

AMENDED
-see meeting video
or minutes



Los Angeles World Airports

REPORT TO THE BOARD OF AIRPORT COMMISSIONERS

Item Number
9

<p style="text-align: center;"></p> <p><u>Approved by:</u> Georginnah Navarrete, Director of Concessions</p> <p style="text-align: center;"></p> <p><u>Reviewed by:</u> Dave Jones, Deputy Executive Director, Commercial Development Division</p> <p style="text-align: center;"></p> <p><u>Brian Ostler (Oct 15, 2021 15:23 PDT)</u> City Attorney</p> <p style="text-align: center;"></p> <p><u>Justin Erbacci (Oct 15, 2021 15:25 PDT)</u> Justin Erbacci, Chief Executive Officer</p>	<p><u>Meeting Date:</u> 10/21/2021</p> <hr/> <p><u>CAO Review:</u></p> <table style="width: 100%;"> <tr> <td><input type="checkbox"/></td> <td>Completed</td> </tr> <tr> <td><input checked="" type="checkbox"/></td> <td>Pending</td> </tr> <tr> <td><input type="checkbox"/></td> <td>N/A</td> </tr> </table> <hr/> <table border="1" style="width: 100%; border-collapse: collapse; font-size: small;"> <thead> <tr> <th><u>Reviewed for</u></th> <th><u>Date</u></th> <th><u>Approval Status</u></th> <th><u>By</u></th> </tr> </thead> <tbody> <tr> <td>Finance</td> <td>6/8/2021</td> <td><input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> NA</td> <td>JS</td> </tr> <tr> <td>CEQA</td> <td>6/3/2021</td> <td><input checked="" type="checkbox"/> Y <input type="checkbox"/> N</td> <td>WW</td> </tr> <tr> <td>Procurement</td> <td>6/3/2021</td> <td><input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Cond</td> <td>LK</td> </tr> <tr> <td>Guest Experience</td> <td>6/4/2021</td> <td><input checked="" type="checkbox"/> Y <input type="checkbox"/> N</td> <td>TB</td> </tr> <tr> <td>Strategic Planning</td> <td>6/3/2021</td> <td><input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> NA</td> <td>KC</td> </tr> </tbody> </table>	<input type="checkbox"/>	Completed	<input checked="" type="checkbox"/>	Pending	<input type="checkbox"/>	N/A	<u>Reviewed for</u>	<u>Date</u>	<u>Approval Status</u>	<u>By</u>	Finance	6/8/2021	<input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> NA	JS	CEQA	6/3/2021	<input checked="" type="checkbox"/> Y <input type="checkbox"/> N	WW	Procurement	6/3/2021	<input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Cond	LK	Guest Experience	6/4/2021	<input checked="" type="checkbox"/> Y <input type="checkbox"/> N	TB	Strategic Planning	6/3/2021	<input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> NA	KC
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SUBJECT

Amend Concession Agreements at Los Angeles International Airport to revise payment terms due to the continuing impacts of COVID-19.

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 proposed Amendments to the ~~19~~²⁰ Concession Agreements at Los Angeles International Airport listed in Attachment 1 to revise rent payment terms as outlined in this report and in each proposed amendment.
4. AUTHORIZE the Chief Executive Officer or designee to execute the proposed Amendments to the Concession Agreements at Los Angeles International Airport, after approval as to form by the City Attorney and approval by the Los Angeles City Council.

DISCUSSION

1. Purpose

For concessions that are open and conducting business at Los Angeles International Airport, extend the revised rent payment terms to require payment of percentage rents instead of Minimum Annual Guarantee rent, for the period July 1, 2021, through June 30, 2022, and establish new Minimum Annual Guarantee rents effective July 1, 2022.

