&B Concessions Program at OAK, the Board adopted Ordinance No. 4570 on July 23, 2020, which provided rent relief to the F&B Concessionaires and other changes to the *SUPs*.

Staff is recommending further revision to the *SUPs* that would benefit from incorporating the changes authorized by Ordinance Nos. 4545 and 4570, plus additional modifications. Rather than further amend each *SUP*, Staff is recommending the Port enter into the proposed *Restated SUP* with each F&B Concessionaire that would:

1. Adopt construction milestones for each Unit based on OAK's recovery of the number of enplaned passengers (ENPs) as compared to the same months in CY2019;
2. Extend the Term to March 31, 2033 plus two one-year options for the benefit of the Port;
3. Adjust the Minimum Annual Guarantee ("MAG") by eliminating the \$250 per square foot MAG for Units less than 1,000 square feet and combining those Units into a revised category of 5,000 square feet or less, reduce MAG on the same percentage as ENPs, and authorize waiver of MAG should there be a severe decline in passenger traffic defined as a decrease by 20% or more from the same month in the prior year;
4. Add a new percentage rent tier of 15% of gross sales of food in excess of \$3 Million (for Units <2,500 square feet) or \$4 Million (for Units >2,500 square feet) annually on a unit-by-unit basis to become effective January 1, 2026;
5. Adjust the commencement date for contributions to the Marketing Fund to be the fourth month after each Unit's opening date;
6. Contributions to the Mid-Term Refurbishment Fund would commence 18 months after each Unit's opening date and contributions could be satisfied by providing a Letter of Credit vs. payment of cash into an escrow fund;
7. Delete Unit No. T2-FB-G24 (commonly referred to as the Terminal 2 Food Court) from the definition of Assigned Space from the *SUP* with HFF OAK Venture, LLC;
8. Delegate to the Executive Director the authority to allow F&B Concessionaires to change the concepts of Units if required because of the failure/closure of a street-side local concept, including type of F&B operation (e.g., Full Service, Quick Serve, Fast Casual, etc.); and,
9. Authorize the Executive Director to execute each *Restated SUP* and other documents that may be necessary to effect these proposed modifications, tenancies and operations.

## **BACKGROUND**

On May 4, 2018 Aviation Staff released the F&B RFP; the terms and conditions are detailed in Attachment “A”. Proposals were due on July 27, 2018. Nineteen (19) Proposals were received from twelve (12) Respondents covering the four (4) packages. Staff reviewed the Proposals and deemed that all met the minimum qualifications. An independent, competitive review, evaluation, presentation and scoring process resulted in the Board awarding the packages to four respondents (Ordinance No. 4498) (the “F&B Concessionaires”):

<b>Package</b>	<b>Awardees</b>
No. 1:	SSP America OAK, LLC
No. 2:	HFF Oak Venture, LLC
No. 3:	Soaring Food Group, LLC <sup>1</sup>
No. 4:	Rylo Management

Effective at midnight on January 31, 2019/February 1, 2019, the former food and beverage operators – Andalé Management Group, Inc.; Host International, Inc., and Gotham Foods Two LLC – formally ceased operations and the four Awardees/new F&B Concessionaires began their interim/temporary operations and redevelopment of all seventeen Units. Throughout 2019, the F&B Concessionaires and their design teams refined the architectural plans and specifications for the Units to be redeveloped and constructed. Also during this time, both Port Staff and the F&B Concessionaires identified a few areas in each *SUP* that would benefit from clarification, update and/or amendment. Pursuant to Ordinance No. 4545 adopted January 23, 2020, the Board approved the following changes to the *SUPs*:

- Increased benefits surcharge to five percent (5%) from three (3%), effective on the first day of the month following opening of each individual Unit.
- Required F&B Concessionaires to offer and advertise:
  - “Value Menu” at initial price of no more than \$10 per meal (minimum inclusion of entrée and drink) at all units;
  - Rotating “Deal-of-the-Day” at a \$15 price point for entrée and drink; and,
  - And allowed F&B Concessionaires the opportunity to request from the Director of Aviation – each January 1<sup>st</sup> – an increase in the price of the “Value Menu” and the “Deal-of-the-Day”, which may or may not be approved at Port’s sole discretion.
- Required the Concessionaires to contribute toward the cost of employee transportation/parking (with Concessionaires and Labor Representatives to determine method of payment).
- Extended the Expiration Date of each *SUP* from December 31, 2029 to March 31, 2030 (three-month extension).

---

<sup>1</sup> Pursuant to Resolution No. 20-03 (January 23, 2020), the Board consented to the assignment of the *SUP* from Soaring Food Group, LLC to Soaring Food Group II, LLC.

- Added the Commissary Kitchen in Terminal 1 to the definition of Assigned Space for SSP.
- Added an option for the Port to utilize the F&B Concessionaires' architect- or contractor-produced as-built drawings to establish square footage of Units.
- Formally incorporated into the HFF and SSP *SUPs* the New Units to be constructed within the demolished Terminal 2 Moving Walkway.
- Confirmed the Commencement Date of Required Payments into Marketing Fund.
- Confirmed the Commencement Date of Required Payments into Refurbishment Fund.
- Extended the Rent Commencement Date from a uniform January 1, 2020 for all F&B Concessionaires to a unit-by-unit basis with earliest Rent Commencement Date of May 1, 2020 and Latest of October 1, 2020.
- Delegated to the Director of Aviation the authority to approve reimbursement for F&B Concessionaires to construct and/or install certain Port-obligated improvements outside the Assigned Space, at an amount not to exceed \$100,000 per Unit.
- Required Concessionaires' to provide a detailed Facility and Equipment Maintenance Plan for each Unit.
- Authorized Concessionaires' installation of game and vending machines (e.g., automated specialty coffee machines).
- Obligated Concessionaires to provide detailed Quarterly Reports to augment the required monthly sales reports used to calculate percentage of gross sales due to the Port.
- Amended SSP's *SUP* to provide an exception to the Tenant Design Standards ("TDS") by allowing a door between the Sterile Area and kitchen to remain unlocked during Operating Hours.

The amendments to document these changes/updates were never finalized with the F&B Concessionaires prior to the beginning of March 2020, when the COVID-19 Pandemic erupted. All redevelopment and construction activities abruptly ceased as passenger traffic plummeted; for several weeks in Spring 2020, just two food and beverage units – one in each terminal – were operating. Gross F&B Concessions sales plunged 98% year-over-year, from \$3.9 million in April 2019 to \$72K in April 2020.

In July 2020, the Board provided limited rent relief to the passenger and air cargo airlines, and many types of Airport concessionaires: Advertising, Escape Lounge, Metro Golf Links, Passenger Convenience ATMs and vending machines), Rental Cars, Retail & Duty Free, and the Wine Bar. Specifically, on July 23, 2020, the Board adopted Ordinance No. 4570 which provided the following rent relief to the F&B Concessionaires:

1. Retroactive waiver of MAG payments from January 2020 through December 2020; and,
2. Suspension of payments into the Marketing and Mid-Term Refurbishment Funds;

Concurrent with providing this rent relief, the F&B Concessionaires agreed to work with Staff to develop a “Path Forward” for how and when the F&B Concessions Program would restart design and construction, and then return to the Board prior to year-end with a detailed proposal, including milestones and obligations. Based on this Path Forward, each *SUP* would be further amended. As detailed below, Staff and the F&B Concessionaires have developed a Path Forward documented in an *Amended and Restated Space/Use Permit*.

In March 2021, the Board also approved an amendment to the *SUP* with HFF to delete one Concession Unit from the Assigned Space (T2-FB-C2-1), and to simultaneously enter into a new *SUP* with NFF Grewal, Inc. for such Concession Unit under the same terms and conditions as with the four other F&B Concessionaires.

## **ANALYSIS**

1. **Construction Milestones:** With passenger traffic drastically reduced from pre-COVID numbers, Airports throughout the country are grappling with how to re-open concessions to provide passengers with adequate retail, restaurant, coffee bar and quick serve food opportunities while also not financially burdening the concessionaires with excessive expenses to be covered by far fewer customers. For airport concessions, the general consensus is using current period enplaned passengers (ENPs) measured against Calendar or Fiscal Year 2019 as a baseline. As shown in Table #1 below, in FY2019, 6,807,800 passengers (ENPs) boarded flights at Oakland International Airport:

**Table 1**  
**Passengers (000) and Percentage Comparisons**

Month	Actual Passengers		FY21 Actual or <i>Forecast</i>	FY21 vs. FY19	
	FY19	FY20		% Decrease	% of
July	654.50	614.00	172.09	-73.71%	26.29%
August	645.70	590.90	155.49	-75.92%	24.08%
September	563.50	559.50	161.41	-71.36%	28.64%
October	577.10	563.00	184.22	-68.08%	31.92%
November	563.80	537.80	175.49	-68.87%	31.13%
December	558.60	579.70	167.09	-70.09%	29.91%
January	462.50	442.60	131.71	-71.52%	28.48%
February	441.60	424.40	153.96	-65.14%	34.86%
March	552.90	217.80	255.00	-53.88%	46.12%
<b>April</b>	562.40	22.50	305.00	-45.77%	<b>54.23%</b>
<b>May</b>	605.50	53.50	350.00	-42.20%	<b>57.80%</b>
<b>June</b>	619.70	130.00	398.54	-35.69%	<b>64.31%</b>
	<b>6,807.80</b>	<b>4,735.70</b>	<b>2,610.00</b>	<b>-61.66%</b>	<b>38.34%</b>

The Port’s adopted FY2020-21 Operating Budget anticipated 3,082,000 ENPs; however, Staff is now forecasting a reduced 2,610,000 ENPs for FY2020-21, which represents a decrease of 61.66% from FY2018-19, or 38.34% of that year’s enplanements.

