

RESOLUTION NO. 27363

WHEREAS, on recommendation of Management, there was presented for approval, Amendment to Concession Agreements at Los Angeles International Airport that are listed in Attachment 1 attached hereto and made part hereof, to revise the payment terms due to continuing impacts of COVID-19; and

LAX
Van Nuys
City of Los Angeles

WHEREAS, on further recommendation of Management, the staff report was amended at the Board meeting revising the total number of concession agreements, for amendment, from nineteen (19) to twenty (20), as well as revising Attachment 1 to reflect the complete list of said twenty (20) agreements for amendment; and

Eric Garcetti
Mayor

**Board of Airport
Commissioners**

Beatrice C. Hsu
President

Valeria C. Velasco
Vice President

Sean O. Burton
Gabriel L. Eshaghian
Nicholas P. Roxborough
Dr. Cynthia A. Telles
Karim Webb

Justin Erbacci
Chief Executive Officer

WHEREAS, Los Angeles World Airports (LAWA) operates a comprehensive concessions program at Los Angeles International Airport (LAX) that includes advertising and sponsorship, duty free merchandise, food and beverage, retail, and services operators in the terminal facilities. Contractually, concessionaires pay rent to LAWA in an amount equal to the greater of a percentage of gross sales or a Minimum Annual Guarantee (MAG). Due to the highly competitive concession market at LAX, the MAGs that were established when the contracts were executed are quite substantial; and

WHEREAS, the decline in passenger traffic due to COVID-19 significantly reduced concession sales and prompted the Board of Airport Commissioners (Board) to temporarily authorize revised payment terms to suspend MAGs through June 30, 2021, and require concessionaires to pay rent only in the amount of the percentage of gross sales defined in each agreement. Unfortunately, the ongoing impacts of COVID-19 on travel have slowed the recovery of concession sales. The Amendment to the twenty (20) concession agreements listed in Attachment 1, will address said continuing impact; and

WHEREAS, the Amendment will extend the temporary suspension of MAG rent from July 1, 2021 through June 30, 2022, and require payment of rent based on percentage of gross sales if the concession units are open and operational. To be considered open and operational, the level of worker hours for each concession unit must be proportional to pre-COVID levels based on passenger traffic for the same period, unless the concessionaire can demonstrate failure to achieve the required staffing level is solely due to challenges to hire employees. Concessions that are not open at the required level will be required to pay rent equal to the greater of percent rents and the MAG rents outlined in the original concession agreement; and

WHEREAS, LAWA plans to use American Rescue Plan Act (ARPA) grant funds to offset the revenue LAWA will forgo by continuing to suspend MAG payments through June 30, 2022. LAWA was awarded approximately \$36.8 million in ARPA grant funds designated for concessions relief, and the grant requires that LAWA allocate these funds proportionally to the in-terminal concessionaires without imposing terms unrelated to those valuable and necessary to enhance operations during the pandemic and recovery. To confirm proper allocation of ARPA funds, LAWA will calculate the amount of relief applied to each concessionaire as the difference between percent rents paid and the amount of rent that would be due if MAG was intact. LAWA will notify concessionaires annually of the amount of ARPA funds applied to date. If LAWA determines that any concessionaire has not depleted its allocation of ARPA funding as of the ARPA Completion Date, then that concessionaire will receive a rent credit for the unused balance of their ARPA fund allocation; and



WHEREAS, in addition, the Amendment will reinstate MAG rents effective July 1, 2022, based on the greater of two (2) calculations: [1] the contractually established percentage of the prior year’s rent payments; and, [2] a temporary MAG calculated by multiplying the pre-COVID MAG by a ratio of current passenger levels to pre-COVID passenger levels. Thereafter, the MAG will reset annually as the greater of three (3) calculations: [1] the contractually established percentage of prior year’s rent payments; [2] the prior year MAG; and, [3] the pre-COVID MAG. This will reset MAG annually based on passenger levels, up to the point that traffic levels exceed the pre-COVID passenger levels, at which point the annual MAG reset will be handled in accordance with the original agreements; and

WHEREAS, finally, as a condition of the prior rent relief programs approved by the Board, the concessionaires contributed funds to extend health insurance for employees furloughed or laid off due to the impacts of COVID-19. Concessionaires were allowed to assess a temporary surcharge of up to three percent (3%) on concession sales through the earlier of September 30, 2021, or the point the concessionaire fully recovers the health insurance costs they invested for furloughed or laid off workers. The Amendment will extend the temporary surcharge assessment period to June 30, 2022, or upon full recovery of costs. Following is a summary:

Food and Beverage, Retail, and Service Concession Agreements

Description	Effective Date	Amendment
Rent	April 1, 2020 to June 30, 2022	MAG Suspension – pay percent rent only
MAG Reinstatement	July 1, 2022, until traffic reaches pre-COVID levels	Greater of: <ul style="list-style-type: none"> • Percent of Prior Year Gross Receipts as defined in the Agreement • Pro-rated MAG (Δ PAX Mar 2021 thru Feb 2022 / PAX Mar 2019 thru Feb 2020) x 2019 MAG
Annual MAG Adjustment upon Full Recovery	After traffic levels reach / exceed pre-COVID levels	Greater of: <ul style="list-style-type: none"> • Percent of Prior Year Gross Receipts as defined in the Agreement • Prior Year MAG • Pre-COVID MAG
3% Surcharge	April 1, 2020 to June 30, 2022	Allow 3% surcharge to cover employee health premium costs paid, through the period ending June 30, 2022, or upon full recovery of costs paid, whichever is sooner

Duty Free and Currency Exchange Agreements

Description	Effective Date	Amendment
Rent	April 1, 2020 to June 30, 2022	MAG Suspension – pay percent rent only
MAG Reinstatement	July 1, 2022, until traffic reaches pre-COVID levels	Greater of: <ul style="list-style-type: none"> • Percent of Prior Year Gross Receipts as defined in the Agreement • Pro-rated MAG (Floor Element) (Δ PAX Mar 2021 thru Feb 2022 / PAX Mar 2019 thru Feb 2020) x 2019 MAG • A per-passenger rate multiplied by the total international passenger activity* • Prior Year MAG

Duty Free and Currency Exchange Agreements (contd)

Description	Effective Date	Amendment
Annual MAG Adjustment upon Full Recovery	After traffic levels reach / exceed pre-COVID levels	Greater of: <ul style="list-style-type: none"> • Percent of Prior Year Gross Receipts as defined in the Agreement • Fixed MAG (Floor Element) • A per-passenger rate multiplied by the total international passenger activity* • Prior Year MAG
3% Surcharge	April 1, 2020 to June 30, 2022	Allow 3% surcharge to cover employee health premium costs paid, through the period ending June 30, 2022, or upon full recovery of cost, whichever is sooner

**International passenger activity will mean all international enplanements recorded in Tom Bradley International Terminal only*

Terminal Media Operator

Description	Effective Date	Amendment
Rent	April 1, 2020 to June 30, 2022	MAG Suspension – pay percent rent only
MAG Reinstatement	July 1, 2022, until traffic reaches pre-COVID levels	Greater of: <ul style="list-style-type: none"> • Percent of Prior Year Gross Receipts as defined in the Agreement • Pro-rated MAG (Δ PAX Mar 2021 thru Feb 2022 / PAX Mar 2019 thru Feb 2020) x 2019 MAG
Annual MAG Adjustment upon Full Recovery	After traffic levels reach / exceed pre-COVID levels	Greater of: <ul style="list-style-type: none"> • Percent of Prior Year Gross Receipts as defined in the Agreement • Prior Year MAG • Pre-COVID MAG; and

WHEREAS, all other terms of the concession agreements will remain unchanged; and

WHEREAS, 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; and

WHEREAS, the concessionaires are required by contract to comply with the provisions of the Living Wage and Service Contractor Worker Retention Ordinances; and

WHEREAS, the concessionaires are required to achieve the Airport Concession Disadvantaged Business Enterprise goals required in their agreements; and

WHEREAS, the concessionaires are required by contract to comply with the provisions of the Affirmative Action Program; and

WHEREAS, the concessionaires have each been assigned a Business Tax Registration Certificate number; and

WHEREAS, the concessionaires are required by contract to comply with the provisions of the Child Support Obligations Ordinance; and

WHEREAS, the concessionaires have approved insurance documents, in the terms and amounts required, on file with LAWA; and

WHEREAS, the concessionaires have submitted the Contractor Responsibility Program Pledge of Compliance, and will comply with the provisions of said program; and

WHEREAS, the concessionaires must be determined by Public Works, Office of Contract Compliance, to be in compliance with the provisions of the Equal Benefits Ordinance prior to execution of their respective Amendments; and

WHEREAS, the concessionaires will be required to comply with the provisions of the First Source Hiring Program for all non-trade Los Angeles International Airport jobs; and

WHEREAS, the concessionaires will comply with the provisions of the Bidder Contributions CEC Form 55; and

WHEREAS, the concessionaires will comply with the provisions of the MLO Bidder Contributions CEC Form 50; and

WHEREAS, 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;

NOW, THEREFORE, BE IT RESOLVED that the Board of Airport Commissioners adopted the amended Staff Report; determined 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; approved the Amendment to the twenty (20) Concession Agreements, listed in Attachment 1 attached hereto and made part hereof, to revise the payment terms due to continuing impacts of COVID-19; and authorized the Chief Executive Officer, or designee, to execute the Amendment to said Concession Agreements after approval as to form by the City Attorney and approval by the Los Angeles City Council.

o0o

I hereby certify that this Resolution No. 27363 is true and correct, as adopted by the Board of Airport Commissioners at its Regular Meeting held on Thursday, October 21, 2021.



Grace Miguel – Secretary
BOARD OF AIRPORT COMMISSIONERS

Attachment 1 - Concessions Agreement Summary