

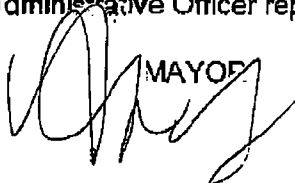
0150-09712-0002

**TRANSMITTAL**

TO Gina Marie Lindsey, Executive Director Department of Airports	DATE 2/19/15	COUNCIL FILE NO.
FROM The Mayor	COUNCIL DISTRICT 11	

**Request to Approve a First Amendment to Terminal Commercial  
Manager Concession Agreement with Westfield Concessions Management, LLC  
to Extend the Term for Management of the Terminal Concessions in the  
Tom Bradley International Terminal and Terminal 2 at the  
Los Angeles International Airport**

Transmitted for further processing, including Council consideration. See the  
City Administrative Officer report attached.

  
MAYOR

(Ana Guerrero)

MAS:WDC: 101500571

REPORT FROM

## OFFICE OF THE CITY ADMINISTRATIVE OFFICER

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Date: February 18, 2015

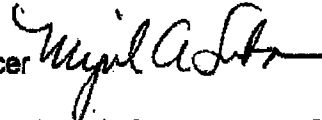
CAO File No. 0150-09712-0002

Council File No.

Council District: 11

To: The Mayor

From: Miguel A. Santana, City Administrative Officer



Reference: Communication from the Department of Airports dated January 9, 2015; referred by the Mayor for report on January 14, 2015

Subject: **APPROVAL OF FIRST AMENDMENT TO TERMINAL COMMERCIAL MANAGER CONCESSION AGREEMENT WITH WESTFIELD CONCESSIONS MANAGEMENT, LLC TO EXTEND THE TERM FOR MANAGEMENT OF THE TERMINAL CONCESSIONS IN THE TOM BRADLEY INTERNATIONAL TERMINAL AND TERMINAL 2 AT THE LOS ANGELES INTERNATIONAL AIRPORT**

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### SUMMARY

The Executive Director of the Los Angeles World Airports (LAWA; Department) requests approval to execute a First Amendment to Terminal Commercial Management Concession Agreement LAA-8613 with Los Angeles-based Westfield Concessions Management, LLC (Westfield), a division of the Westfield Group of Sydney, Australia, to extend the term of performance for three years for concessions in the new Tom Bradley International Terminal (TBIT; Bradley Terminal) and six months for concessions in Terminal 2 (T2) at the Los Angeles International Airport (LAX).

The proposed amendment is intended to compensate Westfield for \$8.4 million in costs (1) for construction that exceeded its original estimates (by up to 18.5 percent) due to delays in LAWA's delivery of contracted concessions space in TBIT resulting from construction overlaps; and (2) related to developing an expanded scope of work for the entirety of the Terminal 2 concourse and the concurrent renovation of public and concession space required to accommodate the TBIT public dedication schedule. Additionally, approval of the First Amendment will allow LAWA to avoid potentially lengthy settlement negotiations with Westfield for the cost increases. If approved, the amendment, subject to City Attorney approval as to form, will extend the 17-year agreement's original termination date from January 31, 2029 to January 31, 2032 (for a total of 20 years) for the Bradley concession spaces and from January 31, 2029 to July 31, 2029 (for a total of 17.5 years) for the T2 concession spaces.

By extending the current terms for the concessions space in the Tom Bradley International Terminal and Terminal 2, it will provide additional time for Westfield to depreciate its capital investment in the two terminals' concessions space.

Westfield Concessions Management, LLC was selected by the Department in 2012, through a competitive process involving three proposers, to develop, lease, and manage concessions (e.g.,

convenience and specialty retail, food and beverage, and various passenger services) in the Bradley Terminal, Terminal 2, and the Theme Building (formerly known as the "Encounter Restaurant") using a Terminal Concessions Manager (TCM) model. This model allows LAWA to move from its previous "concessions management" methodology to a "concessions development" methodology for the combined 84,261 square feet of concessions space. The original Westfield TCM contract was approved by the Council on June 15, 2012 (C.F. 12-0840).