For the aviation industry – especially airports and concessionaires, the “Big Question” is when will enplanements recover? Moody’s Investors Service<sup>2</sup> predicts:

*“Air travel will largely recover after medical treatments make travelers more comfortable... Our faster and slower recovery cases have passenger demand remaining well below 2019 levels through 2023. We expect travel volume will be significantly depressed until medical treatments, which may include a vaccine, allay consumer safety concerns about travel and allow looser travel restrictions, quarantine requirements and reopenings at tourist destinations. After consumer concerns abate, the timing and strength of the economic recovery and the state of the airline industry will ultimately drive the airport sector’s recovery.”*

In the near term, Staff and the F&B Concessionaires have negotiated the construction and opening of four Units in CY2021 plus other items, regardless of enplanements:

- A. Grewal NNF, Inc.<sup>3</sup> – Subway on or before June 30, 2021: Unit T2-FB-C2-1 in Terminal 2 replacing moving walkway between Gates 25 and 26; operated by ACDBE-participant Gurinder and Navdeep Grewal.
- B. HFF – Oaklandish Coffee Collective: Unit T1-FB-G4 in Terminal 1 near Gates 3 and 4 should open within 180 days from the date the Board adopts the ordinance approving the *Restated SUP* (prior to year-end 2021).
- C. SSP:
  - a. Peet’s Coffee: Unit T2-FB-G27 in Terminal 2 across from Gate 27 should open within 150 days from the date the Board adopts the ordinance approving the *Restated SUP* (late autumn 2021); and,
  - b. Sierra Nevada: Unit T2-FB-G28 in Terminal 2 near Gate 29 should open within 180 days from the date the Board adopts the ordinance approving the *Restated SUP* (prior to year-end 2021).
- D. If either HFF or SSP has not commenced construction on the Units referenced above in Sections 1.B. or 1.C. within 90 days of from the date the Board adopts the ordinance approving the *Restated SUP*, the Port shall have the right to terminate the *SUP* by providing written notice to HFF or SSP. Such notice of termination shall be exclusive to the benefit of the Port and shall not be considered a notice of default subject to cure by either HFF or SSP.
- E. Within 90 days of the date the Board adopts the ordinance approving the *Restated SUP*, Construction Barricades as defined in the TDS shall be designed, approved by the Port and installed at the following Units which are not expected to be constructed until ENPs reach either the 65% or 80% Milestone as defined below (i) by SSP at Unit T1-FB-1; (ii) by HFF at Units T1-FB-G8A and T2-FB-G30; and (iii) by Soaring at Unit T1-FB-G9. At the expiration of the 90-day period, if either SSP, HFF or Soaring fails to install the Construction Barricade, the Port shall have the right to construct the Construction

---

<sup>2</sup> Moody’s Investor Service, Infrastructure And Project Finance, Sector-In-Depth, 17 September 2020.

<sup>3</sup> The Grewals were formerly subtenants of HFF; pursuant to separate Board action, the Subway Unit was deleted from HFF’s Assigned Space and a new *Space/Use Permit* has been entered into with NFF Grewal, Inc. for the space.

Barricade and seek immediate reimbursement from SSP, HFF or Soaring, as applicable.

- F. As originally contemplated, effective February 1, 2019 the F&B Concessionaires would continue operating all existing Units, some under the same brand names (e.g., Pyramid Ale House) or rebranded (Starbucks to Peet's Coffee) or proprietary brands. These "old" Units would sequentially close for reconstruction and reopen under the brands included in the Proposals. Due to the delays caused by the COVID-19 Pandemic, some "old" Units are still operating or may re-open as passenger traffic slowly recovers – on a temporary basis. The *Restated SUP* would include the Aviation Director's authority to unilaterally close the interim Units when nearby Units open after reconstruction.

After construction and opening of these first four Units, redevelopment of additional Units will advance using set percentages of ENPs – with Base Year CY2019 – as the milestones/triggers for commencing construction, redeveloping and opening units. As proposed, the milestones would be the actual Average ENP for three consecutive months equaling 50%, 65% and 80% of CY2019 enplanements, and for Units located in Terminal 1, those ENPs would be calculated for all airline passengers except Southwest Airlines.

For instance, referencing Table #1, beginning in April 2021, the Budget forecasts three consecutive months (April, May and June highlighted **yellow**) that equal or exceed 50% of CY2019 enplanements. Hypothetically and assuming the actual ENPs equal budgeted ENPs, at this point Staff would notify the Concessionaires that the "50% Milestone" has been met and certain redevelopment activities must commence.

For future fiscal years, the Port has not forecast enplanements on a monthly basis; however, as shown on Table #2 below, the Budget does not anticipate ENPs to return to FY2019 level until after FY2026.

**Table 2**

Year	PAX (000)	Fiscal Year vs. FY19	
		% Change	% of
FY2019	6,808.0	0.0%	100.0%
FY2020	4,736.0	-30.4%	56.3%
FY2021	2,610.00	-61.66%	38.34%
FY2022	3,744.31	-45.00%	55.00%
FY2023	4,815.00	-29.27%	70.73%
FY2024	5,296.00	-22.21%	77.79%
FY2025	5,826.00	-14.42%	85.58%
FY2026	6,409.00	-5.86%	94.14%

65% of 2019 ENP  
in mid-2023

Sometime in  
early 2025 at 80%  
of 2019 ENP

As projected, sometime in mid FY2023 OAK should hit 65% of 2019 enplanements; and sometime in early FY2025, we should be at 80% of 2019 enplanements.

A schedule of construction milestones and Units included in each phase is detailed in Attachment "B" – Consolidated Modifications as agreed to by Staff and the F&B Concessionaires.



2. Term: As detailed in the Background section, pursuant to Ordinance No. 4545, the Board extended the Term through March 31, 2030, which at the time seemed an adequate length of time to amortize the significant capital investment. However, with the COVID19-related delay in commencing the redevelopment of the Units that could stretch out into the next few years, Staff and the F&B Concessionaires have determined that extending the Term by an additional three years through March 31, 2033 should be adequate. In addition, the Port would be provided two one (1)-year options to extend, with a latest expiration date of March 31, 2035.
3. Minimum Annual Guarantee: As currently defined in Attachment “A” Paragraph F.2., minimum annual guarantee (“MAG”) is a graduated scale based on size and location of each Unit. Payment of MAG should have kicked-in on the earlier of opening after reconstruction or January 1, 2020. With no Units yet under construction and the due date long past, Rent Commencement will be tied to the ENP milestones; details are shown on Attachment “B”; specifically:
  - A. MAG would remain waived for closed, Transition Units<sup>4</sup> or under-construction Units.
  - B. Eliminate the \$250 per square foot MAG for the smallest Units (<1,000 square feet) and combine with the next level; therefore, MAG would be \$200 per square foot for Units up to 5,000 square feet. This change would impact both Peet’s Coffee locations operated by SSP, plus HFF’s Southie.
  - C. MAG would be tied to ENP percentages, so that if ENPs are at 65%, a smaller Unit’s MAG would start at \$130 per square foot ( $\$200 \times 65\% = \$130$ ).
  - D. After the Port provides notice that an ENP milestone has been reached, F&B Concessionaires would have either 150 days (smaller Units) or 180 days (Units >1,000 square feet) to construct and open Units or MAG will kick-in regardless if the Unit is open and operating.
  - E. If the aviation industry experiences another significant decrease in passenger traffic, MAGs will be automatically suspended until traffic recovers (percentage and any other rental obligations would remain due and payable).
4. Percentage Rental: To partially offset the significant loss of revenue suffered by the Port, in five years (effective January 1, 2026) a new percentage rent step would take effect; 15% of gross food sales in excess of:
  - A. \$3 Million for Units <2,500 square feet, or
  - B. \$4 Million for Units >2,500 square feet.
5. Marketing Fund: Currently, contributions to the Marketing Fund are set at the rate of 0.5% of Gross Receipts commencing upon the first month of operation. Staff is recommending contributions would commence on the first day of the fourth month following the opening date of each Unit.
6. Mid-Term Refurbishment Fund: Currently, F&B Concessionaires are required to pay on a monthly basis into an “escrow” account so that there will be funds available to complete

---

<sup>4</sup> Transition Units are those Units operated by one of the F&B Concessionaires that have not been redeveloped and are operating on an interim basis.



mid-term refurbishments five years into the Term. In five years, the escrowed amount would be \$150 per square foot, which calculates as \$2.50 per square foot per month (\$150 per square foot ÷ 60 months). Staff and the F&B Concessionaires have negotiated the following:

- A. Rather than reduce the amount to be contributed to the Mid-Term Refurbishment Fund, the Port will waive rental for Storage Space through December 31, 2021 (occupancy of Storage Space is covered by separate agreements which will be submitted to the Board in the near future);
  - B. Contributions to the Mid-Term Refurbishment Fund will re-commence on the first day of 18<sup>th</sup> month after the opening date of each Unit;
  - C. With staggered opening dates of each Unit, the “Mid-Term” will be defined as the point in time half-way between each Unit’s opening date and the March 31, 2033 expiration date of the *Restated SUP*;
  - D. In lieu of depositing cash, a substitution of a Letter of Credit for the total required amount would satisfy the contributions to the Mid-Term Refurbishment Fund.
  - E. Any and all contributions already made by each F&B Concessionaire would remain in the escrow account.
7. Delete T2 Food Court Unit: HFF has determined that it will be financially infeasible to redevelop the Terminal 2 “Food Court” (Unit T2-FB-G25) as contemplated in its Proposal designated as “The Hangar” featuring Brown Sugar Kitchen, Drake’s Brewing and Red Bay Coffee; therefore, Staff will be recommending that this Unit be deleted from the definition of Assigned Space for HFF.
8. Change in Concepts: If required because of the failure/closure of a street-side local concept or for other operational reasons, Staff is recommending the Executive Director be granted the authority to approve a substitution of a new concept, including type of F&B operation (e.g., Full Service, Quick Serve, Fast Casual, etc.).
9. Transition Plan: As originally contemplated, effective February 1, 2019 the F&B Concessionaires would continue operating all existing Units, some under the same brand names (e.g., Pyramid Ale House) or rebranded (Starbucks to Peet’s Coffee) or proprietary brands. These “old” Units would sequentially close for reconstruction and reopen under the brands included in the Proposals. Due to the delays caused by the COVID-19 Pandemic, some “old” Units are still operating or may re-open as passenger traffic slowly recovers – on a temporary basis. The *Restated SUP* would include the Aviation Director’s authority to unilaterally close the interim Units when nearby Units open after reconstruction.

## **BUDGET & STAFFING**

The adopted FY2020-21 Operating Budget forecast F&B Concessions revenue of \$2,131,135 (not including revenues from the Escape Lounge); based on year-to-date percentage rentals paid, anticipated revenues for the balance of the fiscal year are expected to meet or exceed

budget. The Board's approval of the proposed modifications as detailed in this Agenda Report would not materially affect the revenue projections for the balance of FY2020-21.

