



Los Angeles World Airports

Item Number  
8

# REPORT TO THE BOARD OF AIRPORT COMMISSIONERS

*Dave Jones*

Approved by: Dave Jones, Director, Airline Property and Concession Services

Reviewed by: Jeffrey Utterback, Deputy Executive Director – Commercial Development Division

*D. Utterback*

City Attorney

Justin Erbacci, Chief Executive Officer

Meeting Date:

3/4/2021

CAO Review:

- Completed
- Pending
- N/A

Reviewed for	Date	Approval Status	By
Finance	2/18/2021	<input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> NA	CI
CEQA	2/17/2021	<input checked="" type="checkbox"/> Y <input type="checkbox"/> N	VW
Procurement	2/18/2021	<input type="checkbox"/> Y <input type="checkbox"/> N <input checked="" type="checkbox"/> Cond	LK
Guest Experience	2/18/2021	<input checked="" type="checkbox"/> Y <input type="checkbox"/> N	BY
Strategic Planning	2/16/2021	<input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> NA	KC

**SUBJECT: Third Amendment to Agreement LAA-8862 with Boingo Wireless, Inc. at Los Angeles International Airport, due to decline in revenue resulting from COVID-19 Travel Restrictions.**

Approve the Third Amendment to Agreement LAA-8862 with Boingo Wireless, Inc. to allow revision of payment terms due to the decline in revenue resulting from COVID-19 travel restrictions.

**RECOMMENDATIONS:**

Management RECOMMENDS that the Board of Airport Commissioners:

1. ADOPT the Staff Report.
2. DETERMINE that this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Article II, Section 2.f. of the Los Angeles City CEQA Guidelines.
3. APPROVE the Third Amendment to Agreement LAA-8862 with Boingo Wireless, Inc., revising the monthly payments.
4. AUTHORIZE the Chief Executive Officer to revise Agreement LAA-8862 and implement a temporary policy to forbear on implementing default provisions related to payments for Boingo Wireless, Inc., as set forth in this report.

5. AUTHORIZE the Chief Executive Officer or designee to execute a Letter Agreement revising payment terms in Agreement LAA-8862, with the terms and conditions set forth in this report, subject to City Attorney approval as to form and Los Angeles City Council approval.

## **DISCUSSION:**

### **1. Purpose**

Modify Agreement LAA-8862 payment terms to provide Boingo Wireless, Inc., temporary fee relief due to a decline in revenue from COVID-19 travel impacts.

### **2. Prior Related Actions**

- **June 4, 2015 – Resolution No. 25722**  
The Board of Airport Commissioners approved award of a 7-year agreement (LAA-8862) to Boingo Wireless, Inc.
- **April 20, 2017 – Resolution No. 26215**  
The Board of Airport Commissioners approved the First Amendment to Concession Agreement LAA-8862 with Boingo Wireless, Inc. to accommodate improvements to the Wi-Fi program.
- **May 21, 2020 – Resolution No. 27023**  
The Board of Airport Commissioners approved the Second Amendment to provide fee relief due to the decline in passengers resulting from COVID-19 travel impact.

### **3. Current Action**

On February 13, 2014, Los Angeles World Airports released a Request for Proposals for a non-exclusive Wi-Fi concession. Boingo Wireless, Inc. was the sole and successful proposer. The Board of Airport Commissioners subsequently approved a seven-year Concession Agreement with Boingo Wireless, Inc. (LAA-8862) on June 2015 to upgrade, manage, and operate the Wi-Fi network at Los Angeles International Airport. The Concession Agreement allowed Boingo Wireless, Inc. to require guests to view a short advertisement to gain access to free Wi-Fi, or pay a fee to access faster speed Wi-Fi. In return, Boingo Wireless, Inc. would pay to Los Angeles World Airports:

- Base Annual Fee - \$800,000 escalated annually by the current Department of Labor Consumer Price Index or 2%, whichever is greater; and,
- Additional Annual Contingent Fee – 50% of the annual gross revenue from advertising or membership fees exceeding \$1.4 million each year

In addition, Boingo Wireless, Inc. would upgrade the airport's Wi-Fi network with an expected capital investment of \$1.5 million over the term of the agreement.

On April 20, 2017, the Concession Agreement was amended to accommodate improvements to the Wi-Fi program, including faster connectivity and introduction of the Mobile Passport program to reduce international arrival immigration queue times. In exchange for these improvements, Boingo payments to Los Angeles World Airports were adjusted as follows:

- Base Annual Fee – \$416,000 escalated annually by the current Consumer Price Index or 2% whichever is greater
- Additional Annual Contingent Fee – No change (50% of gross revenue over \$1.4 million)
- Credit of \$65,000 to previous year's rent to pay for 12 additional access points to support the Mobile Passport program

#### Impacts of COVID-19

The significant decline in passenger volume as a result of COVID-19 has resulted in decreased advertising and membership revenue. On May 21, 2020, the Board of Airport Commissioners approved rent relief for Boingo Wireless, Inc. that allowed a waiver of Base Annual Fee payments and payment of 50% of gross revenue, only over the period April 1 – June 30, 2020.

