



# REPORT TO THE

# BOARD OF AIRPORT COMMISSIONERS

*Aura Moore*

Reviewed by: Aura Moore, Deputy Executive Director and Chief Information Officer

*Brian C. Ostler*

Brian C. Ostler, City Attorney

*Justin Erbacci*

Justin Erbacci (May 27, 2022 11:44 MDT)

Justin Erbacci, Chief Executive Officer

Meeting Date

6/2/2022

Needs Council Approval:  Y

<u>Reviewed for / by</u>	<u>Date</u>	<u>Approval Status</u>	<u>By</u>
Finance	5/20/2022	<input checked="" type="checkbox"/> Y <input type="checkbox"/> NA	JS
CEQA	5/20/2022	<input checked="" type="checkbox"/> Y	VW
Procurement	5/24/2022	<input type="checkbox"/> Y <input checked="" type="checkbox"/> Cond	LK
Guest Experience	5/20/2022	<input checked="" type="checkbox"/> Y	TB
Strategic Planning	5/20/2022	<input checked="" type="checkbox"/> Y	KC
City Attorney	5/26/2022	<input checked="" type="checkbox"/> Y	ST

## SUBJECT

Request to approve the Fourth Amendment to Agreement LAA-8862 with Boingo Wireless, Inc. at Los Angeles International Airport to extend the term for an additional 18 months.

## 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 Fourth Amendment to Agreement LAA-8862 with Boingo Wireless, Inc., to extend the term for an additional 18 months for the management and operation of the Wi-Fi network in all terminals at Los Angeles International Airport.
4. AUTHORIZE the Chief Executive Officer, or designee, to execute the contract amendment upon approval as to form by the City Attorney and approval by the Los Angeles City Council.

## DISCUSSION

### 1. Purpose

To amend Concession Agreement LAA-8862 with Boingo Wireless, Inc. to extend the term for 18 months.

### 2. Prior Related Actions/History of Board Actions

- **June 4, 2015 – Resolution No. 25711**  
The Board of Airport Commissioners (Board) approved award of a seven-year, Non-Exclusive Concession Agreement to Boingo Wireless, Inc. to upgrade, manage, and operate the Wi-Fi network at LAX for estimated revenue of \$5,900,000 over the term.
- **April 20, 2017 – Resolution No. 26215 (LAA-8862A)**  
The Board approved the First Amendment to Concession Agreement LAA-8862 with Boingo Wireless, Inc. to reduce the base annual fee by \$400,000 per year and credit Boingo \$65,000 for constructing additional wireless access points to support Mobile Passport in the Tom Bradley International Terminal at LAX.
- **May 21, 2020 – Resolution No. 27023 (LAA-8862B)**  
The Board approved the Second Amendment to Concession Agreement LAA-8862 with Boingo Wireless, Inc. to allow revision of payment terms to allow Boingo to pay Los Angeles World Airports (LAWA) monthly payments of 50 percent of gross revenue for April, May, and June 2020 instead of the Base Annual Fee due to a decline in revenue resulting from COVID-19 travel restrictions.
- **March 4, 2021 – Resolution No. 27216 (LAA-8862C)**  
The Board approved the Third Amendment to Concession Agreement LAA-8862 with Boingo Wireless, Inc. to allow for revision of payment terms to allow Boingo to pay the lower of 40 percent of gross revenues or 1/12<sup>th</sup> of the Base Annual Fee for the rent relief period ending June 30, 2021, due to a decline in revenue resulting from COVID-19 travel restrictions. This agreement expires on June 30, 2022.

### 3. Background

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 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 make payments to Los Angeles World Airports. The original agreement included the following payment terms:

- Base Annual Fee – \$800,000, escalated annually by the current Department of Labor Consumer Price Index or 2 percent, whichever is greater
- Additional Annual Contingent Fee – 50 percent 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 (CPI) or 2 percent, whichever is greater
- Additional Annual Contingent Fee – No change (50 percent of gross revenue over \$1.4 million each year)
- 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 resulting from COVID-19 decreased advertising and membership revenue. On March 4, 2021, the Board approved the revision of payment terms to allow Boingo to pay the lower of 40 percent of gross revenues or 1/12<sup>th</sup> of the Base Annual Fee for the rent relief period ending June 30, 2021. Boingo since then has been paying the Base Annual Fee and 50 percent of gross revenues over \$1.4 million from July 1, 2021, as stipulated in the First Amendment (LAA-8862A).