There would be no impact to Staffing.

### **AVIATION PROJECT LABOR AGREEMENT (MAPLA)**

The Port of Oakland Maritime and Aviation Project Labor Agreement (MAPLA) applies to these tenant projects to the extent the Port will be issuing building permits for such work.

### **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: Improve Customer Service

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 the *Restated SUP* for each of the Four Food & Beverage Concessionaires and all its subtenants that operates concessions, regardless of the number of employees each may employ to operate as "Port-Assisted Businesses" as defined by provisions of Oakland Charter Section 728 and the Living Wage Ordinances.

The proposed *Restated SUP* make no changes to the Living Wage requirements.

### **SUSTAINABILITY**

Each *Restated SUP* references the Board-adopted Resolution No. 20467: Resolution Implementing Port Sustainability Policy and incorporates a "Green Concessions Program" as detailed in the attached Attachment "C", which is being updated to conform with Alameda County Health Department's COVID-19 related requirements and acknowledging later opening dates of all Units. In addition, the TDS (also incorporated into the *SUPs*) contains detailed sustainability and LEED requirements.

OAK's updated Food & Beverage Program and each *Restated SUP* requires the F&B Concessionaires to implement specific actions and investments related to appliance selection, cleaning methods and products, construction and demolition waste management, energy efficiency and performance, food donation, HVAC equipment, indoor air quality, lighting, materials selection, resource use, service ware and supplies, waste reduction, waste receptacles, and water performance.

The proposed *Restated SUP* make no changes to the Sustainability requirements.

## **ENVIRONMENTAL**

The Board's previous action to accept the Evaluation Committees' recommendation of Concessionaires and approving entering into the *SUPs* was determined to be exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15301 "Existing Facilities" of the CEQA Guidelines 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. Approval of the Concessionaires falls within this class of exemptions. 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)**

This project is not subject to the Port's Owner Controlled Insurance Program (OCIP) as it is not a capital improvement construction project.

## **OPTIONS**

1. Approve the terms and conditions of an *Amended and Restated Space/Use Permit* with each of the Food & Beverage Concessionaires – HFF Oak Venture, LLC ("HFF"); Rylo Management, LLC; Soaring Food Group II, LLC; and, SSP America OAK, LLC ("SSP") (collectively, the "F&B Concessionaires") – that will include the terms and conditions previously authorized by Port Ordinance Nos. 4498 and 4545, subject to the following modifications:
  - A. Construction Milestones tied to Current Enplaned Passenger Volume compared to same period in CY2019, including:
    - i. HFF to construct and open Oaklandish Coffee Collective (Unit T1-FB-G4) within 180 days from the date the Board adopts the ordinance approving the *Restated SUP*;
    - ii. If HFF has not commenced construction on Unit T1-FB-G4 within 90 days of from the date the Board adopts the ordinance approving the *Restated SUP*, the Port shall have the right to terminate the *Restated SUP* by providing five days written notice to HFF. Such notice of termination shall be exclusive to the benefit of the Port and shall not be considered a notice of default subject to cure by HFF;
    - iii. SSP to construct and open Peet's Coffee (Unit T2-FB-G27) within 150 days from the date the Board adopts the ordinance approving the *Restated SUP*;
    - iv. SSP to construct and open Sierra Nevada (Unit T2-FB-G28) within 180 days from the date the Board adopts the ordinance approving the *Restated SUP* (prior to year-end 2021); and,

- v. If SSP has not commenced construction on both Units T2-FB-G27 and T2-FB-G28 within 90 days of from the date the Board adopts the ordinance approving the *Restated SUP*, the Port shall have the right to terminate the *Restated SUP* by providing five days written notice to SSP. Such notice of termination shall be exclusive to the benefit of the Port and shall not be considered a notice of default subject to cure by SSP.
  - vi. Thereafter, redevelopment of Units will advance using set ENPs of 50%, 65% and 80% of CY2019 enplanements, and for Units located in Terminal 1, those ENPs would be calculated for all airline passengers except Southwest Airlines.
- B. Term to be extended by an additional three years through March 31, 2033; in addition, the Port would be provided two one (1)-year options to extend, with a latest expiration date of March 31, 2035.
- C. Minimum Annual Guarantee (“MAG”) (total of \$4,749,700 for all four F&B Concessionaires) to be adjusted as follows:
- i. MAG to be waived for closed Units, Transition Units and/or under-construction Units;
  - ii. Eliminate the \$250 per square foot MAG for the smallest Units (<1,000 square feet) and combine with the next level; therefore, MAG would be \$200 per square foot for Units up to 5,000 square feet (and remain at \$100 per square foot for Units >5,000 square feet);
  - iii. MAG to be tied to enplaned passenger (“ENP”) percentages of 50%, 65% and 80% compared to CY2019 ENPs and the Port to provide notice to F&B Concessionaires when these “milestones” have been achieved;
  - iv. After the Port provides notice that an ENP milestone has been reached, F&B Concessionaires to have either 150 days (Units <1,000 square feet) or 180 days (Units >1,000 square feet) to construct and open Units or MAG will kick-in regardless if the Unit is open and operating; and,
  - v. Provide that if the aviation industry experiences another significant decrease in passenger traffic similar to COVID-19 Pandemic, MAGs will be automatically suspended until traffic recovers (percentage and any other rental obligations would remain due and payable).
- D. A new Percentage Rent effective as of January 1, 2026 of 15% of gross sale on food items in excess of:
- i. \$3 Million for Units <2,500 square feet, or
  - ii. \$4 Million for Units >2,500 square feet.
- E. Unit T2-FB-G25 to be deleted from the definition of Assigned Space in the *Restated SUP* with HFF.
- F. Contributions (0.5% of Gross Receipts) to the Marketing Fund to commence on the first day of the fourth month following the opening date of each Unit.

- G. Contributions to the Mid-Term Refurbishment Fund F&B Concessionaires will commence on the 1<sup>st</sup> day of the 18<sup>th</sup> month after the opening date of each Unit, and:
- i. With staggered opening dates of each Unit, the “Mid-Term” will be defined as the point in time half-way between each Unit’s opening date and the March 31, 2033 expiration date of the *Restated SUP*;
  - ii. In lieu of depositing cash, a substitution of a Letter of Credit for the total required amount would satisfy the contributions to the Mid-Term Refurbishment Fund.
  - iii. Any and all contributions already made by each F&B Concessionaire would remain in the escrow account.
  - iv. Rather than reduce the amount to be contributed to the Mid-Term Refurbishment Fund, the Port will waive rental for Storage Space through December 31, 2021 (occupancy of Storage Space is covered by separate agreements which will be submitted to the Board in the near future);
  - v. If required because of the failure/closure of a street-side local concept or for other operational reasons, the Executive Director would be granted the authority to approve a substitution of a new concept, including type of F&B operation (e.g., Full Service, Quick Serve, Fast Casual, etc.).
- H. The Aviation Director to be granted authority to unilaterally close a Transition Unit operated by HFF or SSP when a nearby Unit opens after its reconstruction.

This is Staff’s recommendation.

2. Do not approve any or all of the proposed changes to the existing *Space/Use Permits* with the four new Food & Beverage Concessionaires which would, among other things:
- A. Require payment of Minimum Annual Guarantee – \$4,749,700 – for all Units to commence retroactively to January 1, 2021 even though none of the Units will have been redeveloped and opened;
  - B. Require HFF to construct the T2 Food Court – The Hangar – even though HFF has claimed it cannot finance the necessary capital improvements;
  - C. Force the Concessionaires to absorb more of the increased per-employee wage and benefits costs by not increasing the Benefits Fee from 3% to 5%;
  - D. Leave the expiration date as December 31, 2030 which would not be adequate term to amortize the significant capital investment in the 17 Units;
  - E. Require the Port to design and construct required off-premises improvements to benefit the Units and/or common areas;
  - F. Require contributions to the Marketing Fund to commence February 1, 2021 and to the Mid-Term Refurbishment Fund effective January 1, 2022 (as previously authorized by Ordinance No. 4545); and,

G. Keep the concepts in place that were included in the Proposals even though the “local” street-side outlets may no longer be in business.

Such action would cause financial hardship for the F&B Concessionaires which could lead to default and termination of one or more of the *SUPs*.

3. Reject some or all of Staff’s proposed modifications to the F&B Concessionaires’ *SUPs* as detailed above, recommend alternative changes, and instruct Staff to renegotiate different terms for the existing *Space/Use Permit*.

## **RECOMMENDATION**

It is recommended that the Board adopt an ordinance to approve the terms and conditions of an *Amended and Restated Space/Use Permit (the “Restated SUP”)* with each of the Food & Beverage Concessionaires – HFF Oak Venture, LLC (“HFF”); Rylo Management, LLC; Soaring Food Group II, LLC; and, SSP America OAK, LLC (“SSP”) (collectively, the “F&B Concessionaires”) – that will include the terms and conditions previously authorized by Port Ordinance Nos. 4498 and 4545, subject to the following modifications:

- Establish Construction Milestones tied to Current Enplaned Passenger Volume compared to same period in CY2019, including:
  - Requiring HFF to construct and open Oaklandish Coffee Collective (Unit T1-FB-G4) within 180 days from the date the Board adopts the ordinance approving the *Restated SUP*;
  - Authorizing the Executive Director to terminate the *Restated SUP* by providing five days written notice to HFF if HFF has not commenced construction on Unit T1-FB-G4 within 90 days of from the date the Board adopts the ordinance approving the *Restated SUP*. Such notice of termination shall be exclusive to the benefit of the Port and shall not be considered a notice of default subject to cure by HFF;
  - SSP to construct and open Peet’s Coffee (Unit T2-FB-G27) within 150 days from the date the Board adopts the ordinance approving the *Restated SUP*;
  - SSP to construct and open Sierra Nevada (Unit T2-FB-G29) within 180 days from the date the Board adopts the ordinance approving the *Restated SUP* (prior to year-end 2021); and,
  - Authorizing the Executive Director to terminate the *Restated SUP* by providing five days written notice to SSP if SSP has not commenced construction on both of Units T2-FB-G27 and T2-FB-G29 within 90 days of from the date the Board adopts the ordinance approving the *Restated SUP*. Such notice of termination shall be exclusive to the benefit of the Port and shall not be considered a notice of default subject to cure by SSP.
  - For all other Units, the construction schedule will advance using set ENPs of 50%, 65% and 80% of CY2019 enplanements, and for Units located in Terminal 1, those ENPs would be calculated for all airline passengers except Southwest Airlines.



