

AGENDA REPORT

Ordinance: First Reading of an Ordinance Approving an *Amendment to Airline Operating Agreement* with Nineteen Passenger and Cargo Airlines, and an *Amendment to Space/Use Permit* with Nine of Those Passenger Airlines Serving Oakland International Airport, for a Term of Five Years and Generating Anticipated Revenues of \$128± Million in FY2021-22. **(Aviation)**

MEETING DATE: 9/30/2021

AMOUNT: \$128± Million Estimated Annual Revenue

PARTIES INVOLVED: Nineteen Passenger and Cargo Airlines Currently Serving Oakland International Airport; Various Domestic and International Headquarters Locations

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

APPROVED BY: Danny Wan, Executive Director

ACTION TYPE: Ordinance

EXECUTIVE SUMMARY

This action would give first reading to an Ordinance approving the terms and conditions of an *Amendment to Airline Operating Agreement* (the “2021 AOA Amendment”), and where applicable, approving its companion *Amendment to Space/Use Permit* (the “2021 SUP Amendment”), with nineteen passenger and cargo Airlines (listed below) serving Oakland International Airport (the “Airport”). This action would also authorize the Executive Director to execute each 2021 AOA Amendment and 2021 SUP Amendment.

BACKGROUND

For more than 21 years, the Port and Airlines have entered into a succession of agreements covering the Airline’s use of the airfield and facilities at the Airport:

2000: Staff, legal counsel and representatives of the Airlines serving the Airport at the time negotiated the final terms and conditions of a new, standardized *Airline Operating Agreement* (the “2000 AOA”). All regularly scheduled passenger, cargo and charter airlines (“Signatory Airlines”) operating at the Airport entered into this new form 2000 AOA. In addition, any passenger Signatory Airline that occupied space at the Airport Terminal Complex concurrently entered into a new form *Annex “A” Space/Use Permit to Airline Operating Agreement*. These agreements had an expiration date of October 14, 2010 with basic terms that included:

- Term: Ten years; however, terminable by either party upon thirty (30) days' written notice.
- Fees: Landing Fees, Space Rentals and other charges are assessed to the Airlines based on the applicable, Board of Port Commissioners ("Board") - adopted Rates & Charges Ordinance. Note: Airlines that do not enter into an *Airline Operating Agreement* with the Port are subject to a 25% surcharge on Rates & Charges.
- Passenger Signatory Airlines that utilize only common-use facilities at the Terminal Complex do not need to enter the *Annex "A" Space/Use Permit*.
- Cargo Airlines (FedEx and UPS) occupy Port-owned facilities under agreements which have been separately authorized by the Board.

2010: The Port and the Signatory Airlines agreed that the existing agreements were still acceptable and met the operational and technical needs of the parties. On October 5, 2010, the Board adopted Ordinance No. 4135 approving the terms and conditions, and authorizing execution, of amendments to the *Airline Operating Agreement* and the *Annex "A" Space/Use Permit* by extending the term through September 30, 2013.

2013: Upon further review and consultation between the parties, it was determined that the standard forms *Airline Operating Agreement* and the *Annex "A" Space/Use Permit*, as extended, had served the needs of the Port and the Signatory Airlines. These agreements have proven strict enough to be enforceable whenever needed and flexible enough to allow either the Port or the Signatory Airlines to modify space requirements in the Terminal Complex.

However, the Port Attorney's Office and Aviation Staff determined that the time was appropriate to update, clarify and correct certain provisions of the agreements and to extend them for an additional three-year term; these updated provisions did not add or subtract any significant obligations or responsibilities for either the Port or the Signatory Airlines.

Pursuant to Port Ordinance No. 4248, the Board authorized entering in a new *Airline Operating Agreement* (the "2013 AOA"), and in some cases, a new *Annex "A" Space/Use Permit to Airline Operating Agreement* (the "2013 SUP") with the then existing nineteen Signatory Airlines. The 2013 AOA and the 2013 SUP expired on September 30, 2016.

Between October 1, 2013 and September 30, 2016, the Board approved agreements for additional Airlines to operate at the Airport.

2016: The Port and twenty-three Signatory Airlines agreed that the 2013 AOA and the 2013 SUP continued to meet the operational and technical needs of both the Port and the Airlines. On September 22, 2016, the Board adopted Ordinance No. 4391 approving the terms and conditions, and authorizing execution, of amendments to the 2013 AOA and the 2013 SUP by extending the term for an additional five years through September 30, 2021.

In total, as of Summer 2021 there are nineteen Signatory Airlines with nine of those occupying space within the Terminal Complex. With the impending September 30, 2021 expiration date of these agreements, Staff is recommending that the agreements be amended again to provide an additional five-year term plus minimal updates to the forms.