2. Prior Related Actions

- **January 15, 2015 – Resolution No. 25616**
The Board of Airport Commissioners (Board) approved an amendment to the expiration date for LAA-8613 Terminal Commercial Manager Agreement with URW for the Tom Bradley International Terminal extending the term by three years and for Terminal 2 by six months.
- **January 15, 2015– Resolution No. 25617**
The Board approved an extension to LAA-8647 the Duty-Free Concession Agreement with DFS Group, LLC from the original expiration date of September 30, 2023, to September 30, 2024.
- **June 18, 2015– Resolution No. 25739**
The Board approved an extension to the retail concession agreements LAA-8550 Hudson-Magic Johnson Enterprises-Concourse Ventures, LLC; LAA-8551 LAX Retail Magic 2 JV; LAA-8552 LAX Retail Magic 3-4 JV; and LAA-8543 XpresSpa from original expiration date of June 30, 2021 to June 30, 2023. In addition, the Board approved an extension to the food and beverage concession agreements LAA-8546, 8547 and 8548 with Areas USA LAX, LLC; LAA-8549 with DN Dakota JME from the original expiration date of June 30, 2021 to June 30, 2023.
- **June 18, 2015– Resolution No. 25740**
The Board approved Amended and Restated agreements for food and beverage concession agreements LAA-8589 with DN Dakota JMX 8589 Farmers Market and LAA-8586 and LAA-8587 with Host International for technical adjustments, approval of assignments and to extend the expiration date from June 30, 2021 to June 30, 2023.
- **April 21, 2016 – Resolution No. 25935**
The Board approved an amendment to LAA-8640 Terminal Commercial Manager Agreement with URW to extend the term for Terminal 1 for an additional three years and Terminal 6 for one year and three months
- **April 21, 2016 – Resolution No. 25936**
The Board approved an amendment to LAA-8613 Terminal Commercial Manager Agreement with URW to extend the term for Terminal 2 for an additional two years and six months
- **April 16, 2020 – Resolution No. 27003**
The Board approved revisions of payment terms of In-Terminal Concession Agreements and Rental Car Concession Agreements to require payment of percentage rent instead

of Minimum Annual Guarantees through June 30, 2020, and approved deferral of payment of percentage rent from July 2020 through December 2020.

- **October 1, 2020 – Resolution No. 27118**

The Board approved Second Letter Agreements for the Concession Relief Program which included: (1) abating Minimum Annual Guarantees through June 30, 2021, for Concession Agreements; (2) deferring payment for storage fees through December 31, 2020; (3) extending current expiration dates for certain In-Terminal Concession Agreements and the Terminal Media Operating Agreement by 24 months; and (4) authorizing the CEO to have two 12-month options to delay required refurbishment dates.

- **December 10, 2020 – Resolution No. 27170**

The Board approved resubmittal of the Second Letter Agreement for Host International, Inc. after verified compliance with Living Wage Ordinance requirements. The Second Letter Agreements for LAA-8586 and LAA-8587 covered the Concessions Rent Relief Program including (1) abating Minimum Annual Guarantees through June 30, 2021, for Concession Agreements; (2) deferring payment for storage fees through December 31, 2020; (3) extending current expiration dates for certain In-Terminal Concession Agreements and the Terminal Media Operating Agreement by 24 months; and (4) authorizing the CEO to have two 12-month options to delay required refurbishment dates.

- **April 7, 2021 – Resolution No. 27208**

The Board approved both the Sixth Amendment to Terminal Commercial Management Concession Agreement LAA-8613 and the Fourth Amendment to Terminal Commercial Management Concession Agreement LAA-8640 with URW Airports, LLC, to waive late fees and transfer funds to support construction efforts for the concessions program at the Bradley West Gates.

- **July 8, 2021 – Resolution No. 27297**

The Board of Airport Commissioners authorized the acceptance of the third round of economic relief funds provided from the American Rescue Plan Act of 2021.

3. Current Action

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.

The decline in passenger traffic due to COVID-19 significantly reduced concession sales and prompted the 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. To address this continuing impact, LAWA proposes to amend the ~~19~~²⁰ concession amendments outlined

below and listed in Attachment 1, to extend concession rent adjustments through June 30, 2022.