- Extend the Term by an additional three years through March 31, 2033; in addition, the Port would be provided two one (1)-year options to extend, with a latest expiration date of March 31, 2035.
- Adjust the Minimum Annual Guarantee (“MAG”) as follows:
  - MAG to be waived for closed Units, Transition Units and/or under-construction Units;
  - Eliminate the \$250 per square foot MAG for the smallest Units (<1,000 square feet) and combine with the next level; therefore, MAG would be \$200 per square foot for Units up to 5,000 square feet (and remain at \$100 per square foot for Units >5,000 square feet);
  - MAG to be tied to enplaned passenger (“ENP”) percentages of 50%, 65% and 80% compared to CY2019 ENPs and the Port to provide notice to F&B Concessionaires when these “milestones” have been achieved;
  - After the Port provides notice that an ENP milestone has been reached, F&B Concessionaires to have either 150 days (Units <1,000 square feet) or 180 days (Units >1,000 square feet) to construct and open Units or MAG will kick-in regardless if the Unit is open and operating; and,
  - Provide that if the aviation industry experiences another significant decrease in passenger traffic similar to the COVID-19 Pandemic, MAGs will be automatically suspended until traffic recovers (percentage and any other rental obligations would remain due and payable).
- Establish a new Percentage Rent effective as of January 1, 2026 of 15% of gross sale on food items in excess of:
  - \$3 Million for Units <2,500 square feet, or
  - \$4 Million for Units >2,500 square feet.
- Delete Unit T2-FB-G25 from the definition of Assigned Space in the *Restated SUP* with HFF.
- Set the commencement date for F&B Concessionaires’ contributions (0.5% of Gross Receipts) to the Marketing Fund to be the first day of the fourth month following the opening date of each Unit.
- Set the commencement date for F&B Concessionaires’ contributions to the Mid-Term Refurbishment Fund F&B Concessionaires as the 1<sup>st</sup> day of the 18<sup>th</sup> month after the opening date of each Unit, and:
  - With staggered opening dates of each Unit, the “Mid-Term” will be defined as the point in time half-way between each Unit’s opening date and the March 31, 2033 expiration date of the *Restated SUP*;
  - In lieu of depositing cash, a substitution of a Letter of Credit for the total required amount would satisfy the contributions to the Mid-Term Refurbishment Fund;
  - Any and all contributions already made by each F&B Concessionaire would remain in the escrow account; and

- Rather than reduce the amount to be contributed to the Mid-Term Refurbishment Fund, the Port will waive rental for Storage Space through December 31, 2021 (occupancy of Storage Space is covered by separate agreements which will be submitted to the Board in the near future).
  - Authorize the Executive Director to approve a substitution of a new concept, including type of F&B operation (e.g., Full Service, Quick Serve, Fast Casual, etc.), if required because of the failure/closure of a street-side local concept or for other operational reasons, the Executive Director would be granted the authority.
  - Authorize the Aviation Director to unilaterally close a Transition Unit operated by HFF or SSP when a nearby Unit opens after reconstruction.
  - Authorize the Executive Director to execute each *Amended and Restated Space/Use Permit* and any other documents necessary to effect these proposed modifications;
- Subject to approval by the Port Attorney as to form and legality.

## ATTACHMENT “A”

The below outline describes the terms and conditions contained in the “Four Separate Food & Beverage Concessions Opportunities at Oakland International Airport” Request for Proposals issued by the Port on May 4, 2028:

**The Packages:** The packages are briefly described in the below table with the awarded Concessionaire shown:

Package	Proposed Assigned Space (Estimated Square Feet)	Awardees
No. 1:	Seven Units in T1 & T2, including one unit at T1 Pre-Security (Total 11,480± Square Feet)	SSP America OAK, LLC
No. 2:	Eight Units in T1 & T2, including one unit at T2 Pre-Security (Total 13,186± Square Feet)	HFF Oak Venture, LLC
No. 3:	Independent/Small Business Unit in T1 (1,283± Square Feet); Previously Silver Dragon Café	Soaring Food Group, LLC
No. 4:	Independent/Small Business Unit in T2 (1,455± Square Feet); Previously Firewood Café	Rylo Management

**Business Terms and Conditions:** The following terms and conditions were established in the F&B RFP and incorporated into each *SUP*:

**A. Term** = 10 years + 11 Months.

- 1. Interim Term:** Occupancy for transition/construction as of February 1, 2019 through midnight December 31, 2019; and,
- 2. Primary Term:** Commences January 1, 2020 for a term of ten (10) years through midnight December 31, 2029.

**B. Minimum Initial Capital Investment** = \$600 per square foot

**C. Minimum Mid-term Capital Investment** = \$150 per square foot

**D. Marketing Fund** = 0.5% of Gross Receipts for each Unit (not per package)

**E. Recommended Concepts & Packages:** The F&B RFP defines the food and beverage categories, and depending on the Unit, requires that alcohol (at a minimum beer and wine) and coffee be available for sale. The F&B RFP emphasizes local concepts; however, it did not require any specific local, regional and/or national concepts or brands for any package or Unit. The awarded Concessionaires will be operating the following concepts/brands in the locations illustrated on Attachment “A”:

- 1. HFF:** A16 Pizzeria; Artisan Market featuring Café X; Brown Sugar Kitchen; Calavera; Drake’s Brewing; Farley’s Café; Oaklandish; Red Bay Coffee; Southie; and, Subway
- 2. Rylo:** Tay Ho Oakland
- 3. Soaring:** Luka’s Taproom & Lounge
- 4. SSP:** Briggo featuring Peet’s Coffee; Cosecha Market; District; Oakland A’s Club House; Peet’s Coffee; and, Oakland Draft House featuring Sierra Nevada

## **ATTACHMENT "A"**

**F. Rental Structure:** All rental rates are calculated for each Unit based on the Gross Receipts generated by the total Unit; not per package or concept(s) within a Unit. The Concessionaires will pay MAG or percentage rent, whichever is greater, as detailed in the next section.

### **1. Percent Rental Rates:**

- a. The percentage rent will be calculated using the steps below for each Unit. The total percentage rent due shall be the sum of the individual rent calculations for each Unit, which shall be compared with the MAG by Unit to determine the amount due each month.
- b. 8% First \$1,000,000 in Gross Receipts; plus
- c. 10% Gross Receipts from \$1,000,001 to \$2,000,000; plus
- d. 12% Gross Receipts in excess of \$2,000,001; plus
- e. 15% Alcoholic Beverages
- f. 15% Related Retail Merchandise
- g. Stepped percentage rents are applied to each layer of gross receipts.
- h. Each Unit (even those that share the same trade name) will be treated as a stand-alone business for the purposes of calculating percentage rent.
- i. The F&B RFP specifies that the Port will not consider any alternative percentage rent structure as part of a Proposal.

### **2. Minimum Annual Guarantee (MAG)**

- a. The MAG is calculated on a square foot basis for each Unit commencing with the earlier of the opening of each reconstructed or new Unit or January 1, 2020.
- b. During the time an existing unit is closed for renovation there will be no MAG payable. Instead, Concessionaires will pay monthly percentage rent in an amount described in Paragraph F.1 above for gross receipts of the interim or temporary unit until such time as the renovation is completed and the Unit is reopened for business to passengers or the public.
- c. Post Security, Units < 1,000 SF = \$250/SF
- d. Post Security, Units 1,000 to 5,000 SF = \$200/SF
- e. Post Security, Units > 5,000 SF = \$100/SF
- f. Pre-Security, each Unit = \$75/SF
- g. The Initial MAG for each Unit is subject to adjustment based on post-construction, as-built drawings.
- h. Each Unit (even those that share the same trade name) will be treated as a stand-alone business for the purposes of calculating the MAG.

## ATTACHMENT "A"

- i. Annual MAG will be recalculated and reset on a per-Unit basis at 85% of prior year payments (MAG or percentage rents), but never less than the Initial Minimum Annual Guarantee.

**G. Performance Deposit:** Six months of MAG assessed on a per-unit basis.

**H. Temporary Facilities:** As existing units are closed for reconstruction and in order to meet passenger demand, the Port will permit the reasonable use of carts and temporary facilities that do not interfere with passenger flows or airline operations. These short-term occupancies will be covered by the Port's standard form *Temporary Rental Agreement*, which do not require Board action.

**I. Pricing Policy** = "Street" + 10%

**J. Benefits Fee** = +3% (Not attributable to Gross Receipts)

**K. Operating Hours:** All Units (and concepts within Units) must be open and fully operational from 4:00 a.m. to 11:00 p.m., seven days per week with no exception for holidays. These hours of operation may be extended or shortened as approved in writing by the Director as determined by the Director to accommodate security checkpoint, airline schedules or other operational needs. If the Director extends or shortens this required 4:00 a.m. to 11:00 p.m., the Respondent will be given thirty (30) days written notice. In addition, the Director may require the Units to be open and fully operational in the event of emergency or major disruption of Airport operations. Staff continues to monitor passenger traffic and flight schedules; the Director has authorized amended hours for most units.