#### **4. Current Action/Rationale**

Los Angeles World Airports' vision is to have ubiquitous Wi-Fi coverage across the entire airport campus, from CONRAC to gate, ensuring a wireless user has a seamless guest experience no matter where they go within the LAX footprint. To achieve that vision, LAWA is planning to release a Request for Proposals (RFP) for the design, deployment, optimization, monitoring, maintenance and administration of a new LAWA owned Wi-Fi system that will eventually cover all the airport facilities. This new Managed Services Partner will set-up, operate and maintain the new LAWA Wi-Fi networks built as part of new construction, as well as operate and maintain existing Wi-Fi networks – integrating all into one campus-wide system.

This RFP will provide a ubiquitous Wi-Fi system that will support a wide range of user groups including the traveling public, LAWA stakeholders and our federal partners. The new Wi-Fi system also will support LAWA's vision of directly communicating with passengers and providing foundational connectivity for guest engagement and a digital marketplace.

Approval of this amendment will allow LAWA to complete the RFP procurement process and ensure uninterrupted Wi-Fi service until a new agreement is awarded and executed, and a new system implemented. The current Concession Agreement with Boingo will be terminated upon the earlier of 18 months or the award of a new agreement and transition of Wi-Fi service provision to the new Managed Services Partner.

### ***How This Action Advances a Specific Strategic Plan Goal and Objective***

This action advances this strategic goal and objective: *Deliver Facilities & Guest Experiences that are Exceptional: Upgrade every element of the guest experience.*

Extending the current concession agreement ensures continuous access to free Wi-Fi service for the traveling public at LAX, an essential part of the guest experience.

### **5. Fiscal Impact**

Approval of the Fourth Amendment to Concession Agreement No. LAA-8862C will provide additional annual revenue to LAWA of approximately \$1,700,000. This includes the Base Annual Fee over the 18-month term extension and the potential revenue share of 50 percent of gross revenues over \$1,400,000. This amount likely will increase as there is an annual CPI adjustment to the Base Annual Fee in July 2022.

### **6. Alternatives Considered**

- ***Take No Action***

If no action is taken, a lapse may occur in free Wi-Fi service for travelers at LAX for the period from the expiration of the current agreement until a new agreement is in place.

## **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. The 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 will 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 will comply with the provisions of the Affirmative Action Program.
7. Boingo has been assigned Business Tax Registration Certificate number 0002274391-0001-4.
8. Boingo will comply with the provisions of the Child Support Obligations Ordinance.

9. Boingo has approved insurance documents, in the terms and amounts required, on file with the Los Angeles World Airports prior to contract execution.
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 Amendment.
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.

**FOURTH AMENDMENT TO THE NON-EXCLUSIVE CONCESSION  
AGREEMENT BETWEEN THE CITY OF LOS ANGELES DEPARTMENT OF  
AIRPORTS  
AND BOINGO WIRELESS INC.  
FOR WIRELESS FIDELITY (WI-FI) INTERNET ACCESS SERVICE AT LAX**

THIS FOURTH AMENDMENT TO THE NON-EXCLUSIVE CONCESSION AGREEMENT (this “Fourth Amendment”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2022 (the “Effective Date”) between the City of Los Angeles, acting by and through its Board of Airport Commissioners (“Board”) of the Los Angeles World Airports (“LAWA”), a department of the City of Los Angeles (collectively, “City”), and BOINGO WIRELESS INC. (“Concessionaire”). City and Concessionaire are each a “Party” to this Fourth Amendment, and collectively are referred to herein as “Parties.” Los Angeles International Airport is referred to herein as “LAX.”

**RECITALS**

The Parties hereby acknowledge and agree that their respective decisions to enter into this First Amendment are premised on the following recitals which set forth certain facts upon which the Parties agree:

A. City and Consultant entered into a Non-Exclusive Concession Agreement dated June 29, 2015, for Wireless Fidelity (Wi-Fi) Internet Access at LAX (Contract No. LAA-8862, referred to herein as “the Contract”). Unless otherwise specified, all capitalized terms in this First Amendment shall have their meanings as set forth in the Contract. The Contract was a seven-year, Non-Exclusive Concession Agreement to upgrade, manage, and operate the Wi-Fi network at LAX for estimated revenue of \$5,900,000 over the term.