Proposed Amendments

The proposed Amendments 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.

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.

In addition, the proposed amendments will reinstate MAG rents effective July 1, 2022, based on the greater of two 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 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.

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 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 proposed amendments will extend the temporary surcharge assessment period to June 30, 2022, or upon full recovery of costs.

The tables below summarize the proposed amendments to the ~~19~~
20 concession agreements.

Food and Beverage, Retail, and Service Concessions Agreements

Description	Effective Date	Proposed 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	Proposed 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 • Prorated 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
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	Proposed 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

All other terms of the concession agreements will remain unchanged.

How this action advances a specific strategic plan goal and objective

This action advances this strategic goal and objective: ***Sustain a Strong Business: Operate sustainability – balancing economic, social and environmental responsibilities.*** Approving this rent adjustment will allow concessionaires to pay rents proportionate to recovering passenger traffic levels and support growth of airport revenues in parallel with the rate of passenger level recovery.

Fiscal Impact

The fiscal impact of this action is projected to be an additional loss of approximately \$130 million some of which may be eligible for the ARPA grant reimbursement. Staff previously anticipated the possibility of extending the temporary relief program through the end of FY2022 and has budgeted FY2022 revenue accordingly.

4. Alternatives Considered

• ***Proportionately Reset MAG Monthly***

Resetting the MAG amount payable every month until passenger levels reach pre-COVID levels will require consistent audit and reconciliation of accounts. This will be challenging given the limited resources and will not provide any significant addition to potential revenue to Los Angeles World Airports.

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. Concessionaires are required by contract to comply with the provisions of the Living Wage Service Contractor Worker Retention Ordinances.
5. Concessionaires are required to achieve the Airport Concession Disadvantaged Business Enterprise (ACDBE) goals required in their agreements.
6. Concessionaires are required by contract to comply with the provisions of the Affirmative Action Program.
7. Concessionaires have each been assigned a Business Tax Registration Certificate number.
8. Concessionaires are required by contract to comply with the provisions of the Child Support Obligations Ordinance.
9. Concessionaires have approved insurance documents, in the terms and amounts required, on file with the Los Angeles World Airports.
10. This action is not subject to the provisions of Charter Section 1022 (Use of Independent Contractors).
11. Concessionaires have submitted the Contractor Responsibility Program Pledge of Compliance and will comply with the provisions of the Contractor Responsibility Program.
12. 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 the Amendment.
13. Concessionaires will be required to comply with the provisions of the First Source Hiring Program for all non-trade Airport jobs.
14. Concessionaires will comply with the provisions of the Bidder Contributions CEC Form 55.
15. Concessionaires will comply with the provisions of the MLO Bidder Contributions CEC Form 50.
16. This item is not subject to the provisions of the Iran Contracting Act.