## ATTACHMENT “B”

### Consolidated Modifications\* to Food & Beverage Concessionaires’ Existing *Space/Use Permit* to be incorporated into the *Amended and Restated Space/Use Permit*

March 31, 2021

	SUBJECT	SUP TERM/DEFINITION	AS COVERED IN <i>RESTATED SUP</i>
<b><i>Space/Use Permit</i></b>			
New	Whereas	New concept.	<p>The Parties have agreed to include a series of introductory acknowledgements; specific language:</p> <p><b>WHEREAS</b>, on March 11, 2020, the World Health Organization declared COVID-19 a global pandemic; and</p> <p><b>WHEREAS</b>, the COVID-19 pandemic has negatively impacted the aviation industry, which resulted in an unprecedented decrease in flight activity and passenger traffic at all commercial airports in the United States, including at Oakland International Airport; and</p> <p><b>WHEREAS</b>, the parties acknowledge that the severe financial hardship that impacted the Permittee and the Port were not caused by any action taken by either party; and</p> <p><b>WHEREAS</b>, as a result of the impact of COVID-19 on passenger traffic, the parties desire to amend and restate the Original Permit to make certain modifications to the Original Permit, including, but not limited to, the term, the construction schedule and the rental terms; and</p> <p><b>WHEREAS</b>, in addition, the parties agree that if during the term there is another event that causes a significant decrease in passenger traffic at Oakland International Airport, the parties shall work together to address potential relief, which may be beyond the measures addressed in this Amended and Restated Space/Use Permit.</p>
B.1	Permitted Use	Specific type of operation and concept as set forth in each awarded Proposal.	Limits re-opening of Units that have been closed; specific language:

\* The items in this table represent most modifications and changes to be incorporated into the *Amended and Restated Space/Use Permit*; minor typographic, format, grammar, etc. corrections are not separately listed.



## ATTACHMENT “B”

			<p>Exhibit 2 sets forth the Concession Unit(s) that are open as of the date of this Permit. Any Concession Unit that is not listed on Exhibit 2 shall not re-open prior to construction without the prior approval of the Director. If Permittee proposes to reopen a Concession Unit that is not listed on Exhibit 2, it shall submit a written request to the Director at least ten (10) business days prior to the proposed reopening date. Approval to reopen such closed Concession Unit, along with modification of operating hours, will be decided by the Director, in his or her sole discretion. Temporary Concession Units shall cease operations on the earlier of (i) within sixty (60) days of the Port providing the [50/65/80%] Notice, and (ii) within thirty (30) days of the Port providing notice to the Permittee to cease operating the temporary Concession Unit.</p> <p>If required because of the failure/closure of a street-side local concept, Board shall delegate to the Executive Director the authority to substitute a similar local concept and/or to change the type of operation (Full Service, Quick Serve, Fast Casual, Café, Bar, etc.); specific language:</p> <p>In the event of the failure/closure of the street-side local concept that the Concession Unit is associated with, the Permittee may submit a request to the Executive Director to change the concept and/or type of operation (e.g. full service, quick serve, fast casual, café, bar) of the Concession Unit. The Executive Director may, in his or her sole and absolute discretion, approve or deny such request in writing. Any such decision shall be final and binding on Permittee.</p>
B.4(a)	Pricing	<p>“...Permittee may charge customer a separate three percent (3%) benefits surcharge line item to defray the costs of employee benefits...”</p>	<p>Pursuant to Ordinance No. 4545 (January 23, 2020) the Board increased the benefits surcharge to 5% for newly constructed Units. F&amp;B Concessionaires request immediate implementation of 5% benefits surcharge; parties agreed provided “Value Meal” and “deal of the Week” pricing commences concurrently. Specific language:</p>

## ATTACHMENT “B”

			Effective upon execution of this Permit, in addition to the price chargeable pursuant to the Airport Pricing Policy, Permittee may charge customers, for such Concession Unit, a separate five percent (5%) benefits surcharge lien item to defray the costs of employee benefits, and such five percent (5%) surcharge shall not be included as Gross Receipts for purposes of the rent calculation contained in Paragraph E.2 of this Permit; provided that concurrent with Permittee’s election to collect a 5% benefits surcharge, Permittee shall be obligated to concurrently place on the menu at each of its Concession Units the “Value Meal” and “Deal of the Week” described in Paragraph B.4(b).
B.4(b)	Menu Items	New language at the end of Paragraph B.4(b).	<p>Pursuant to Ordinance No. 4545 the Board increased the benefits surcharge to 5% for newly constructed Units provided a “Value Meal” and a rotating “Deal-of-the-Day” are offered; the parties agreed to change to “Deal-of-the-Week”. Specific language:</p> <p>Permittee must offer and advertise at each Concession Unit: a (i) “Value Meal” at initial price of no more than \$10 per meal (minimum inclusion of entrée and drink), and (ii) rotating “Deal-of-the-Week” at a \$15 price point for entrée and drink. Each January 1st commencing January 1, 2023, Permittee may request to the Director an increase in the price of the “Value Meal” and the “Deal-of-the-Week”, which may or may not be approved at Port’s sole discretion.</p>
C.	Term	February 1, 2019 through December 31, 2029. Eleven months to complete design and construct all Units.	<p>Fixed Term to expire March 31, 2033 (39 additional months), plus the Port to have two unilateral options to extend the Term for one additional year (latest expiration of March 31, 2035). Specific language:</p> <p>The Term of this Permit shall commence on February 1, 2019 (the “<u>Commencement Date</u>”), and shall expire on the expiration of the Primary Term, unless sooner terminated in accordance with the terms and provisions of this Permit. The Interim Term shall commence on the Commencement Date and shall expire at 11:59 PM Pacific Time on December 31, 2019. The Primary Term shall commence on January 1, 2020 and shall expire at 11:59 PM Pacific Time on March 31, 2033. The Port shall have</p>

## ATTACHMENT “B”

			the unilateral right to extend the Primary Term for two additional one-year periods (latest expiration of March 31, 2035) by giving written notice to the Permittee at least sixty (60) days prior to the applicable expiration date.
	Construction Schedule	Based on the Term, the obligation to commence payment of MAG on January 1, 2020 plus the imposition of \$500 per day Liquidated Damages as of January 1, 2020; the contractual obligation is for all Units to be constructed and open by no later than December 31, 2019.	<p>In early 2019, the Board authorized a delay in the construction schedule to provide for phased openings stretching from June 1, 2019 through October 1, 2019. Staff has now negotiated construction start dates based on the current enplanements as a percentage of CY2019, with two Units – Oaklandish Coffee Collective (HFF’s UnitT1-FB-G4) and Peet’s (SSP’s UnitT2-FB-G27) to be opened within 150 days of the date the Board adopts the ordinance approving the <i>Restated SUP</i>, and SSP to open Sierra Nevada (T2-FB-G28) by no later than 180 days from the date the Board adopts the ordinance approving the <i>Restated SUP</i>.</p> <p>Thereafter, Unit construction would be triggered when enplanements equal 50%, 65% and 80% of CY2019. On a terminal-by-terminal basis, the Port will provide notice to all Permittees when the average enplanements for three consecutive months have equaled:</p> <ul style="list-style-type: none"> <li>• 50% of CY2019 monthly enplanements (the “50% Notice”);</li> <li>• 65% of CY2019 monthly enplanements (the “65% Notice”); and,</li> <li>• 80% of CY2019 monthly enplanements (the “80% Notice”).</li> </ul> <p>Required Opening/Rent Commencement dates for specific Units are detailed in Section E.3(a) below.</p> <p>There are also “outs” for District (SSP-T2) and Southie (HFF-T2), plus the two pre-security Units if enplanements do not recover within the next two- to three-years.</p> <p>For HFF and SSP, only: If either HFF or SSP has not commenced construction on the Units referenced above</p>

## ATTACHMENT “B”

			(Oaklandish Coffee, Peet’s Coffee and Sierra Nevada). within 90 days after the date the Board adopts the ordinance approving the <i>Restated SUP</i> , the Port, as a matter of its sole discretion and by written notice given to HFF or SSP (as applicable) before the commencement of such construction, shall have the right to terminate the <i>Restated SUP</i> , which termination shall be effective upon the receipt of such termination notice.
D.	Assigned Space	The four “Packages” were carefully assembled so that both large packages contained a mix of large and small Units, Units further out the concourses, and a pre-security Unit (otherwise, concessionaires would just cherry-pick the best locations). The two single-Unit packages included smaller, yet very high-grossing locations which would benefit a small business by reducing cost of construction and generating sales.	<p>No change (i.e., no reduction) in the size of any Assigned Space for any Unit in any package with the exception of (i) deleting Unit T2-FB-G25 (the former T2 Food Court) from the definition of Assigned Space for HFF, and (ii) the following potential deletion of certain Units specific to HFF and SSP if passenger traffic volume does not meet or exceed CY2019 passenger volume:</p> <p>For HFF:</p> <ul style="list-style-type: none"> <li>• If the average Airport-wide enplanements for three consecutive months have not equaled 80% of CY2019 monthly enplanements by December 31, 2022 both the Port and HFF have the option of unilaterally terminating the <i>SUP</i> as it relates to Artisan Market; and,</li> <li>• If the average Terminal 2 enplanements have for three consecutive months not equaled 80% of CY2019 monthly enplanements by December 31, 2023 both the Port and HFF have the option of unilaterally terminating the <i>SUP</i> as it relates to Southie.</li> </ul> <p>For SSP:</p> <ul style="list-style-type: none"> <li>• If the average Airport-wide enplanements for three consecutive months have not equaled 80% of CY2019 monthly enplanements by December 31, 2022 both the Port and SSP have</li> </ul>

