

Memorandum



Date: December 1, 2021

To: Honorable Chairman Jose “Pepe” Diaz
and Members, Board of County Commissioners

Supplement to
Agenda Item No. 8(A)(2)

From: Daniella Levine Cava
Mayor

Subject: Supplement No. 1 to Amendment to Lease and Concession Agreements for Food and Beverage, Retail and Services Concessionaires at Miami International Airport, Legistar No. 212917

The “Amendment to Lease and Concession Agreements for Food and Beverage, Retail and Services Concessionaires at Miami International Airport” as referenced above was amended at the Miami-Dade Chairmans Council of Policy (CCP) meeting held on November 10, 2021. This supplement memorandum summarizes in Chart A (as shown below) the original recommendations my Administration proposed to provide Food and Beverage, Retail and Services Concessionaires long-term relief and the amendments proposed by CCP committee members at the November meeting. Additionally, Chart B on page 7 summarizes the details of the revisions made to the terms of the concessionary agreements.

Chart A. Summary of Changes to Long-Term Relief Recommendations

Business Terms	Existing Terms	Mayor’s Recommendation	CCP Amendments
Contract Term	Terms in agreements vary.	Toll the term of the concessionary agreements commencing on March 1, 2020, until December 31, 2021. Once the tolling ends, the Concessionaire’s remaining term within each agreement shall resume. For those agreements that expire on or prior to September 13, 2024, an additional two (2) years shall be added to the Concessionaire’s resumed term. For those agreements that expire after September 13, 2024, but on or before October 21, 2025, an additional one (1) year shall be added to the Concessionaire’s resumed term. For those agreements that expire after October 21, 2025, no additional years	The Amendment revises language that extends the term of the Concessionary Agreement for an additional four years when tolling ends. See Chart B. Additionally, the Amendment adds language that restricts any Concessionaire from the tolling and extension of term if the Concessionaire was awarded a contract during or before the year 2018 and whose Location(s) were not open by December 31, 2019, such Concessionaire shall not be entitled to the

		shall be added to the Concessionaire’s resumed term. In the event the Concessionaire’s term is currently on a month-to-month tenancy, the Concessionaire will not have a resumed term upon the conclusion of the tolling period and shall only be entitled to an extension of four (4) years when the tolling ends.	tolling or extension of the Term of the Agreement, but solely with respect to such unopened Location(s), and solely as to those Location(s), the Agreement shall expire, on the date specified in the Agreement prior to the execution of the Amendment.
Minimum Annual Guarantee (MAG)	Majority of agreements contain a MAG payment requirement.	No MAG payment. Compensation is based on tiered annual rent or percentage fee payments, whichever is greater.	No changes
Percentage Fee Percent of Gross Revenues	Agreements establish various percentage fee payments.	Reduce monthly percentage fee payments for all percentage fees set in existing concessionary agreements from 100 percent of the total percentage fee to 70 percent of the total percentage fee, from March 1, 2021 to December 31, 2021. Thereafter, effective January 1, 2022, the percentage fee is reset to 100 percent of the total percentage fee and concessionaires shall receive a two percent decrease on each percentage fee payment obligation for the remainder of the contract term.	No changes
Concession Space	Penalty for space returned.	No penalty for space returned prior to executing the amendment.	No changes
Hours of Operation	Majority of Agreements require food and beverage Locations and/or its subtenants shall be open	Concessionaire shall be required by the Department to open its Location(s) when enplanements are one hundred percent (100%) of 2019 Enplanements for domestic and international passengers in the respective	The Amendment revises language that requires Concessionaires to open all remaining Location(s) when enplanements are one hundred percent (100%) of 2019 Enplanements

	<p>for business 365 days a year, opening 1 ½ hours before the first flight (in each respective Concourse) and closing no less than 30 minutes prior to the departure of the last flight). This should be considered as the minimum hours of operation of the food and beverage Locations. Retail Locations and/or its subtenants shall operate a minimum of 17 hours a day, seven days a week. Service concessions shall operate 17 hours a day, seven days a week. The Aviation Department may increase or decrease the number of required operating hours for both Retail locations and Service concessions.</p>	<p>terminal of the Location(s) for a ninety (90) day period.</p>	<p>for domestic and international passengers in the respective terminal of the Location(s) for a ninety (90) day period.</p> <p>The Amendment also adds language that requires all post-security newsstands and food and beverage locations serving gates in the South, Central and North Terminals to open during peak operating hours within ninety (90) days of the Board of County Commissioners approval of this Amendment, and, if applicable, at least one pre-security newsstand and food and beverage location in each of the South, Central and North Terminals during peak operating hours, as determined by the Aviation Department. If the Concessionaire refuses to comply, the Aviation Department may take such Location(s) back from the Concessionaire and re-lease or re-concess the Location without any claims of any kind against the County arising out of such action.</p>
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Refresh Locations	Terms in agreements vary.	Require a minimum investment of \$75.00 per square feet to refresh each respective location. The obligation to invest such amount shall accrue for each location when passenger enplanements are 100 percent of 2019 domestic and international passenger enplanements in the respective terminal of the location as follows: North Terminal – 12,947,679 enplanements; South Terminal - 5,045,628 enplanements; and Central Terminal – 4,755,464 enplanements. Such refreshment shall be completed within two years of such occurrence.	<p>The Amendment revises language that exempts Concessionaires from complying with the investment requirement if the Concessionaire made an investment in its Location(s) equal to or greater than \$75.00 per square feet during the period between March 1, 2020 and December 31, 2021 and provides proof of such investment to the Aviation Department.</p> <p>The Amendment also adds provisions with timelines and submittal requirements of financial records, improvement plans, and implementation schedules for the administration of the investment requirement for both the Concessionaires on month-to-month leases and the Aviation Department following approval of this Amendment by the Board of County Commissioners, including the Aviation Department’s right to terminate an Agreement with a Concessionaire on a month-to-month lease upon 30 days notification, should the Concessionaire fail to meet the deadlines and requirements.</p>
Competitive Pricing	Pricing is set at +/-10%.	No competitive pricing.	No changes

