COMMISSION
AGENDA MEMORANDUM
ACTION ITEM

Item No.	10b
Date of Meeting	April 13, 2021

DATE: March 15, 2021
TO: Stephen P. Metruck, Executive Director
FROM: Lance Lyttle, Managing Director, Aviation
Dawn L. Hunter, Director, Aviation Commercial Management

SUBJECT: Additional Airport Relief Measures in Response to On-Going COVID-19 Pandemic Impacts on SEA Tenants and Concessionaires

ACTION REQUESTED

Request Commission authorization for the Executive Director to finalize and implement additional airport relief measures in response to the on-going COVID-19 pandemic impacts to Airport Dining and Retail (ADR), On-Airport Parking, and Rental Car (RAC) concessionaires, specifically (i) to offer lease amendments to ADR, On-Airport Parking, and RAC concessionaires relating to adjustment of minimum annual guaranteed (MAG) rent, and RAC concession agreement extensions, and (ii) to separately provide rent relief in the form of credits to eligible ADR, On-Airport Parking, and RAC concessionaire as part of the Airport Coronavirus Response Grant Program established by the Federal Aviation Administration (FAA) pursuant to the federal Coronavirus Response and Relief Supplemental Appropriation Act (CRRSAA).

EXECUTIVE SUMMARY

The Executive Director and Seattle-Tacoma International Airport (SEA) leadership propose to offer additional relief measures to ADR, On-Airport Parking, and RAC concessionaires at the airport that continue to be significantly impacted by the on-going COVID-19 pandemic. First, the Executive Director and SEA leadership propose to offer contract amendments for ADR and On-Airport Parking concessionaires to adjust an existing “exceptional circumstances” provision in their agreements which provides for reduction of the amount of MAG rent payable in the event of a substantial decrease in passenger enplanements at the airport; adjustment to this contract provision is necessary in order for MAG adjustments to continue co-extensively with the ongoing adverse economic impacts at the airport caused by the COVID-19 pandemic. A similar adjustment will also be made to the exceptional circumstances provision in the RAC agreements, together with proposed amendments to adjust the calculation of MAG and to extend the term of the concession agreements, which are components of the overall lease agreements. Separately, Executive Director and SEA leadership propose to participate in the FAA’s Airport Coronavirus Response Grant Program and to offer under this program rent relief to eligible ADR, On-Airport Parking, and RAC tenants in the form of a rent credit in the amount of the concessionaire’s pro rata share of the grant funds provided to the Airport under CRSSAA. These measures will be consistent with the Commission-approved airport relief motion and action approved on April 1, 2020, a motion approved on June 9, 2020 related to airport tenant relief, and an order approved on December 8, 2020 authorizing additional adjustments to agreements with tenants and concessionaires impacted by the pandemic. This proposed relief is in response to the on-going impacts of the pandemic on tenants and concessionaires at SEA.

JUSTIFICATION

The dramatic economic impact of the COVID-19 pandemic required an immediate response by the Port, which was taken by the Port Commission on April 1, June 9, and December 8, 2020 and provided short- and medium-term relief measures to tenants and concessionaires. The duration of the pandemic, and the negative effects it has caused on airport operations, has continued to jeopardize the viability of many businesses at SEA that are critical to airport operations and passengers. Although the relief approved in 2020 was a tremendous support to tenants and concessionaires and their continued viability to serve passengers at the airport, the on-going impacts of the pandemic and the functional expiration of built-in relief, in the form of the "exceptional circumstance" clause within certain agreements, justify the consideration of additional relief measures as proposed and contained in this request.

These additional relief measures will aid the continued operation and financial viability of SEA's business partners, which is critical to advancing the Port's financial interests through the on-going economic downturn and into the economic recovery. The Port depends on these tenants and concessionaires to provide services to airport customers and generate revenue for airport operations. Maintaining its base of tenants and concessionaires is critical to the Port's financial strategy to navigate the impacts of the COVID-19 pandemic. Preserving and strengthening the Port's airport financial sustainability and operations will play a critical role in the economic recovery and return to growth in the Puget Sound region and the state of Washington.

DETAILS

Rent Relief through Contract Amendments

The Executive Director and SEA leadership propose to amend the concession agreements for ADR, RAC, and on-airport parking, which have been significantly impacted by the on-going COVID-19 pandemic, by resolving a limitation of the agreement's built-in exceptional circumstance relief clause to better address the duration of pandemic impacts. The proposed relief measures have been discussed with all of the tenants involved and been accepted, contingent on Commission approval. These measures will be consistent with Commission direction as stated in the Commission's tenant relief motions in April and June of 2020 and order in December 2020, as well as state and federal law.

The Executive Director and SEA leadership propose to offer the following forms of additional relief regarding Airport tenants and concessionaires:

- ***Airport Dining and Retail (ADR)***
  1. Amend ADR agreements containing an Exceptional Circumstances clause to allow for on-going adjustment of MAG rent throughout the duration of the pandemic in accordance with continued reduced passenger levels. In an effort to clarify the intended operation of the Exceptional Circumstances clause, applied in the context of the continuing adverse economic impacts of the COVID-19 health crisis, the Port proposes to amend the ADR agreements to restate the provision in a manner that results in an outcome that is consistent with its originally intended purpose.