## ATTACHMENT “B”

			<p>the option of unilaterally terminating the <i>SUP</i> as it relates to Peet’s Coffee Pre-Security T1; and,</p> <ul style="list-style-type: none"><li>• If the average Terminal enplanements for three consecutive months have not equaled 80% of CY2019 monthly enplanements by December 31, 2023 both the Port and SSP have the option of unilaterally terminating the <i>SUP</i> as it relates to District.</li></ul> <p>In addition, Unit FB-2-C2-1 subleased by HFF to Subway has been deleted from the definition of Assigned Space pursuant to Ordinance No. 4591 (adopted March 11, 2021).</p>																					
D.2	As-Built Condition	New language at the end of the first paragraph of Paragraph D.2.	<p>As authorized by Ordinance No. 4545:</p> <p>In addition, the Port shall have the right to use the square footage on the “as-built” drawings provided by Permittee’s architect/contractor to recalculate the Minimum Annual Guaranty as provided in the next paragraph. Use of such as-built drawings does not waive the Port’s right to measure the size of the Concession Unit as provided in this paragraph.</p>																					
D.4	T2 Connector Units for HFF/SSP Only	Amend to delete existing language because (i) HFF’s T2 Connector Unit subleased to Subway will no longer be part of its Assigned Space and (ii) SSP’s T2 Connector Unit will be incorporated into the <i>Amended and Restated SUP</i> .	<p>Pursuant to Ordinance No. 4545, SSP’s Unit T2-FB-C2-2 branded as “District” has been incorporated and will be included in Exhibit “5” – Assigned Space.</p> <p>Pursuant to Ordinance No. 4591, HFF’s Unit T2-FB-C2-1, subleased to HFF Grewal has been deleted from the definition of Assigned Space.</p> <p>Unit T2-FB-C2-2 will be incorporated into the <i>Restated SUP</i> with SSP.</p>																					
E.1	Minimum Annual Guarantee (MAG’')	<p>MAG as set forth below:</p> <table><tr><td>Post Security</td><td>Units &lt; 1,000 SF</td><td>\$250/SF</td></tr><tr><td>Post Security</td><td>Units 1,000-5,000 SF</td><td>\$200/SF</td></tr><tr><td>Post Security</td><td>Units &gt;5,000 SF</td><td>\$100/SF</td></tr><tr><td>Pre-Security</td><td>Both Units</td><td>\$75/SF</td></tr></table>	Post Security	Units < 1,000 SF	\$250/SF	Post Security	Units 1,000-5,000 SF	\$200/SF	Post Security	Units >5,000 SF	\$100/SF	Pre-Security	Both Units	\$75/SF	<p>Modify MAG to eliminate higher PSF charge for units less than 5,000 SF and will be incorporated into Exhibit “5” as follows:</p> <table><tr><td>Post Security</td><td>Units up to 5,000 SF</td><td>\$200/SF</td></tr><tr><td>Post Security</td><td>Units &gt;5,000 SF</td><td>\$100/SF</td></tr><tr><td>Pre-Security</td><td>Both Units</td><td>\$75/SF</td></tr></table>	Post Security	Units up to 5,000 SF	\$200/SF	Post Security	Units >5,000 SF	\$100/SF	Pre-Security	Both Units	\$75/SF
Post Security	Units < 1,000 SF	\$250/SF																						
Post Security	Units 1,000-5,000 SF	\$200/SF																						
Post Security	Units >5,000 SF	\$100/SF																						
Pre-Security	Both Units	\$75/SF																						
Post Security	Units up to 5,000 SF	\$200/SF																						
Post Security	Units >5,000 SF	\$100/SF																						
Pre-Security	Both Units	\$75/SF																						

## ATTACHMENT “B”

		<p>Payment of MAG to commence for each Unit upon completion of construction or January 1, 2020, whichever is earlier.</p>	<p>To compensate for reduced passenger traffic, MAG to be adjusted based on enplanements. Specific language:</p> <p>Until enplanements in the applicable terminal of the Concession Unit reaches calendar year 2019 levels for three consecutive months, the Minimum Annual Guaranty shall be adjusted on the Rent Commencement Date, the Initial Minimum Annual Guaranty Adjustment Date and on each anniversary of the Initial Minimum Annual Guaranty Adjustment Date based on enplanements as set forth in <u>Exhibit “5”</u>. Once the applicable terminal of the Concession Unit reaches calendar year 2019 levels for three consecutive months, then this Paragraph E.1(c) shall no longer apply to such Concession Unit.</p> <p>Also negotiated an automatic suspension of MAG rent if another catastrophic event occurs throughout the Term; specific language:</p> <p>The Minimum Annual Guaranty will be temporarily suspended in the event of a severe decline in enplanements as provided in <u>Exhibit “18</u>. This Paragraph E.1(d) shall only apply after the provisions of Paragraph E.1(c) are no longer applicable to a Concession Unit.”</p>
E.2	Percentage of Gross Receipts	<p>Percent Rent as set forth below:</p> <p style="margin-left: 40px;">8% Up to first \$1 Million; plus</p> <p style="margin-left: 40px;">10% From \$1M to \$2M; plus</p> <p style="margin-left: 40px;">12% Over \$2M; plus</p> <p style="margin-left: 40px;">15% Alcohol; plus</p> <p style="margin-left: 40px;">15% Retail</p> <p>Payment of Percent Rent to commence for each Unit upon completion.</p>	<p>To recapture several years of reduced rental revenue, have agreed to adding a 15% step/tier for sales of food products that would kick-in after five years (effective January 1, 2026). Specific language will be incorporated into Exhibit “5”:</p> <p style="margin-left: 40px;">8% Up to first \$1 Million; plus</p> <p style="margin-left: 40px;">10% From \$1M to \$2M; plus</p> <p style="margin-left: 40px;">12% <del>Over</del> <u>From \$2M to \$3M</u>; plus</p> <p style="margin-left: 40px;"><u>15% Over \$3M for Units &lt;2,500 SF or Over \$4M for Units &gt;2,500 SF; plus</u></p> <p style="margin-left: 40px;">15% Alcohol; plus</p> <p style="margin-left: 40px;">15% Retail</p>



## ATTACHMENT “B”

E.2(b)	Marketing Fund	0.5% of Gross Receipts to commence upon the first month of operation.	<p>Ordinance No. 4545 suspended payment of the Marketing Fund effective April 1, 2020; parties have agreed to a four-month grace period after Unit opening before resumption of payment into Marketing Fund. Specific language:</p> <p>Commencing on January 1, 2020, in addition to Percentage Fees, Permittee shall pay to the Port 0.5% of Gross Receipts for a collective marketing fund (“Marketing Fund”) that supports the concessions program at the Airport. The use of such Marketing Fund shall be solely at the discretion of the Port. Amounts due for the Marketing Fund during the period April 1, 2020 to the first day of the month following four (4) months from the Rent Commencement Date shall be suspended, provided that amounts for the Marketing Fund due prior to April 1, 2020 have been paid to the Port. In the event the Rent Commencement shall commence or end on any day other than the first and last day, respectively, of a calendar month, it shall nonetheless be considered as one (1) complete month for the purposes of this section.</p>
E.2(c)	Mid-Term Refurbishment Fund	\$2.50 per square foot per month payable for five years (total of \$150 per square foot ÷ 60 months = \$2.50 per square foot) to be used to offset the cost of mid-term refurbishment capital investment.	<p>Permittee’s contributions to the Mid-Term Refurbishment Fund shall commence on the first day of the 18<sup>th</sup> month after the opening date of each Unit. Any/all contributions already made to the Mid-Term Refurbishment Fund will remain with the Port and held as defined in this Section E.2(c). Specific language:</p> <p>Amounts due for the Refurbishment Fund during the period April 1, 2020 up to the first day of the 18<sup>th</sup> month after the Rent Commencement Date (“Refurbishment Fund Payment Restart Date”) shall be suspended, provided that amounts for the Refurbishment Fund due prior to April 1, 2020 have been paid to the Port. Commencing with the amount to be paid by Permittee on the Refurbishment Fund Payment Restart Date, Port shall notify Permittee of the revised amount of the Mid-Term Amount to be paid each month for each Concession Unit taking into account the suspension period. In lieu of payment of cash into the Refurbishment Fund, prior to the Refurbishment Fund</p>

## ATTACHMENT “B”

			<p>Payment Restart Date, Permittee may provide to the Port a Letter of Credit for the full Mid-Term Amount.</p> <p>Note 1: In lieu of reducing the amount of the contribution to the Mid-Term Refurbishment Fund, Staff recommends that rental for Storage Space be waived through December 31, 2021 (which results in immediate savings to F&amp;B Concessionaires). This concept will be in the ordinance, but not stated in the <i>Restated SUP</i>.</p> <p>Note 3: See Attachment “A” Section 2 below for definition of mid-point.</p>																								
E.2(d)	Commissary Rent for SSP only	Correct error of Package #2 Commissary not included in definition of Assigned Space.	Adding Unit No. T1-FB-1A (1,636 SF) to the definition of Assigned Space for SSP was authorized pursuant to Ordinance No. 4545. This Unit will be incorporated into Exhibit “5” of SSP’s <i>Restated SUP</i> at the Category VIII Concessions Support Space Rate.																								
E.3(a)	Rent Commencement Date	Amendment No. 1 revised the Rent Commencement Date to January 1, 2021	<p>Rent Commencement Date <u>for the following Unit</u> will be further revised as follows:</p> <table border="1"> <thead> <tr> <th>Date</th><th>Unit</th><th>Permittee</th><th>Concept</th></tr> </thead> <tbody> <tr> <td>July 1, 2021</td><td>T2-FB-C2-1</td><td>HFF/Grewal</td><td>Subway</td></tr> </tbody> </table> <p>Rent Commencement Date for Unit T2-FB-G27 will be on the first day of the month 150 Days after the Effective Date of the <i>Restated SUP</i>. Rent Commencement Date for Units T1-FB-G4 and T2-FB-G28 will be on the first day of the month 180 Days after the Effective Date of the <i>Restated SUP</i>.</p> <table border="1"> <thead> <tr> <th>Square Feet</th><th>Unit</th><th>Permittee</th><th>Concept</th></tr> </thead> <tbody> <tr> <td>1,116</td><td>T1-FB-G4</td><td>HFF</td><td>Oaklandish</td></tr> <tr> <td>672</td><td>T2-FB-G27</td><td>SSP</td><td>Peet’s T2</td></tr> <tr> <td>2,363</td><td>T2-FB-G28</td><td>SSP</td><td>Sierra Nevada</td></tr> </tbody> </table> <p>For the following Units, MAG to commence on the earlier of (i) the first day of the month after 180 days from the</p>	Date	Unit	Permittee	Concept	July 1, 2021	T2-FB-C2-1	HFF/Grewal	Subway	Square Feet	Unit	Permittee	Concept	1,116	T1-FB-G4	HFF	Oaklandish	672	T2-FB-G27	SSP	Peet’s T2	2,363	T2-FB-G28	SSP	Sierra Nevada
Date	Unit	Permittee	Concept																								
July 1, 2021	T2-FB-C2-1	HFF/Grewal	Subway																								
Square Feet	Unit	Permittee	Concept																								
1,116	T1-FB-G4	HFF	Oaklandish																								
672	T2-FB-G27	SSP	Peet’s T2																								
2,363	T2-FB-G28	SSP	Sierra Nevada																								