ANALYSIS

Subject to Board approval, nineteen Signatory Airlines will enter into the updated *2021 AOA Amendment*, and of those, nine Signatory Passenger Airlines will enter into the updated *2021 SUP Amendment*. Along with providing an additional extended five-year term, the new amendments update, clarify and correct certain provisions. The table identified as Exhibit “A” lists the nineteen Signatory Airlines, the average monthly revenue generated by each agreement pursuant to the annual Rates & Charges Ordinance, and the updated amount of the proposed Security Deposits.

Charges and Fees: More than one-third of the Aviation Division’s operating revenues are generated through collection of charges, fees and rentals authorized by the Port’s Rates & Charges Ordinance. The Port establishes Airline Rates & Charges on a fiscal year basis concurrent with the Port’s Operating Budget. Calculation of Airline Rates & Charges are based on the Airport’s expenses for areas used by the Airlines – the Airfield and Terminal Complex – offset by non-airline sources of revenue within those areas. As signatories to the *Airline Operating Agreement*, and in some cases an *Annex “A” Space/Use Permit*, the Signatory Airlines agree to pay all charges included in the Rates & Charges Ordinance plus other miscellaneous fees. Upon entering into the *2021 AOA Amendment* and the *2021 SUP Amendment*, the Signatory Airlines will pay:

→ Charges and fees under the *2021 AOA Amendment*:

- Landing Fee;
- Per-Turn Charge for International and Charter Airlines’ use of ticket counters, passenger holdrooms and jetways (outbound passengers);
- International Arrivals Building Use (per inbound passenger);
- Common-Use In-Bound Baggage;
- Employee, Management and/or Staff Parking;
- Airport-Issued I. D. Badging;
- Secondary Jetway Usage; and,
- Aircraft Parking

→ Charges and fees under the *2021 SUP Amendment*:

- Terminal Complex Space Rentals; and,
- Preferential Use Gate.

Security Deposit: In conformance with Port Policy No. AP509, all property agreements must contain a security deposit requirement: “the amount of the security deposit will be based on the customer’s credit rating and shall generally be equal to 3 months of average billings or

payments due under the agreement... Amounts less than the 3-month minimum standard must be approved by the Board.”

The existing agreements require the following security deposits:

“Contract Security” for the *Airline Operating Agreement*

“Performance Deposit” for the *Annex “A” Space/Use Permit*

Many of the existing Signatory Airlines have been operating at the Airport for several years or even decades, and during this period, have earned good credit history with the Port, including generally making all payments to the Port on a timely basis. Therefore, Staff is recommending the Board approve an exception to Port Policy No. AP509 to reduce the total security deposits due for the two proposed agreements to approximately (but not less than) two times the average monthly billings (excluding passenger facility charges) due under the agreements (rounded up to the nearest \$1,000) and only for existing Signatory Airlines. Any future airline wishing to enter into an agreement with the Port will need to meet the requirements of Port Policy No. AP509

Environmental Responsibilities: On July 30, 2015 the Board adopted Ordinance No. 4345 – Port of Oakland Environmental Ordinance which became effective September 1, 2016 (the “Environmental Ordinance”). The Environmental Ordinance defines and proscribes the environmental responsibilities of all parties “accessing” Port property. As users of the airfield, and in some cases tenants of spaces within the Terminal Complex, the Signatory Airlines are considered “Accessing Parties” as defined in the Environmental Ordinance. Section 18 of the Environmental Ordinance essentially allows the Port and tenants to enter into tenancy agreements after the effective date of the Environmental Ordinance which “deviate” from Sections 7 and 8 of the Environmental Ordinance (Limitation of Liability and Indemnity and Responsibility for Toxic Materials). At this same Board meeting, Port staff has presented an Information Report recommending proposed revisions to the Environmental Ordinance for the Board’s consideration. If the Board concurs with staff’s recommendation, then the proposed revisions to the Environmental Ordinance will be presented to the Board for approval at the next Board meeting. The proposed revisions to the Environmental Ordinance do not significantly alter an Accessing Party’s responsibility for pre-existing contamination from what is contained in the existing Environmental Ordinance.

The proposed environmental responsibilities exhibit incorporated into the proposed *2021 AOA Amendment* is consistent with the environmental provisions contained in the *2013 AOA*, as amended; however, as allowed, certain of the environmental provisions deviate from those in the Environmental Ordinance. For example, under the Environmental Ordinance, an “Accessing Party” has certain responsibilities for preexisting contamination if, for example the Accessing Party excavates the preexisting contamination. The proposed environmental responsibilities exhibit in the *2021 AOA Amendment* provides that the Signatory Airline would not be responsible for pre-existing contamination provided that it promptly notifies the Port of discovery of contamination, takes precautionary measures to avoid increasing the scope, boundaries or cost of the contamination, provides prompt and adequate access to the Port to undertake the cleanup, and takes precautionary measures to prevent an increase in costs of the response action.