The proposed TCM Agreement, once fully implemented, is estimated to provide LAWA with \$18.6 million in revenue for the "first fully developed year" (the 12-month period following completion of all design and construction work and where the spaces are fully operational for the traveling public) and between \$331.1 million and \$440 million over the original 17-year term. The 17-year term is comprised of (1) a two-year period to develop concession and related spaces for a minimum of 84,261 square feet in the Bradley Terminal, T2, and—as an option—the Theme Building (the option of which has expired); market and promote the concessionaires; and negotiate and administer the individual concession contracts; and (2) a 15-year operational period to monitor and manage concessionaire performance. The 15-year operational period was determined to be optimal in order for Westfield to recover its capital investment and LAWA to offset its development costs and debt service on the Bradley West Terminal, a component of the TBIT. In addition to the estimated revenue to LAWA from the management of the terminal concessions, Westfield and its concessionaires must invest a minimum of \$98.3 million (\$81.9 million in initial and \$16.4 in mid-term improvements) over the 17-year term of the Agreement. With the proposed extension to the original term of performance, LAWA estimates that \$35.5 million in additional revenue will be generated making the total Department revenue from the Terminal Commercial Management Concession Agreement, over a 20-year period, between \$366.6 million and \$475.5 million.

Under Agreement LAA-8613, Westfield has the exclusive right, subject to approval by LAWA, to select and manage all concessions—other than those for duty free, which are managed under a separate agreement with the DFS Group L.P., and duty paid sales, advertising, sponsorships, luggage carts, communications media, currency exchange, banking, and ATM services—in the designated areas. The Department retains the right to reduce the 84,261 square foot space if it is necessary for operational purposes, physical or financial non-feasibility, design inconsistency, or other reasonable justifications.

At its meeting of January 15, 2015, the Board of Airport Commissioners (Board) approved the proposed First Amendment with Westfield and, pursuant to Charter Section 606, authorized the Department to proceed with executing the Amendment, subject to the approval of the Council. The above-referenced aspects of the proposed First Amendment, and this report, are based upon revised information received from the Department subsequent to the initial request submittal.

## **BACKGROUND**

### **Basis for Proposed Amendment**

Delays in LAWA's delivery of completed base building construction to Westfield for the Bradley Terminal and Terminal 2, and the resulting cost to Westfield and its concessionaires, are the basis for LAWA's proposal to reimburse Westfield by extending its existing lease terms by way of the

proposed First Amendment to Concession Agreement LAA-8613. Approval of the First Amendment will provide an alternative for a monetary settlement by the Department that could exceed \$8.4 million and is, therefore, recommended by LAWA as the optimal solution to the problem of unexpected construction cost increases by Westfield and its concessionaires.

Originally, as detailed in the Terminal Commercial Management Concession Agreement LAA-8613, base building concession space in the Bradley Terminal was to be delivered by LAWA to Westfield for final construction in time for the planned opening in support of the original Bradley Terminal dedication of December 12, 2012. When the Bradley Terminal dedication was then extended to May 2013 (and later to September 2013), LAWA required Westfield to accelerate certain elements of its final concessions construction (while having to work around LAWA's general contractor's crews) in order to meet the May 2013 TBIT dedication. When that date was extended to September 2013, the construction costs borne by Westfield's concessionaires and delays in the base building Temporary Certificate of Occupancy significantly encumbered the construction progress leading up to the official Bradley Terminal dedication on September 18, 2013. As a consequence of the various changes in required completion dates, the delays in obtaining finished space in TBIT in which to complete their concessions improvements, and the need to accelerate certain elements of the concessions space build-outs, Westfield incurred significant costs that were neither envisioned nor part of the original contract with the Department.

As a result of the delays and changes to various contractual milestone dates, Westfield determined that approximately \$17 million in increased and unexpected costs to deliver finished terminal concession spaces were borne by Westfield and its concessionaires. Of that amount, and after extensive investigation by LAWA, it was determined that a reasonable financial impact on Westfield for the unanticipated cost increases amounted to approximately \$8.4 million rather than \$17 million. Consequently, both parties were able to agree on (1) the financial impact of base building construction delays and (2) the best course of action to address the financial impacts, namely, an extension to the concessions agreement that would benefit all concerned.

In discussions with Westfield, the Department determined that by extending the 17-year term for three additional years for the Tom Bradley International Terminal and six months for Terminal 2, it would satisfactorily resolve the problems of cost overruns, claims by Westfield's concessionaires, and insufficient time allotted for Westfield to depreciate its capital investment without the parties having to resort to costly and time-consuming settlement negotiations. To modify the original not-to-exceed 17-year term of performance, however, requires Board and City Council approval. Approval of the First Amendment would not result in any additional costs to the Department.