     - The current Exceptional Circumstances clause in ADR agreements, which allows for the reduction of MAGs equivalent to a drop in enplanement levels exceeding 20% compared to the same month of the prior year (e.g.- if a given month's enplanement levels drop by 50% compared to the same month of the prior year, the tenant's MAG amount is reduced the following month by 50%) is set to expire potentially in March, possibly not until April (but no later than April, barring another catastrophic event). Beginning in March, and because the pandemic's main impacts on enplanements began to materialize in March 2020, the lookback clause comparing March 2021 to March 2020 may not result in a drop in enplanements exceeding 20%. Thus, the relief to the tenant's MAG associated with the Exceptional Circumstances clause would expire beginning with the MAG payment due for April 2021 and tenants would be responsible for full monthly MAG payments (no reduction).

       While the intent of the provision was to provide a mechanism for determining MAG relief throughout the duration of an exceptional circumstances event that caused significantly reduced enplanements, the current language was not drafted to correctly apply to a substantial impact to enplanements that continued for more than 12 months. Thus, tenants are facing a sudden increase in monthly MAG payments, to pre-pandemic levels, before enplanement levels have returned closer to pre-pandemic levels. The proposed revision to the Exceptional Circumstances clause will allow the clause to function throughout the duration of the pandemic as originally intended. Revising the clause will provide needed clarity for both the Port and its concessionaires, ease the administration burden to the Port in administering the clause, and will benefit the ADR concessionaires by allowing for adjustment of MAG to continue during the duration of the "exceptional circumstances" posed by the COVID-19 pandemic and support their continued viability and readiness to serve passengers at SEA as the COVID-19 crisis comes to end. The amended language is being finalized by staff.

- ***Rental Cars (RACs)***
  1. Amend RAC agreements containing an Exceptional Circumstances clause to allow for on-going adjustment of minimum annual guarantees (MAG) in accordance with continued reduced passenger levels.
     - Similar to the ADR explanation above, the lookback period may expire in March, but no later than April. This relief will allow for the continued reduction of MAG associated with depressed enplanement levels associated with the pandemic, and potential future catastrophic events.
  2. Extension of the 10-year concession agreement, set to expire in 2022
     - The overall 30-year lease associated with the Rental Car Facility (RCF) that began in 2012 includes a 10-year concession agreement with operators. The intent of 10-year concession terms was to allow for market shifts and reallocations of space during the 30-year lease term with the opportunity to re-bid the facility at 10 years and 20 years. With the upcoming expiration of the 10-year concession agreement set for 2022, both the RACs and SEA are required to spend significant amounts to re-bid, re-design, and re-demise the facility based on market conditions, with costs to SEA alone upwards of $10-$12 million, starting in 2021 and throughout 2022. Due to the impact of the pandemic, both the RACs and SEA agreed that extending the current concession agreement by five years and allowing for a re-bid process to occur at that time would benefit both parties with the delay of major capital costs and allow time for market conditions to stabilize. Extending the concession agreement provides a benefit to the Port and the RACs in both the short and long terms. This benefit includes delaying the re-bidding of the facility during a severe economic downturn and the potential elimination of a major re-demising capital project in 2032.
  3. Adjust annual MAG calculation for RACs
     - At the start of each agreement year (June 1), MAGs for each company are recalculated and set to either 1) the original MAG amount that was bid at the beginning of the 10-year concession agreement, or 2) 85% of the prior year revenue paid to the Port, whichever is higher. With the upcoming MAG reset in June 2021, it is anticipated that the calculation for 85% of prior year's payments will be significantly lower than the original MAG bid amount. With the current agreement language, the calculated new MAG (based on original bids in 2012) for the agreement year beginning June 1, 2021 is anticipated to substantially and suddenly increase for the RACs.

Bringing the MAG calculation methodology in-line to current concession agreement standards at SEA, the agreements would be amended to eliminate the option of the MAG being reset to the original bid amount and instead solely be based on 85% of prior year's revenue to the Port. The adjustment to the MAG calculation, coupled with the necessary relief for exceptional circumstance changes described above, would ensure a stable return of MAG levels as we continue through the pandemic and the recovery efforts.

- ***On-Airport Parking Concessionaire***
  1. Amend SEA's agreement with its on-airport parking concessionaire containing an Exceptional Circumstances clause to allow for on-going adjustment of minimum annual guarantees (MAG) in accordance with continued reduced passenger levels.
     - Similar to the ADR and RAC explanation above, the lookback period may expire in March, but no later than April. This relief will allow for the continued reduction of MAG associated with depressed enplanement levels associated with the pandemic, and potential future catastrophic events.