Signatory Airlines would remain responsible for any environmental contamination that they release as a result of their activities.

Staff is recommending this variance that would require the Port to be responsible for pre-existing contamination identified, but not disturbed. The *Airline Operating Agreement* provides Signatory Airlines with access to the airfield and no defined premises; its *Annex "A" Space/Use Permit* assigns spaces (offices, ticket counters, holdrooms, etc.) within the Terminal Complex. Neither of these agreements contemplates granting Signatory Airlines with premises that would result in a development project that could generate waste with pre-existing contamination.

Sustainability: The proposed *2021 AOA Amendment* incorporates the Sustainability Opportunities Assessment form for use by Signatory Airline should it consider any type of development.

FAA Required Provisions: The proposed 2021 SUP Amendment updates the 2013 SUP with the current Federal Aviation Administration ("FAA") Airport Improvements Program required provisions.

BUDGET & STAFFING

The FY2021-22 Adopted Operating Budget includes projected landing fees, space rentals and other charges detailed in Exhibit "A". Approving and entering into the *2021 AOA Amendment*, and if applicable the *2021 SUP Amendment*, with each of the Signatory Airlines should not generate any additional revenue beyond what has been budgeted.

There would be no impact to staffing by entering into the proposed amendments.

MARITIME AVIATION PROJECT LABOR AGREEMENT (MAPLA)

The action to approve the *2021 AOA Amendment* and the *2021 SUP Amendment* does not fall within the scope of the Port of Oakland Maritime and Aviation Project Labor Agreement (MAPLA) and the provisions of MAPLA do not apply to this action. However, if future tenant construction work under the *2021 SUP Amendment* exceeds the thresholds required for coverage under MAPLA, the provisions of MAPLA will apply when Port Permits are requested for that construction 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

LIVING WAGE

The Signatory Airlines' number of employees varies widely:

1. Airlines who (a) employ 21 or more employees (who spend 25% or more of their time on Port-related work) AND (b) expect to pay more than \$50,000 to the Port over the term of

the agreement: 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"), will apply to these agreements; or,

2. Airlines who do not employ 21 or more employees (who spend 25% or more of their time on Port-related work): living wage requirements do not apply under the Port's Regulations; however, these Airlines will be required to certify that should living wage laws be applicable or become applicable, these Airlines shall comply with all of their obligations under law; or,
3. Airlines that are subject to valid collective bargaining agreement: living wage requirements will not apply.

SUSTAINABILITY

The Signatory Airlines have not proposed any development for the occupied areas covered by the *Annex "A" Space/Use Permit*. If a Signatory Airline decides to develop its premises in the future, that Signatory Airline must comply with the 2000 Sustainability Policy and complete the Sustainability Opportunities Assessment Form.

ENVIRONMENTAL

This Agenda Report involves approving amendments with a five-year term extension between the Port and Signatory Airlines serving the Airport. These agreements are categorically exempt from the California Environmental Quality Act (CEQA) Guidelines pursuant to Section 15301, Existing Facilities, which exempts operation, repair, maintenance, permitting, leasing, licensing, or minor alternation of existing public or private structures, facilities, mechanical equipment or topographical features, involving negligible or no expansion of existing or former use. No changes to the premises or use are proposed.

GENERAL PLAN

This action does not change the use of any existing facility, make alterations to an existing facility, or create a new facility; therefore, a General Plan conformity determination pursuant to Section 727 of the City of Oakland Charter is not required.

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

It is prudent for the Board to approve the terms and conditions and authorize execution of each *2021 Amendment to Airline Operating Agreement* and *2021 Amendment to Space/Use Permit* with the nineteen Signatory Airlines who are signatories to the existing *Airline Operating Agreement* and the nine Signatory Airlines occupying space in the Terminal Complex who are signatories to the *Annex "A" Space/Use Permit to Airline Operating Agreement*. The Federal Aviation Administration's Grant Assurances, Section 22, Economic Discrimination, provide in part that "(each airport operator) will make the airport available as an airport for public use on reasonable terms and without unjust

discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.” All nineteen Signatory Airlines are FAA-certified air carriers and their continuing air service can be accommodated at the Airport.

Staff recommends approving the terms and conditions – including releasing the Signatory Airlines from certain responsibilities with respect to pre-existing contamination as defined in the Environmental Ordinance – and entering into each *2021 AOA Amendment*, and when applicable, each *2021 SUP Amendment*.