## ATTACHMENT “B”

			<p>date the Port delivers the 50% Notice to Permittee, or (ii) the first day of the month following opening date of each Unit, whichever is earlier:</p> <table border="1"> <thead> <tr> <th>Square Feet</th><th>Unit</th><th>Permittee</th><th>Concept</th></tr> </thead> <tbody> <tr> <td>3,878</td><td>T1-FB-G8</td><td>SSP</td><td>Oakland A's</td></tr> <tr> <td>1,081</td><td>T2-FB-G22</td><td>HFF</td><td>Farley's</td></tr> </tbody> </table> <p>For Unit T1-FB-G9A, MAG to commence on the earlier of (i) the first day of the month after 150 days from the date the Port delivers the 65% Notice, or (ii) the first day of the month following opening date of each Unit, whichever is earlier. For all other Units in this subsection, MAG to commence on the earlier of (i) the first day of the month after 180 days from the date the Port delivers the 65% Notice, or (ii) the first day of the month following opening date of each Unit, whichever is earlier.</p> <table border="1"> <thead> <tr> <th>Square Feet</th><th>Unit</th><th>Permittee</th><th>Concept</th></tr> </thead> <tbody> <tr> <td>1,283</td><td>T1-FB-G9*</td><td>Soaring</td><td>Luka's</td></tr> <tr> <td>853</td><td>T1-FB-G9A*</td><td>SSP</td><td>Peet's T1</td></tr> <tr> <td>1,455</td><td>T2-FB-G23</td><td>Rylo</td><td>Tay Ho</td></tr> <tr> <td>1,583</td><td>T2-FB-G24</td><td>SSP</td><td>Cosecha</td></tr> <tr> <td>1,495</td><td>T2-FB-G29</td><td>HFF</td><td>Calavera</td></tr> </tbody> </table> <p>For Unit T2-FB-G30, MAG to commence on the earlier of (i) the first day of the month after 150 days from the date the Port delivers the 80% Notice, or (ii) the first day of the month following opening date of each Unit, whichever is earlier. For all other Units in this subsection, MAG to commence on the earlier of (i) the first day of the month after 180 days from the date the Port delivers the 80% Notice, or (ii) the first day of the month following opening date of each Unit, whichever is earlier.</p>	Square Feet	Unit	Permittee	Concept	3,878	T1-FB-G8	SSP	Oakland A's	1,081	T2-FB-G22	HFF	Farley's	Square Feet	Unit	Permittee	Concept	1,283	T1-FB-G9*	Soaring	Luka's	853	T1-FB-G9A*	SSP	Peet's T1	1,455	T2-FB-G23	Rylo	Tay Ho	1,583	T2-FB-G24	SSP	Cosecha	1,495	T2-FB-G29	HFF	Calavera
Square Feet	Unit	Permittee	Concept																																				
3,878	T1-FB-G8	SSP	Oakland A's																																				
1,081	T2-FB-G22	HFF	Farley's																																				
Square Feet	Unit	Permittee	Concept																																				
1,283	T1-FB-G9*	Soaring	Luka's																																				
853	T1-FB-G9A*	SSP	Peet's T1																																				
1,455	T2-FB-G23	Rylo	Tay Ho																																				
1,583	T2-FB-G24	SSP	Cosecha																																				
1,495	T2-FB-G29	HFF	Calavera																																				

# ATTACHMENT "B"

			<table> <tr> <th>Square Feet</th><th>Unit</th><th>Permittee</th><th>Concept</th></tr> <tr> <td>1,390</td><td>T1-FB-1</td><td>SSP</td><td>Peet's Pre</td></tr> <tr> <td>1,158</td><td>T1-FB-G8A*</td><td>HFF</td><td>A16</td></tr> <tr> <td>1,058</td><td>T2-FB-1</td><td>HFF</td><td>Artisan Market</td></tr> <tr> <td>1,010</td><td>T1-FB-C2-2</td><td>SSP</td><td>District</td></tr> <tr> <td>537</td><td>T2-FB-G30</td><td>HFF</td><td>Southie</td></tr> </table> <p>* ENPs for these Units will be measured by Terminal 1 enplanements not including Southwest Airlines' passengers</p> <p>Rent Commencement Date Relief due to City Building Permit delay or a governmental agency requires construction activities to be suspended due to health-related issues. Specific language:</p> <p>In the event that securing a City of Oakland Building Permit is delayed through no fault of Permittee, Permittee may request that the Director extend the Rent Commencement Date for up to sixty (60) days. Such request shall describe the circumstances of the delay. The Director, in his or her sole discretion, may grant such extension of up to sixty (60) days. In addition, in the event that a governmental agency requires construction activities to be suspended at the Concession Unit due to health-related issues, the Rent Commencement Date shall be extended for the same duration of days.</p>	Square Feet	Unit	Permittee	Concept	1,390	T1-FB-1	SSP	Peet's Pre	1,158	T1-FB-G8A*	HFF	A16	1,058	T2-FB-1	HFF	Artisan Market	1,010	T1-FB-C2-2	SSP	District	537	T2-FB-G30	HFF	Southie
Square Feet	Unit	Permittee	Concept																								
1,390	T1-FB-1	SSP	Peet's Pre																								
1,158	T1-FB-G8A*	HFF	A16																								
1,058	T2-FB-1	HFF	Artisan Market																								
1,010	T1-FB-C2-2	SSP	District																								
537	T2-FB-G30	HFF	Southie																								
E.3(b)	Late Opening Penalty	\$500 per day liquidated damages for each day each Unit does not open after January 1, 2020.	The parties should acknowledge that liquidated damages have not been enforced by the Port. By amending the Rent Commencement Date for each Unit based on a construction scheduled with milestones related to recovering passenger traffic volume, the concept of future imposition of liquidated damages must remain in the <i>Restated SUP</i> ; no change																								
E.4	Remitting Payment	Correct remittance information and address	Credit to: Union Bank 12200049 Wire ABA/ACH Routing #1222000496																								

## ATTACHMENT “B”

			<p>In favor of: Port Department of the City of Oakland Account #0113080519</p> <p>Reference: Port Department of the City of Oakland (may add invoice no. or other information)</p>
I.2	Employee Parking	Add new requirement to contribute toward cost of employee parking.	<p>Specific language:</p> <p>Permittee must contribute toward the cost of employee transportation/parking at a minimum of the annual marginal increase in the employee parking rate (i.e. \$3/month in January 1, 2020; \$4/month in January 1, 2022 and \$5/month in January 1, 2023). The amount and method of payment shall be negotiated between Permittee and its employees’ labor representatives.</p>
I.5	Reports and Surveys	Requires both parties to make available various reports.	<p>F&amp;B Concessionaires to provide a quarterly operations report pursuant to Ordinance No. 4545; specific language:</p> <p>Permittee shall provide a quarterly report in substantially the form attached as <u>Exhibit “13”</u> (“<u>Quarterly Business Report</u>”). The Quarterly Business Report must be delivered to the Port within thirty (30) days following the end of the calendar quarter, with the first Quarterly Business Report due the first quarter after the Rent Commencement Date of the first Concession Unit to open. Such Quarterly Business Report shall include, but not be limited to, gross sales, average revenue per enplanement, average check amount, sales vs. RPE graphic, transactions vs. labor hours on an hourly basis, top ten item sales (minimum of five items) by dollar amount and number of that item sold, any other information that Permittee believes would be helpful to the Port, and any other information reasonably requested by the Port.</p>
1.7	Credit/Charge Cards, Mobile Payment and Traveler’s Checks	New requirement consistent with expectations.	<p>Passengers/Customers expect branded Units to be equivalent to street side locations; therefore, an amenity like gift, club, reward, etc. cards that are offered outside the Airport must be available; specific language:</p> <p>In the event the Concession Unit is a branded concept that has gift, club, reward or similar cards, the Concession Unit must accept such cards.</p>

## ATTACHMENT “B”

<b>Attachment “A” to Amended and Restated Space/Use Permit</b>			
1(2)(g)	Construction of Improvements in Assigned Space	Add language covering what should be the Port’s Work – e.g., flooring at Luka’s - that Permittee will undertake and Port will reimburse.	<p>As authorized by the Board pursuant to Ordinance No. 4545; specific language:</p> <p>In addition to Removal or Utility Service Connections, the Port may propose to Permittee, or Permittee may propose to the Port, certain improvements to Port space near the Permittee’s Assigned Space to be completed by Permittee (“<u>Port Improvements</u>”). Subject to Permittee’s compliance with the remaining provisions of this Section 2(g) and the Director’s approval authority of \$100,000 per Concession Unit, Permittee shall be entitled, on the issuance of a credit memorandum by Port to Permittee, to be reimbursed for Permittee’s actual out of pocket costs of the Port Improvements by having such costs credited against the next payments of Rent that come due under Paragraph E of this Permit until the amount of such credit memorandum has been exhausted.</p>
1.(2)(j)	Construction Barricades		<p>Within 90 days of the date the Board adopts the ordinance approving the <i>Restated SUP</i>, Construction Barricades as defined in the TDS shall be designed, approved by the Port and installed at the following Units which are not expected to be constructed until ENPs reach either the 65% or 80% Milestone as defined below (i) by SSP at Unit T1-FB-1; (ii) by HFF at Units T1-FB-G8A and T2-FB-G30; and (iii) by Soaring at Unit T1-FB-G9. At the expiration of the 90-day period, if either SSP, HFF or Soaring fails to install the Construction Barricade, the Port shall have the right to construct the Construction Barricade and seek immediate reimbursement from SSP, HFF or Soaring.</p>
2	Mid-Term Refurbishment	“Permittee shall refurbish, redecorate and modernize the interior and exterior of... each Concession Unit after January 1, 2025... Mid-Term Refurbishment shall not mean the expenditure of money for those ordinary maintenance and repair items...”	<p>Date to be revised as described in E.2(c); specific language:</p> <p>The Mid-Term Refurbishment Date shall be the first day of the month after the half way point between the Rent Commencement Date and the end of the Term.</p>



## ATTACHMENT “B”

3	Maintenance and Repair of Assigned Space	New subsection requiring detailed monthly maintenance schedule.	As authorized by Board pursuant to Ordinance No. 4545; specific language: Permittee shall prepare a detailed monthly maintenance schedule to be reviewed and approved by the Port (“ <u>Permittee Maintenance Schedule</u> ”). Once approved by the Port, the Permittee Maintenance Schedule shall be attached to this Amendment as <u>Exhibit</u> “19” and form part of the Permit. Permittee agrees to maintain the Assigned Space in conformity with the Permittee Maintenance Schedule.
4(7)(c)	Other Operational Requirements	Vending machines not permitted	Certain exception for specialty coffee and free food vending pre-security, and certain games in the Hangar
31	FAA Requirements	Need to be updated to current FAA requirements	See Exhibit “17”.