CRRSAA Relief Efforts

As referenced above, the Executive Director and SEA leadership propose to provide additional rent relief through participation in the FAA's Airport Coronavirus Response Grant Program. This proposed relief is in addition to the direct rent and MAG relief that the airport is able to provide thanks to federal legislation passed in December of last year (the Coronavirus Response and Relief Supplemental Appropriation Act) (CRRSAA)and in March of this year (the American Rescue Plan Act) (ARPA). Those pieces of legislation contained $200 million and $800 million respectively "to provide relief from rents and minimum annual guarantees to on-airport car rental, on-airport parking, and in-terminal airport concessions." The FAA has released airport-specific funding levels and allocation guidance for the first package, but not yet for the second.

CRRSAA allocated approximately $5.4 million for SEA tenant relief, and staff is finalizing a plan for allocating and distributing those funds as quickly as possible to the concessionaires for which federal relief is specifically authorized in CRRSAA. The proposed relief under CRRSAA, through the FAA's Airport Coronavirus Response Grant Program, will be provided to eligible concessionaires based on the concessionaire's pro rata share (a proportional share based on the concessionaire's rent and MAG compared to the total amount of rent and MAG of all eligible airport concessions at SEA) of the $5.4 million allocated to SEA under CRRSAA. The proposed relief would be issued to each eligible concessionaire in the form of a rent credit in the amount of the concessionaire's pro rata share.

At this time, SEA staff is awaiting guidance from the FAA regarding allocation and eligibility associated with the ARPA funds; of note, ARPA specifically allocates approximately three-quarters of the concessionaire relief funds for "small airport concessions."

Despite the significant benefits that these federal funds will provide, SEA staff feel that the relief measures described in this memo are necessary in addition to the federal grant funding to help ensure continued operations and viability into a post-pandemic recovery.

ALTERNATIVES AND IMPLICATIONS CONSIDERED

Alternative 1 – SEA does not offer additional relief

Cost Implications: None, unless tenants shut down and/or abandon their agreements.

Pros:
(1) If tenants remain, continues monthly revenue
(2) Maintains continuity of current lease terms

Cons:
(1) Exposes tenants to significant financial risk from on-going COVID-19 economic impact
(2) Tenants may abandon agreements, thus requiring legal action
(3) Exposes Port to costly legal action, lost revenue, and renovation/rebidding expenses
(4) Depending on the number and type of concessionaires that lose viability, airport operations and passengers could be negatively impacted

This is not the recommended alternative.

Alternative 2 – SEA only proposes relief associated with Exceptional Circumstances clause

Cost Implications: with continued depressed enplanement levels, MAGs would continue to be reduced below normal levels, thus reducing guaranteed revenue to the Port in the short run. In the long run more revenue to the Port is expected through the preservation of its tenant base and increased enplanements.

Pros:
(1) Provides more assurance of continuity of operations for tenants and revenue to the Port
(2) Gives tenants additional flexibility to weather impact of the pandemic

Cons:
(1) Reduced guaranteed revenue to the Port if enplanements do not recover
(2) May not be sufficient to keep tenants afloat
(3) Depending on the number and type of concessionaires that lose viability, airport operations and passengers could be negatively impacted

This is not the recommended alternative.

Alternative 3 – Implement all proposed additional relief measures

Cost Implications: with continued depressed enplanement levels, MAGs would continue to be reduced below normal levels, thus reducing guaranteed revenue to the Port in the short run. In the long run more revenue to the Port is expected through the preservation of its tenant base and increased enplanements. Longer guaranteed terms for RAC tenants is expected to increase revenue to the Port.

Pros:
(1) Provides more assurance of continuity of operations for tenants and revenue to the Port
(2) Provides reasonable additional term to RAC tenants and increased revenue to Port in an uncertain economy
(3) Gives tenants significant flexibility and time to recover from impacts of on-going pandemic impacts

Cons:
(1) Reduced guaranteed revenue to the Port if enplanements do not recover
(2) Locks in current allocations (RACs) for five years, not allowing for adjustments that may be warranted based on changing market conditions

This is the recommended alternative.

Financial Analysis and Summary

Project cost for analysis	No incremental costs to the Port for this request
Business Unit (BU)	Aviation Commercial Management
Effect on business performance (NOI after depreciation)	If percentage rents paid to the Port do not exceed guaranteed amounts, revenue may be reduced due to the reduction of MAG associated with relief in the short term but increased in the long term through preservation of the tenant base and increased enplanements. Extension of RAC agreements increases future expected revenues through preserving the tenant base and avoiding the costs of re-bidding.
IRR/NPV (if relevant)	N/A
CPE Impact	N/A

ATTACHMENTS TO THIS MEMO

None

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS

April 1, 2020 - The Commission passed Motion 2020-06 to provide guidance for Port leadership in prioritizing Port investments to assist local, regional, and statewide economic recovery from the COVID-19 pandemic.

April 1, 2020 - The Commission authorized for the Executive Director to take such immediate, short-term actions as necessary to implement airport relief measures in response to the COVID-19 pandemic leading to initial relief to a variety of airport tenants.

June 9, 2020 - The Commission passed Motion 2020-13 to authorize adjustments to leases and other financial terms for airport dining and retail tenants.

December 8, 2020 – The Commission passed Order 2020-21 to authorize additional adjustments to agreements with tenants and concessionaires impacted by the COVID-19 pandemic.