RECOMMENDATION

It is recommended that the Board give first reading to an ordinance to:

1. Approve the terms and conditions of the proposed *2021 Amendment to Airline Operating Agreement* with nineteen existing Signatory Airlines as outlined above – including a variance from the Environmental Ordinance No. 4345 that would make the Port, rather than the Signatory Airline, responsible for any pre-existing contamination generated by a Signatory Airline from its development project; and,
2. Approve, when applicable, the terms and conditions of the proposed *2021 Amendment to Space/Use Permit* with nine Signatory Airlines currently occupying space at the Terminal Complex;
3. Approve an exception to Port Policy No. AP509 to reduce the security deposit required to be provided by each existing Signatory Airline to approximately, but not less than, two times the average monthly billings due under the agreements (rounded up to the nearest \$1,000); and,
4. Authorize the Executive Director to execute each *2021 Amendment to Airline Operating* and *2021 Amendment to Space/Use Permit* and other documents that may be necessary to effect these transactions; and,

Subject to the Port Attorney’s review and approval as to form and legality of all the agreements.

Exhibit “A”

		FY2022 Revenue Generated by Signatory Airlines		FY2022 AOA Contract Security		FY2022 SUP Performance Deposit	
Airline		AOA Amendment ¹	SUP Amendment ²	Current	Proposed ³	Current	Proposed ³
1	ABX Air, Inc. ⁴	0	-	\$5,000	\$5,000	-	-
2	Alaska Airlines, Inc.	\$2,000,000	\$2,077,544	865,000	330,000	\$350,000	\$350,000
3	Allegiant Air, LLC	1,612,000	57,768	130,000	270,000	20,000	10,000
4	Contour Airlines ⁵	233,000	46,043	27,000	40,000	20,000	8,000
5	Delta Air Lines, Inc.	1,400,000	845,054	250,000	235,000	300,000	141,000
6	Federal Express Corporation ⁶	25,300,000	-	1,500,000	4,300,000	-	-
7	Frontier Airlines, Inc.	1,430,000	99,271	509,000	240,000	40,000	20,000
8	Hawaiian Airlines, Inc.	3,150,000	617,560	350,000	525,000	150,000	103,000
9	Horizon Air Industries ⁷	853,000	-	130,000	235,000	-	-
10	JSX/JetSuiteX Air ⁸	566,000	-	48,000	48,000	-	-
11	Mesa Airlines, Inc. ³	0	-	18,000	5,000	-	-
12	Redding Aero Enterprises, Inc. ⁹	33,000	-	8,000	6,000	-	-
13	SATA Internacional ¹⁰	36,000	-	65,000	6,000	-	-

¹ AOA Amendment Revenues include variable landing fees, employee parking, holdroom and baggage charges, and Airport I.D. Badge charges

² SUP Amendment Revenues are fixed space rentals

³ In no event will the Contract Security or Performance Deposit be less than the amount listed in this column.

⁴ Airline enters into AOA to benefit from “Signatory” Rates & Charges for its itinerant operations at the Airport

⁵ Corporate Flight Management, Inc. dba Contour Airlines

⁶ In addition, FedEx has a \$3,100,000 Security Deposit for its Lease

⁷ No terminal space occupied; Horizon Air is handled by its corporate partner Alaska Airlines, Inc.

⁸ Delux Public Charter, LLC dba JetSuiteX Air operates as a subtenant to Signature Flight Support from North Field facilities

⁹ Redding Aero provides “feeder” service to FedEx

¹⁰ SATA/Azores Airlines provides once-per-week summer-only service between OAK and Azores, Portugal

		FY2022 Revenue Generated by Signatory Airlines		FY2022 AOA Contract Security		FY2022 SUP Performance Deposit	
Airline		AOA Amendment ¹	SUP Amendment ²	Current	Proposed ³	Current	Proposed ³
14	SkyWest Airlines, Inc. ¹¹	1,875,000	-	200,000	315,000	-	-
15	Southwest Airlines Co.	35,900,000	29,248,783	3,250,000	6,000,000	4,400,000	4,900,000
16	Spirit Airlines, Inc.	7,400,000	1,937,057	140,000	617,000	30,000	162,000
17	Surf Air ³	0	-	\$5,000	\$5,000	-	-
18	United Parcel Service, Inc. ¹²	7,900,000	-	270,000	1,350,000	-	-
19	Volaris	4,200,000	64,573	375,000	690,000	15,000	11,000
	TOTAL REVENUES =	\$93,322,000	\$34,993,653				

¹¹ No terminal space occupied; SkyWest operates as Alaska Airlines and Delta Air Lines

¹² In addition, UPS has a \$435,000 security deposit for a separate *License & Concession Agreement* for cargo facilities on the South Field