Attachment

- Concessions Agreement Summary Attachment 1

see next page for
amended attachment

Concessions Agreement Summary Attachment 1

Agreement With	Agreement No.	Local Contact	Corporate Address
DFS Group, L.P.	LAA-8647	Martin Mathews, Quentin Chan	1580 Francisco Street, Torrance, CA 90501
Hudson-Magic Johnson Enterprises-Concourse Ventures, LLC	LAA-8550	Courtney Thornton, Jeff Martin	300 World Way, Los Angeles, CA 90045
LAX Retail Magic 2 JV	LAA-8551	Courtney Thornton, Jeff Martin	300 World Way, Los Angeles, CA 90045
LAX Retail Magic 3-4 JV	LAA-8552	Courtney Thornton, Jeff Martin	300 World Way, Los Angeles, CA 90045
LAX Retail Magic 3-4 JV	LAA-8542	Courtney Thornton, Jeff Martin	300 World Way, Los Angeles, CA 90045
Areas USA LAX, LLC	LAA-8546, 8547, 8548, 8843, 8964	Carlos Bernal, Ayaz Siddiki	5301 Blue Lagoon Dr. Ste. 690, Miami FL 33126
DN Dakota/JME LAX 8589 Farmers, LLC	LAA-8589	Bob Wilson, Chistopher Angne	250 Delaware Avenue, Buffalo, NY 14202
DN Dakota/JME LAX 8549 Pucks, LLC	LAA-8549	Bob Wilson, Chistopher Angne	250 Delaware Avenue, Buffalo, NY 14202
Host International, Inc.	LAA-8586, 8587	Derryl Benton, Amy Dunne, Kendra Arroyo	6905 Rockledge Drive, Bethesda, MD 20817
XpresSpa LAX Airport, LLC	LAA-8543	Doug Satzman	254 West 31st St, 11th Floor, New York, NY 10001
Lenlyn Ltd dba ICE Currency Services	LAA-8831	Bharat Shah	5777 W, Century Blvd., Suite1550, Los Angeles, CA 90045
URW Airports, LLC	LAA-8640	Dan Hough, Mike Salzman	2049 Century Park East, 41st Floor, Los Angeles, CA 90067
URW Airports, LLC	LAA-8613	Dan Hough, Mike Salzman	2049 Century Park East, 41st Floor, Los Angeles, CA 90067
JCDecaux Airport, Inc	LAA-8796	Alan Sullivan, Stacey Kodak	Empire State Building, 350 5th Ave, 73rd Fl, New York NY 10118

Surrendered Attachment 1

ITEM 9

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DFS Group, L.P.	LAA-8647	Martin Mathews, Quentin Chan	1580 Francisco Street, Torrance, CA 90501
Hudson-Magic Johnson Enterprises-Concourse Ventures, LLC	LAA-8550	Courtney Thornton, Jeff Martin	300 World Way, Los Angeles, CA 90045
LAX Retail Magic 2 JV	LAA-8551	Courtney Thornton, Jeff Martin	300 World Way, Los Angeles, CA 90045
LAX Retail Magic 3-4 JV	LAA-8552	Courtney Thornton, Jeff Martin	300 World Way, Los Angeles, CA 90045
LAX Retail Magic 3-4 JV	LAA-8542	Courtney Thornton, Jeff Martin	300 World Way, Los Angeles, CA 90045
Areas USA LAX, LLC	LAA-8546, 8547, 8548, 8843, 8964	Carlos Bernal, Ayaz Siddiki	5301 Blue Lagoon Dr. Ste. 690, Miami FL 33126
DN Dakota/JME LAX 8589 Farmers, LLC	LAA-8589	Bob Wilson, Christopher Angne	250 Delaware Avenue, Buffalo, NY 14202
DN Dakota/JME LAX 8549 Pucks, LLC	LAA-8549	Bob Wilson, Christopher Angne	250 Delaware Avenue, Buffalo, NY 14202
Host International, Inc.	LAA-8586, 8587	Derryl Benton, Amy Dunne, Kendra Arroyo	6905 Rockledge Drive, Bethesda, MD 20817
XpressSpa LAX Airport, LLC	LAA-8543	Doug Satzman	254 W. 31st St., 11th Floor, New York NY 10001
AIClear	LAA-9095	Kenneth Kornick	650 5th Ave 17th Floor, New York, NY 10019
Lenlyn Ltd dba ICE Currency Services	LAA-8831	Bharat Shah	5777 W, Century Blvd., Suite 1550, Los Angeles, CA 90045
URW Airports, LLC	LAA-8640	Dan Hough, Mike Salzman	2049 Century Park East, 41st Floor, Los Angeles, CA 90067
URW Airports, LLC	LAA-8613	Dan Hough, Mike Salzman	2049 Century Park East, 41st Floor, Los Angeles, CA 90067
JCDecaux Airport, Inc	LAA-8796	Alan Sullivan, Stacey Kodak	Empire State Building, 350 5th Ave, 73rd Fl, New York NY 10118

ADDED