Due to continued impacts of the pandemic on passenger activity, Boingo Wireless, Inc. requested an extension to rent relief terms to offset the continued losses in revenue, with an additional reduction to contingent rent from 50% to 25%. Based on review of actual sales from July 1, 2020 and discussions with Boingo Wireless, Inc. representatives, however, staff recommends that monthly rent be the lower of 40% of gross revenues or 1/12<sup>th</sup> of the Base Annual Fee for the rent relief period.

For Boingo Wireless, Inc. to receive this proposed rent relief, they will have to comply with the following:

- a) Comply with all applicable City Ordinances;
- b) Commit to re-employ laid off staff in direct proportion to increases in sales during the recovery period so that on a quarterly basis, employment numbers increase in proportion to sales increases, using December 2019 payroll levels and sales as the basis of full employment/sales;
- c) Have all accounts receivable status current;
- d) Have fully funded Faithful Performance Guarantees and agree that Los Angeles World Airports can draw down on the Faithful Performance Guarantees if concessionaire misses any payments; and,
- e) Demonstrate that Boingo is not entitled to any business interruption insurance benefits that are redundant to this program

#### ***How this action advances a specific strategic plan goal and objective***

This action advances this strategic goal and objective: *Sustain a Strong Business: Diversify and grow revenue sources, and manage costs.* Authorizing and approving the modification of Boingo Wireless, Inc.'s payment terms for the period of July 1, 2020 to June 30, 2021 will allow Boingo Wireless Inc. to pay fees based on percentage of sales, and airport revenues will recover in parallel to passenger level increases.

### ***Action Requested***

Staff requests the Board of Airport Commissioners authorize the Chief Executive Officer or designee to approve this Third Amendment to Agreement LAA-8862, to modify Boingo Wireless, Inc.'s payment terms for the period of July 1, 2020 to June 30, 2021, to allow Boingo Wireless, Inc. to pay monthly fees equal to the lesser of 1/12<sup>th</sup> of the Base Annual Fee or 40% of gross monthly revenue, and to authorize the Chief Executive Officer or designee to grant this rent relief request to Boingo Wireless, Inc. via written letter.

### ***Fiscal Impact***

The Fiscal Impact of this action will be the loss of guaranteed revenue of approximately \$100,000 over FY 2021 for the twelve months waived, and the reduction in unrestricted cash by the same amount.

#### **4. Alternatives Considered**

- ***Take No Action***

Taking no action would require Boingo Wireless, Inc. to pay monthly payments at levels established during normal passenger activity and corresponding sales levels. The approximate 80% decline in passenger traffic makes these payments unsustainable.

### **APPROPRIATIONS:**

No appropriation of funds is required for this action.

### **STANDARD PROVISIONS:**

1. This action, as a continuing administrative activity, is exempt from California Environmental Quality Act (CEQA) requirements pursuant to Article II, Section 2.f. of the Los Angeles City CEQA Guidelines.
2. This proposed document(s) is/are subject to approval as to form by the City Attorney.
3. Actions taken on this item by the Board of Airport Commissioners will become final pursuant to the provisions of Los Angeles City Charter Section 606.
4. Boingo is required by contract to comply with the provisions of the Living Wage Ordinance.
5. Procurement Services has reviewed this action (File No. 6820). No Airport Concession Disadvantaged Business Enterprise (ACDBE) goal was set for this project, as no subcontracting opportunities were identified.
6. Boingo is required by contract to comply with the provisions of the Affirmative Action Program.
7. Boingo has been assigned Business Tax Registration Certificate number 0002274391-0001.
8. Boingo is required by contract to comply with the provisions of the Child Support Obligations Ordinance.

9. Boingo must have approved insurance documents, in the terms and amounts required, on file with the Los Angeles World Airports prior to contract amendment.
10. As this is a concession agreement, the CAO has determined that this action is exempt from the provisions of Charter Section 1022 (Use of Independent Contractor).
11. Boingo has submitted the Contractor Responsibility Program Questionnaire and Pledge of Compliance and will comply with the provisions of the Contractor Responsibility Program.
12. Boingo must be determined by Public Works, Office of Contract Compliance, to be in full compliance with the provisions of the Equal Benefits Ordinance prior to contract execution.
13. Boingo will be required to comply with the provisions of the First Source Hiring Program for all non-trade LAX Airport jobs.
14. Boingo has submitted the Bidder Contributions CEC Form 55 and will comply with its provisions.