<p>Performance Bonds, Security Deposits</p>	<p>Majority of agreements require: 1) a performance bond to guarantee payment of 75 percent of MAG payment and annual rent and any applicable taxes, and 2) a security deposit in the form of cash or an irrevocable letter of credit in an initial amount of 25 percent of the MAG and annual rent and any applicable taxes. The security payment will be adjusted to reflect any increases or decreases in annual rent.</p>	<p>Security deposit and performance bond provisions shall be waived effective March 1, 2021 until December 31, 2022. Commencing on January 1, 2023, concessionaires shall be required to maintain a security deposit equal to 15 percent of total rent and applicable taxes paid the Department in the immediate prior fiscal year. Such security deposit will be adjusted every subsequent fiscal year thereafter, and payment can be in the form of a performance bond, irrevocable standby letter of credit as approved by the Department or cash. If any concessionaire currently has a cash deposit, it will be credited to their account and such credit may be applied against any outstanding invoices.</p>	<p>No changes</p>
<p>Marketing Fees</p>	<p>Majority of agreements contain a marketing fee, which consists of one-half (½) of one (1) percent of gross revenues assessed annually and paid monthly.</p>	<p>Suspension of marketing fees from March 1, 2021 – December 31, 2021, On January 1, 2022, marketing fees will resume.</p>	<p>No changes</p>
<p>Living Wage</p>	<p>Majority of agreements do not contain</p>	<p>Incorporate the Living Wage requirement pursuant to Section 2-8.9 of the Code of Miami-Dade County, and</p>	<p>No changes</p>

	Living Wage requirements.	Administrative Order No. 3-30 as amended, as applicable.	
Labor Peace	Majority of agreements do not contain Labor Peace requirements.	Incorporate Labor Peace requirements per Resolution No. 148-07, as applicable.	The Amendment adds language which reiterates that Concessionaires providing food & beverage, retail, and specialty retail services shall be subject to the Labor Peace provisions already stated in the Amendment.
Assign/Transfer/Pledge Sublet Rights of Locations	Majority of Agreements prohibit the assignment, transfer, pledge, or otherwise encumbrance of the Concession Agreement, or the use of the Location by others without the written consent of the Aviation Department.	No recommendations	The Amendment adds Paragraph P, which prohibits the Concessionaire to assign, transfer, pledge, or otherwise encumber the Agreement, nor sublet all or any portion of the Location(s), or allow parties other than Concessionaire, or any sublessee currently operating with the County’s express knowledge and consent, to use the Location(s) for the purposes established in the Agreement without the prior approval of the Board.
Execution of Amendment	None	No recommendations	The Amendment adds Paragraph Q, which requires Concessionaires to execute this Amendment within 90 days of the Board’s approval, unless the Board authorizes additional time.


Chart B, as depicted below, shows the recommendations made by the Administration to revise the term of the concessionary agreements for food and beverage, retail, and services concessionaires as well as the amendments proposed by CCP members at the November 10, 2021 meeting.

Chart B

Original Expiration Date of Concessionary Agreements	Time Added to Concessionary Agreement Terms per the Mayor’s Recommendation	Revised Expiration Date of Concessionary Agreements per the Mayor’s Recommendation	Time Added to Concessionary Agreement Terms per the CCP Amendment	Expiration Date of Concessionary Agreements per the CCP Amendment
Agreement expires <u>on/prior</u> to September 13, 2024	2 years added to the term, plus the 22-month tolling period	Agreement expires in 2028	4 years added to the term, plus the 22-month tolling period	Agreement expires 70 months after its expiration date
Agreement expires <u>after</u> September 13, 2024, but on or before October 21, 2025	1 year added to the term, plus the 22-month tolling period	Agreement expires in 2027 or 2028	4 years added to the term, plus the 22-month tolling period	Agreement expires 70 months after its expiration date
Agreement expires <u>after</u> October 21, 2025	22-month tolling period with no years added to the term	Agreement expires 22 months after its current expiration date	4 years added to the term, plus the 22-month tolling period	Agreement expires 70 months after its expiration date
Month-to-Month Contracts	4-year contract extension, effective January 1, 2022	Agreement expires in 2026	4-year contract extension, effective January 1, 2022	Agreement expires in 2026

Note: Tolling Period is from March 1, 2020- December 31, 2021 = 22 months

As can be seen, the CCP Amendment proposes to toll the term commencing on March 1, 2020 until December 31, 2021. Once the tolling ends, the Concessionaire’s remaining term within each agreement resumes and an additional four (4) years is added to the resumed term regardless of the expiration date of the Agreement, except for those on month-to-month leases, which do not have a remaining term, and therefore, receive only a four-year extension.



 Jimmy Morales
 Chief Operations Officer