### EXHIBITS

1	Exhibit “1”	For SSP only	Add depiction of Commissary Space.
2	Exhibit “2”	Transition Plan	Transition Plan will be replaced with Concession Units that will be open as of the Amended and Restated SUP date.
4	Exhibit “4”	Initial Proposed Pricing	Updated proposed pricing and menus for each Concession Unit as of July 1, 2021
5	Exhibit “5”	Concession Unit	Adjust MAG pursuant to revised rates (see E.1 above). Amend “% Rate” column to include 15% Tier effective January 1, 2026 (see E.2 above)
6	Exhibit “6”	Airport Security Requirements	For SSP only: Add Security Requirement for Prohibited Items to be allowed in T2 Peet’s Coffee back-of-house.
11	Exhibit “11”	Form of Letter of Credit	Update for most recent Letter of Credit form.
12	Exhibit “12”	Green Concessions Program	Some edits have been made, subject to further review by F&B Concessionaires and Port Staff; see redline <i>Restated SUP</i> .
13	Exhibit “13”	New: See I.5 above	Quarterly Business Report

## ATTACHMENT “B”

17	Exhibit “17”	New: See 31 above	Federal Aviation Administration AIP Grant-Required Provisions.
18	Exhibit “18”	New: See E.1 above	Temporary Suspension of Minimum Annual Guaranty in the Event of a Severe Decline in Enplanements
19	Exhibit “19”	New: See 3 above	Permittee Maintenance Schedule
The Discussion Topics in this matrix cannot be considered a commitment to alter the terms and conditions of the existing <i>Space/Use Permit</i> between the Port and each of the F&B Concessionaires; only the Board of Port Commissioners, with concurrence from the Executive Director, can approve such changes.			

## ATTACHMENT “C”

### GREEN CONCESSIONS PROGRAM

**DRAFT – BEING UPDATED BY STAFF FOR RESTATED SUP**

**Port Sustainability Policy:** The Board has adopted Resolution No. 20467: Resolution Implementing Port Sustainability Policy (the “Policy”). All operations throughout the Port, including food, beverage, retail and duty free concessions should be guided by this Policy. In addition, the Port requires the following actions to be undertaken by its Permittee:

- I. **Cleaning:** Permittee is required to use green cleaning methods in conformance with the product manufacturer’s recommendations and in compliance with OAK’s Green Cleaning Program. Tenants are required to develop a Green Cleaning Plan in compliance with the OAK Green Clean Program and provide regular staff training to implement this program.
- II. **Construction & Demolition Waste Management:** Permittee shall reduce total waste material during construction and demolition (goal – a maximum of 2.5 lbs. per square foot) or divert at least 75% of the total construction and demolition material generated during construction (by weight or volume) from the landfill via recycling or reusing materials. All material leaving the site shall be tracked and documented by Permittee, and Permittee shall provide Port with weight slips or other similar documentation in form reasonably acceptable to Port. Reference City of Oakland [Construction and Demolition Debris Waste Reduction and Recycling Ordinance](http://www2.oaklandnet.com/Government/o/PWA/o/FE/s/GAR/OAK024368) program: <http://www2.oaklandnet.com/Government/o/PWA/o/FE/s/GAR/OAK024368>
- III. **Employee Benefits and Training:**
  - A. Permittee must offer commuter benefits program for employees and participate in BART’s OAK Connector discount program.
  - B. Permittee shall commit to annual training and new employee training with a focus on sustainability as outlined and required in this Exhibit.
- IV. **Energy Efficiency:** To maximize energy efficiency, Permittee shall target the refrigerator temperature at a minimum of 36 degrees Fahrenheit, and freezer at a minimum of 0 degrees Fahrenheit. All refrigerated cases, refrigerator doors and strip curtains must be maintained in good working order (replace worn gaskets, align doors, etc.).
- V. **Food Donation Program:** Permittee to develop, participate and collaborate in a food donation program. Permittee is required to establish a plan for surplus food donation to be phased-in over a three-year period, with at least 30% surplus food donated in 2021; at least 60% in 2022, and at least 90% in 2023, with the ultimate goal of 100% of all surplus food donated beyond 2024.
- VI. **Indoor Air Quality:** Permittee shall comply with the IAQ Management Plan established for the construction project including building flush-out after construction, but before occupancy.
- VII. **Service Ware/Supplies:** “Service Ware” is defined and includes, but is not limited to, all bags, bowls, boxes, cartons, cups, cutlery, deli sheets, drink lids, napkins, pizza boxes, plates, portion cups, sacks, stir sticks, straws, trays, utensils, wrapping and other

## ATTACHMENT "C"

common food service ware items. All Service Ware shall meet ASTM D6400 or ASTM D6868 or Biodegradable Products Institute (BPI) [www.bpiworld.com](http://www.bpiworld.com) for compostability.

### A. To reduce waste, Permittee:

1. Is required to first ask customer before providing or making available drink lids, straws, stir-sticks, utensils, napkins, bags.
2. Should encourage and use electronic/paperless receipts and not print a receipt if the customer does not request or declines on offer to provide a printed receipt.
3. Shall assure that all packaging or Service Ware provided to customer is reusable rigid plastic, metal, glass, ceramic, or compostable. Cutlery must be metal or compostable (and labeled as such on each piece).
4. Shall minimize packaging and use of single-use Service Ware.
5. Shall eliminate individually wrapped single-use cutlery.
6. Shall not utilize Styrofoam (or similar) products, petroleum-based plastic bags, or petroleum-based plastic utensils.
7. Minimize single-serving packages of sweeteners and creamers by establishing coffee stations where these items are made available in bulk.
8. Minimize single-serving packages of condiments by establishing condiment stations where these items are made available in bulk.
9. Stock and sell water only in aluminum cans, compostable or bio-resin bottles, or compostable paper boxes for all bottled water sales. Permittee shall offer, advertise and provide an incentive for customers to use their own reusable cup and/or bottle.
10. Discourage the use of pizza boxes. If used, pizza boxes must be unbleached e-flute boxes: <http://www.pmq.com/May-June-2004/Packaging-That-Delivers/>

### B. Hierarchy of usage:

1. 1<sup>st</sup> choice shall be reusable rigid plastic, metal, glass, ceramic Service Ware (plates, cups, cutlery, etc.). If not practicable then,
2. 2<sup>nd</sup> choice shall be compostable Service Ware derived from plant fiber (wheat straw, sugarcane or bamboo). If not practicable then,
3. 3<sup>rd</sup> choice shall be compostable, tree-based Service Ware and products certified by the Forest Stewardship Council (FSC). The FSC label ensures that the forest products used are from responsibly harvested and verified sources. All paper/cardboard should be unbleached. Paper bags, printer paper, menu paper must be non-bleached and contain 50% post-consumer waste recycled content.
4. 4<sup>th</sup> choice, only acceptable in limited applications, is the use of a clear, compostable, PLA (polylactic acid) bio-based plastic, derived from renewable

## ATTACHMENT “C”

resources such as corn starch, tapioca roots, or sugarcane. May only be used in limited applications when clear clamshells or cups are required to broaden appeal of grab-and-go items such as salads, parfaits, etc. when content visibility is essential. In these cases, containers must be compostable PLA and clearly labeled as such.

- C. Any approved usage of paper products must be of the highest post-consumer recycled content as possible.
  - D. The only allowable plastics are for pre-packaged drinks: PETE #1, HDPE #2 and PP#5.
  - E. Fryer oil must be recycled pursuant to Port direction.
  - F. Light bulbs must be recycled by Permittee.
  - G. Scrap metal must be recycled by Permittee.
  - H. Batteries must be recycled by Permittee.
  - I. Toner cartridges and any other electronics must be recycled by Permittee.
  - J. Any and all bulky waste items must be stored in Permittee storage areas, not in common areas. Permittee will have opportunity to participate in Port-sponsored bulky waste FOD (Foreign Object Debris) disposal events.
- VIII. **Waste Reduction Program:** consists of source-separated, three-stream diversion program in the Assigned Space located throughout the Terminal Complex, including Permittee storage areas and offices. The three waste streams are:
- A. **Organic Waste (Green):** Consisting of
    - B. All food, food-soiled paper, including grease-stained pizza boxes, napkins and paper towels
    - C. Coffee grounds and filters
    - D. Cooked meat, poultry, seafood, bones, eggs and eggshells
    - E. All breads, cheese, pasta, grains, rice and beans
    - F. compostable plates, cups, flatware, straws, any takeout containers, including straws and lids.
  - G. **Mixed Recycling (Blue):** Consisting of:
    - a. metals, cans and aluminum foil,
    - b. clean cardboard, cartons, paper, newspaper and magazines,
    - c. glass, bottles and jars, and
    - d. non-compostable rigid plastics numbered #1 - #7.
  - H. **Landfill (Black):** Any residual waste that cannot be recycled or composted, such as plastic film.

## ATTACHMENT "C"

Waste must be placed in the appropriate Terminal 1 compactor or Terminal 2 trash chute, or as otherwise designated by the Port. Fully enclosed containers must be used by Permittee to transport waste to the compactors/chute rooms.

- IX. **Waste Receptacles:** Permittee must separate all waste in the Assigned Space into receptacles designated for organic waste, mixed recycling or landfill. Permittee shall co-locate appropriately-sized waste receptacles in their Assigned Space - front of house, back of house and in offices and breakrooms. All public (front-of-house) receptacles must be approved by the Port and in locations designated by the Port. All waste receptacles must be:
- A. clearly labeled for organic waste, mixed recycling or landfill.
  - B. maintained in good working order
  - C. emptied at an interval that prevents overflowing
  - D. kept clean inside and out to prevent lingering odors
  - E. leak-proof
  - F. maintained with a bag liner of the appropriate type:
    - a. compostable green bag liner for organic waste
    - b. clear bag liner for mixed recycling, and
    - c. black bag liner for landfill.
- X. **Pallets / Crates:** Permittee must use re-usable, rigid plastic pallets and crates whenever possible. Permittee is responsible for storing unused pallets and crates in the designated area. Permittee is responsible for pallet and crate take-back by delivery drivers. Permittee responsible for disposal of any pallets or crates considered abandoned.