

RESOLUTION NO. 27191

WHEREAS, on recommendation of Management, there was presented for approval, Fourth Amendment to Concession Agreement LAA-8647 with DFS Group, LP to allow adjustment of the Faithful Performance Guarantee, covering duty free concession at Los Angeles International Airport; and

LAX

Van Nuys

City of Los Angeles

Eric Garcetti
Mayor

Board of Airport
Commissioners

Sean O. Burton
President

Valeria C. Velasco
Vice President

Gabriel L. Eshaghian
Beatrice C. Hsu
Nicholas P. Roxborough
Dr. Cynthia A. Telles
Karim Webb

Justin Erbacchi
Chief Executive Officer

WHEREAS, all concession agreements at Los Angeles International Airport (LAX) require the concessionaire to post a Faithful Performance Guarantee (FPG) in the form of a Letter of Credit equal to three (3) months' rent. The FPG requirements are reviewed and adjusted annually based on prior year rent payments. Historically, rents have increased and, therefore, the FPGs have been adjusted up to reflect the required rent guarantee; and

WHEREAS, in April 2020 and October 2020, the Board of Airport Commissioners (Board) approved rent relief for concessionaires that waived the required Minimum Annual Guarantee (MAG) 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 FPGs to be reset to reflect the lower monthly rent payments; and

WHEREAS, the duty free concession agreement includes language that prevents DFS Group, LP (DFS) from reducing the FPG below the initial amount set when the agreement was executed. Therefore, DFS is facing a financial burden that other concessionaires do not face because DFS is prevented by its agreement from reducing its Letter of Credit FPG; and

WHEREAS, the Fourth Amendment will allow the FPG amounts to be reset to reflect the reduced rent that results from the concession relief program previously approved by the Board. It will adjust the minimum FPG amount from \$7.5M to \$5M so that the FPG is the greater of \$5M or three times the monthly rental rate, whichever is higher. This amount is nearly double the FPG amount that would be required calculated at three times estimated monthly rent. In addition, the amendment will allow the Chief Executive Officer to adjust the FPG to align with a revised MAG, if applicable, which is similar to the process allowed for all other in-terminal concession agreements; and

WHEREAS, 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; and

WHEREAS, at its meeting, the Board approved amendments to the staff report to correct standard provisions 4 through 15, as follows:

4. DFS will comply with the provisions of the Living Wage/Service Contractor Worker Retention Ordinances.
5. Procurement Services Division has reviewed this action (File 7038), and established a goal of 20% Airport Concessions Disadvantaged Business Enterprise (ACDBE) participation. DFS committed to 25% ACDBE, and has achieved 25% participation to date.
6. DFS is required by contract to comply with the provisions of the Affirmative Action Program.
7. DFS has been assigned Business Tax Registration Certificate 0000572747-0002-7.



8. DFS is required by contract to comply with the provisions of the Child Support Obligations Ordinance.
9. DFS has approved insurance documents, in the terms and amounts required, on file with LAWA.
10. This action is not subject to the provisions of Charter Section 1022 (Use of Independent Contractors).
11. DFS has submitted the Contractor Responsibility Program Pledge of Compliance, and will comply with the provisions of said program.
12. DFS has been determined by Public Works, Office of Contract Compliance, to be in compliance with the provisions of the Equal Benefits Ordinance.
13. DFS will be required to comply with the provisions of the First Source Hiring Program for all non-trade LAX jobs.
14. DFS has submitted the Bidder Contributions CEC Form 55, and will comply with its provisions.
15. This action is not subject to the provisions of the Iran Contracting Act of 2010.

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 III, Class 1 (18)(c) of the Los Angeles City CEQA Guidelines; approved the Fourth Amendment to Concession Agreement LAA-8647 with DFS Group, LP to allow adjustment of the Faithful Performance Guarantee, covering duty free concession at Los Angeles International Airport; and authorized the Chief Executive Officer to execute said Fourth Amendment to Concession Agreement LAA-8647 with DFS Group, LP after approval as to form by the City Attorney and approval by the Los Angeles City Council.

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I hereby certify that this Resolution No. 27191 is true and correct, as adopted by the Board of Airport Commissioners at its Regular Meeting held on Thursday, January 7, 2021.


Grace Miguel – Secretary
BOARD OF AIRPORT COMMISSIONERS