B. On April 20, 2017, the Board approved the First Amendment to Concession Agreement LAA-8862 to reduce the base annual fee by \$400,000 per year and credit Boingo \$65,000 for constructing additional wireless access points to support Mobile Passport in the Tom Bradley International Terminal at LAX.

C. On May 21, 2020, due to a decline in revenue resulting from COVID-19 travel restrictions, the Board approved a Second Amendment to Concession Agreement LAA-8862 to allow revision of payment terms to allow Boingo to pay monthly payments of 50 percent of gross revenue for April, May, and June 2020 instead of the Base Annual Fee.

D. On March 24, 2021, due to a decline in revenue resulting from COVID-19 travel restrictions, the Board approved the Third Amendment to Concession Agreement LAA-8862 with Boingo Wireless, Inc. to allow for revision of payment terms to allow Boingo to pay the lower of 40 percent of gross revenues or 1/12<sup>th</sup> of the Base Annual Fee for the rent relief period ending June 30, 2021. This agreement expires on June 30, 2022.

- E. The Parties now desire to amend the Contract to add an additional 18 months of term.

## AGREEMENT

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**Section 1.** Section 2.2 shall be deleted in its entirety and replaced with the following:

“2.2 Termination Date. The Termination Date of the Agreement is December 30, 2023, subject however, to earlier termination as provided elsewhere in this Agreement, including but not limited to, LAWA's right to unilaterally cancel the Agreement after year five subject to a buy-out of undepreciated Qualified Investments as set forth below.”

**Section 2. Effect of This Fourth Amendment.** Except as modified by this Fourth Amendment, the Contract is hereby ratified and confirmed and all other terms of the Contract shall remain in full force and effect, unaltered and unchanged by this Fourth Amendment. If there is any unresolvable conflict between the provisions of this Fourth Amendment and the provisions of the Contract, the provisions of the Contract shall prevail. Whether or not specifically amended by this Fourth Amendment, all terms and provisions of the Contract are amended to the extent necessary to give effect to the purpose and intent of this Fourth Amendment.

**Section 3. Integration; No Third Party Beneficiaries.** No provisions of the Fourth Amendment may be further amended or added to except by a written agreement signed by the Parties or their respective successors-in-interest. Except as expressly provided for herein, this Fourth Amendment is not intended to confer upon any person other than the Parties any rights or remedies hereunder.

**Section 4. Governing Law; Interpretation.** This Fourth Amendment shall be governed by, and construed in accordance with, the laws of the State of California. The Contract and this Fourth Amendment are subject to the provisions of the Los Angeles Administrative Code. Each Party represents and warrants that this Fourth Amendment has been negotiated and drafted at arms-length by equally sophisticated parties, and any ambiguity cannot be attributed to either Party hereto.

REMAINDER OF PAGE BLANK

**Section 5. Counterparts.** This Fourth Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto except having additional signature pages executed by other parties to this Fourth Amendment attached thereto.

**SIGNATURE BLOCKS**

IN WITNESS WHEREOF, the parties hereto have themselves or through their duly authorized officers caused this Fourth Amendment to be executed as of the day and year herein below written.

**APPROVED AS TO FORM:**  
Michael N. Feuer, City Attorney

**CITY OF LOS ANGELES**

Date: \_\_\_\_\_

By \_\_\_\_\_

By: \_\_\_\_\_

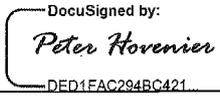
Chief Executive Officer

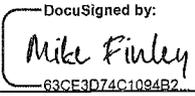
Deputy/Assistant City Attorney

Department of Airports

ATTEST:

**BOINGO WIRELESS, INC.**

By  \_\_\_\_\_  
Secretary (Signature)

By  \_\_\_\_\_  
Signature

Peter Hovenier

Mike Finley

Print Name

Print Name

CFO

CEO

[SEAL]