### **Alternatives to Approving the First Amendment**

According to the Department, there are no viable alternatives to approving the proposed First Amendment to Concession Agreement LAA-8613 with Westfield Concession Management, LLC.

By not amending the agreement, it could result in lengthy settlement negotiations, payment by LAWA of approximately \$8.4 million to compensate Westfield for its cost increases, and the potential loss of approximately \$35.5 million in additional revenue that would be realized by the Department from the proposed term extensions.

## **Compliance with City Administrative Requirements**

The proposed First Amendment must be approved by the City Attorney as to form. Westfield has been assigned a Business Tax Registration Certificate number and has approved insurance documents on file with the Department, in the terms and amounts requested.

Westfield has submitted the Contractor Responsibility Program Pledge of Compliance and must comply with its provisions. In accordance with the contract, Westfield is required to comply with the provisions of the following standard City contract requirements: Affirmative Action Program; Child Support Obligations Ordinance; Living Wage Ordinance; the First Source Hiring Program for all non-trade LAX airport jobs; and the Bidder Contributions CEC (City Ethics Commission) Form 55.

Pursuant to Charter Section 1022, staff determined that work specified in the TCM contract can be performed more feasibly and economically by an independent contractor than by City employees, therefore, the underlying agreement is not subject to the provisions of Charter Section 1022. According to Department staff, there were no objections to the original agreement by the affected City labor unions.

Staff from the Department of Public Works, Office of Contract Compliance, must determine that Westfield is in full compliance with the provisions of the Equal Benefits Ordinance prior to execution of the First Amendment.

Department of Airports' Procurement Services staff reviewed this action (File 5124) and established two different categories of participation goals for the following ACDBE program: 25 percent for Food and Beverage concessions and 20 percent for Retail concessions. Staff reports that Westfield also proposed ACDBE participation levels of 25 percent and 20 percent for Food and Beverage and Retail concessions, respectively. To date, Procurement Services staff has determined that Westfield has achieved 49 percent participation for Food and Beverage concessions and 35 percent participation for Retail concessions.

The issuance of permits, leases, agreements or other entitlements granting use of existing facilities at a municipal airport involving negligible or no expansion of use beyond that previously existing or permitted is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Article III, Class 1(18)(c) of the Los Angeles City CEQA Guidelines. Pursuant to Charter Section 606 and the Los Angeles Administrative Code Section 10.5, the proposed First Amendment, being that the underlying concession agreement is for a period longer than five years, must be approved by the Council.

## **RECOMMENDATIONS**

That the Mayor:

1. Approve, subject to City Attorney approval as to form, the First Amendment to Terminal Commercial Management Concession Agreement LAA-8613 between the Los Angeles World Airports and Westfield Concession Management, LLC (Westfield) to extend the current term of performance by three years for development and

management of concessions in the Tom Bradley International Terminal and six months for concessions in Terminal 2 at the Los Angeles International Airport (LAX) subject to Westfield's compliance with the standard City contract requirements pertaining to: the Affirmative Action Program; Child Support Obligations Ordinance; Living Wage Ordinance; the First Source Hiring Program for all non-trade LAX airport jobs; and the Bidder Contributions CEC (City Ethics Commission) Form 55, and determination by the Department of Public Works, Bureau of Contract Administration, of Westfield's compliance with the provisions of the Equal Benefits Ordinance;

2. Authorize the Executive Director of the Los Angeles World Airports to execute the proposed First Amendment to Terminal Commercial Management Concession Agreement LAA-8613 with Westfield Concessions Management, LLC; and
3. Return the proposed First Amendment to the Department for further processing, including Council consideration.

#### **FISCAL IMPACT STATEMENT**

Approval of the proposed amendment will generate approximately \$35.5 million in additional revenue for LAWA over the three-year extension period and will help the Department to avoid paying settlement claims of approximately \$8.4 million to Westfield for construction cost increases attributable to LAWA. Both the proposed First Amendment and the underlying agreement comply with the Department of Airports adopted Financial Policies. Approval of the proposed amendment with Westfield Concession Management, LLC will have no impact on the City's General Fund.

#### **Time Limit for Council Action**

Pursuant to Charter Section 606, "Process for Granting Franchises, Permits, Licenses and Entering Into Leases," and the Los Angeles Administrative Code Section 10.5, "Limitation and Power to Make Contracts," unless the Council takes action disapproving a contract that is longer than five years within 30 days after submission to Council, the contract shall be deemed approved.