



Los Angeles World Airports

REPORT TO THE

BOARD OF AIRPORT COMMISSIONERS

Item Number
15

Dave Jones

Approved by: Dave Jones Director Airline Property and Concessions

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

D. Dug

City Attorney

Justin Erbacci, Chief Executive Officer

Meeting Date:

1/7/2021

CAO Review:

- Completed
- Pending
- N/A

Reviewed for	Date	Approval Status	By
Finance	12/30/2020	<input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> NA	CI
CEQA	12/29/2020	<input checked="" type="checkbox"/> Y <input type="checkbox"/> N	VW
Procurement	12/29/2020	<input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Cond	MJ
Guest Experience	12/29/2020	<input checked="" type="checkbox"/> Y <input type="checkbox"/> N	TB
Strategic Planning	12/29/2020	<input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> NA	KC

SUBJECT: Fourth Amendment to the Concession Agreement with DFS Group, L.P. (Agreement No. LAA-8647)

Approve the Fourth Amendment to the Concession Agreement with DFS Group, L.P. (Agreement No. LAA-8647) to allow adjustment of the Faithful Performance Guarantee.

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 III, Class 1 (18)(c) of the Los Angeles City CEQA Guidelines.
3. APPROVE the Fourth Amendment to the Concession Agreement with DFS Group, L.P. (Agreement No. LAA-8647) to allow adjustment of the Faithful Performance Guarantee.
4. AUTHORIZE the Chief Executive Officer to execute the proposed Approve the Fourth Amendment to the Concession Agreement with DFS Group, L.P. (Agreement No. LAA-8647) to allow adjustment of the Faithful Performance Guarantee after approval as to form by the City Attorney and approval of the Los Angeles City Council.

DISCUSSION:

1. Purpose

Amend the Concession Agreement with DFS Group, L.P. (DFS) to adjust the Faithful Performance Guarantee proportionally to the reduced rent payable due to the rent relief program approved by the Board of Airport Commissioners to address the impacts of COVID-19. This action will provide DFS with the same flexibility already available to other concessionaires that received the rent relief packages.

2. Prior Related Actions

- **August 6, 2012 – Resolution 24683 (LAA-8647)**
The Board of Airport Commissioners (Board) approved award of a ten-year with three one-year extension options Concession Agreement with DFS to develop and operate duty free locations at Los Angeles International Airport (LAX) (Agreement).
- **February 18, 2018 – Resolution 25617 (LAA-8647A)**
The Board approved a term extension of one year to compensate for increased construction costs as a result of delayed delivery of space.
- **April 22, 2020 – Resolution 27003 (LAA-8831B)**
The Board approved a Letter Agreement for a concessions relief program to abate and adjust the Minimum Annual Guarantee (MAG) for the period April 1 to June 30, 2020, and defer storage and rent payment fees to July 1, 2020, upon meeting certain conditions for rent relief eligibility.
- **October 21, 2020 – Resolution 27118 (LAA-8647)**
The Board approved a Second Letter Agreement for a concessions relief program to abate and adjust the MAG through June 30, 2021, and defer storage payments to January 2021, upon meeting of certain conditions for rent relief eligibility.

3. Current Action

All concession agreements at Los Angeles International Airport (LAX) require the concessionaire to post a Faithful Performance Guarantee, in the form of a Letter of Credit equal to three months' rent. The Faithful Performance Guarantee requirements are reviewed and adjusted annually based on prior year rent payments. Historically, rents have increased and therefore the Faithful Performance Guarantees have been adjusted up to reflect the required rent guarantee.

In April 2020 and October 2020, the Board approved rent relief for concessionaires that waived the required Minimum Annual Guaranteed rent, and allowed payment based only on percentage of gross sales. This resulted in reduced rents paid as passenger traffic and gross sales have declined significantly due to COVID-19 impacts. Most of the concession agreements will allow the Faithful Performance Guarantees to be reset to reflect the lower monthly rent payments.

However, the duty free concession agreement includes language that prevents DFS from reducing the Faithful Performance Guarantee below the initial amount set when the

agreement was executed. Therefore, DFS is facing a financial burden that other concessionaires do not face because the DFS agreement prevents DFS from reducing their Letter of Credit Faithful Performance Guarantee.

LAWA staff reviewed approximate duty free sales and recommends that the duty free concession agreement LAA-8647 be amended to allow the Faithful Performance Guarantee amounts to be reset to reflect the reduced rent that results from the concession relief program previously approved by the Board. The proposed amendment will adjust the minimum Faithful Performance Guarantee amount from \$7.5M to \$5M so that the Faithful Performance Guarantee is the greater of \$5M or three times the monthly rental rate, whichever is higher. This amount is nearly double the Faithful Performance Guarantee amount that would be required calculated at three times estimated monthly rent. In addition, the proposed amendment will allow the CEO to adjust the Faithful Performance Guarantee to align with a revised MAG, if applicable, which is similar to the process allowed for all other in terminal concession agreements.

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.* The proposed amendment will provide the currency exchange concessionaire the same ability to reduce its Faithful Performance Guarantee as all other concessionaires at LAX.

Action Requested

Approve the proposed fourth amendment to the Concession Agreement LAA-8647 and authorize the Chief Executive Officer to execute the proposed amendment after approval as to form by the City Attorney and approval of the Los Angeles City Council.

Fiscal Impact

There is no fiscal impact due to this action.

4. Alternatives Considered

• ***Take No Action***

Taking no action will require DFS to regain a Letter of Credit of no less than \$7.5M as provided per the Agreement, which exceeds the required Faithful Performance Guarantee amount and limits the concessionaire's ability to use cash effectively during this period of reduced traffic and sales.

STANDARD PROVISIONS:

1. The issuance of permits, leases, agreements, gate and space assignments, and renewals, amendments or extensions thereof, or other entitlements granting use of existing airport facilities or its operations is exempt from California Environmental Quality Act (CEQA) requirements pursuant to Article III, Class 1 (18) (c) 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. This action is not subject to the provisions of the Living Wage/ Worker Retention Ordinances.
5. This action is not subject to the provisions of the Business Enterprise (BE) Programs.
6. This action is not subject to the provisions of the Affirmative Action Program.
7. This action does not require a Business Tax Registration Certificate number.
8. This action is not subject to the provisions of the Child Support Obligations Ordinance.
9. This action is not subject to the insurance requirements of the Los Angeles World Airports.
10. This action is not subject to the provisions of Charter Section 1022 (Use of Independent Contractors).
11. This action is not subject to the provisions of the Contractor Responsibility Program.
12. This action is not subject to the provisions of the Equal Benefits Ordinance.
13. This action is not subject to the provisions of the First Source Hiring Program.
14. This action is not subject to the provisions of Bidder Contributions CEC Form 55.
15. This action is not subject to the provisions of the Iran Contracting Act.