



AGENDA REPORT

PROPOSED ACTION: Ordinance: Adopt an Ordinance to Approve and Authorize the Executive Director to Execute an *Amendment to Space/Use Permit for Retail and Duty Free Concession* with WDFG North America LLC to (i) Extend the Term through January 31, 2023 for approximately \$520,454.85 in Anticipated Revenues; (ii) Grant the Executive Director the Authority to Extend the Term on an As-Needed Basis for Up to an Additional Five Months from February 1, 2023 through June 30, 2023 for approximately \$130,113.71/Month in Anticipated Revenues; and (iii) Waive Certain Restrictions in Resolution No. 16-144 – Resolution Approving a Restatement, Affirmation and Update to the Board’s Policy for Awarding Concession And Customer Service Privileges at the Terminal Complex (Aviation).

Submitted By: Bryant L. Francis, Director of Aviation; Danny Wan, Executive Director

Parties Involved: WDFG North America, LLC., East Rutherford, NJ

Amount: \$520,454.85(Anticipated Revenue for Four Month Term)

EXECUTIVE SUMMARY:

The existing *Space/Use Permit for Retail and Duty Free Concession* (the SUP) with WDFG North America, LLC, aka “Hudson Group” (Hudson) will expire on September 30, 2022. Port staff and representatives from Hudson are working on finalizing the terms and conditions of a new agreement for a term of approximately 11 years for approximately one-half of the Port’s retail program at Oakland International Airport (OAK) which Port staff will submit to the Board for its review and approval at a future Board Meeting. Port staff requests that the Executive Director be authorized to enter into an *Amendment* to the SUP to extend the current agreement with Hudson from October 1, 2022 through January 31, 2023 so that the parties may finalize the new retail agreement with Hudson. Port staff also requests that the Executive Director be authorized to enter into as-needed monthly extensions with Hudson from February 1, 2023 through June 30, 2023 for flexibility due to unforeseen delays or to facilitate the transition of the remaining retail units from Hudson to the new retail concessionaire under the Retail and Duty Free Request for Proposals.

BACKGROUND AND ANALYSIS

Since 2006 and through its corporate predecessor Host International, Inc., WDFG North America, LLC (an affiliate of World Duty Free Group, a Dufry Company, operating as “Hudson Group”) has been operating the entirety of the Retail & Duty Free Concessions Program at OAK. On June 16, 2022, the Board approved Ordinance No. 4643 whereby the existing SUP was extended from June 1, 2022 through September 30, 2022, during which time Port staff and Hudson anticipated a new agreement with Hudson would be

finalized for the development of their new retail program at OAK consisting of nine units – approximately half of the Retail Concession Program (2022 Hudson SUP).

Port staff and Hudson have been working towards finalizing the terms of the 2022 Hudson SUP, while concurrently working on the review of proposals for award of the other half of the Retail Concession Program pursuant to the Retail and DutyFree Request for Proposals (Retail RFP). From experience gained from the food and beverage concession program, Port staff will be working with Hudson and the new retail concessionaire on a phased construction timeline, such that there will be sufficient retail stores open for passengers, while others are under construction.

Based on the above, in order to finalize the 2022 Hudson SUP and the new SUP with the new retail concessionaire pursuant to the Retail RFP, and to plan for a phasing schedule for the new units that would provide for adequate retail stores to be open for passengers, Port staff is recommending that the existing agreement with Hudson be extended from October 1, 2022 through January 31, 2023, with the Executive Director being further granted the authority to execute additional one month extensions through June 30, 2023, as needed, for unforeseen delays or for transition purposes. During the extended term, Hudson would continue to pay a Percentage of Gross Receipts, subject to an adjusted minimum annual guarantee (“MAG”) for each Unit. Currently, the Percentage of Gross Receipts are in steps/tiers ranging from a low of 12% to a high of 16%. Pursuant to Port Ordinance No. 4643, for FY2023, MAG was adjusted based on percentage of passenger traffic for February, March and April 2019 vs the same three months in 2022, resulting in adjusted MAG of 80% of the contractually obligated MAG. Terms and Conditions of the Proposed Amendment to *Space/Use Permit* are summarized in the following chart:

Extended Term:	Extend expiration date from October 1, 2022 through January 31, 2023. Grant the Executive Director the Authority to Extend the Term on an As-Needed Basis for Up to an Additional Five Months from February 1, 2023 through June 30, 2023.
Assigned Space:	All existing units
Access to Additional Space:	Access to Six Units circled on Exhibit “A” and identified as: T1-R-G1 T1-R-G3 T1-R-G7 T1-R-G12 T2-R-C2-2 T2-R-C2-1 Three of these units are identified as “Replacement” for the Kiosks and the Newsstand that must be removed.
Permitted Use for Additional Space:	No permanent occupancy; access to immediately commence planning and design activities. Portions of Unit T2-R-C2-2 are currently occupied by another permittee and the Port; Hudson Group must coordinate access to that space.

Rent:	During the Extended Term, Hudson Group shall continue to pay Percentage of Gross Receipts for each Unit and an adjusted minimum annual guarantee.
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Exception to Board's Policy on Extension of Concession Agreements

On December 15, 2016 the Board adopted Resolution No. 16-144: "Resolution Approving a Restatement, Affirmation and Update to the Board's Policy for Awarding Concession and Customer Service Privileges at the Terminal Complex at Oakland International Airport", whereby an extension or renewal of any Concession agreement would only be approved where the Board has determined it to be in the best interests of the Airport.

As noted in the Background section above, the Board had previously approved a waiver of the Concession Policy and extended the Hudson agreement from May 31, 2022 to September 30, 2022. Given that the two retail programs are interrelated and additional coordination is required until such time that the Retail RFP concessionaire has been awarded, Staff requests the Board's waiver of the Concession Policy through January 31, 2023 and thereafter, on a monthly basis, as needed, through June 30, 2023.

OTHER FINDINGS AND PROVISIONS

ENVIRONMENTAL REVIEW

The proposed action was analyzed under the California Environmental Quality Act (CEQA) and was found to be:

- x Categorically exempt under the following CEQA Guidelines Section:
15301 (Existing Facilities)
- Exempt from CEQA because it is not a “Project” under CEQA Guidelines Section 15061(b)(3).
- Other/Notes:

BUDGET

- Administrative (No Impact to Operating, Non-Operating, or Capital Budgets); OR
 - Operating Non-Operating Capital

Analysis: There is no budget impact as revenues for Hudson were included in the FY2023 Operating Budget.

STAFFING

- No Anticipated Staffing Impact.
- Anticipated Change to Budgeted Headcount.
Reason:
- Other Anticipated Staffing Impact (e.g., Temp Help).
Reason:

MARITIME AND AVIATION PROJECT LABOR AGREEMENT (MAPLA):

Applies? No (Not Aviation or Maritime CIP Project) – proposed action is not covered work on Port’s Capital Improvement Program in Aviation or Maritime areas above the threshold cost.

- Additional Notes:

LIVING WAGE (City Charter § 728):

Applies?

No (No Covered Agreement) – proposed action is not an agreement, contract, lease, or request to provide financial assistance within the meaning of the Living Wage requirements.

- Additional Notes:

SUSTAINABLE OPPORTUNITIES:

Applies? **No.**

Reason: Extension of existing lease. No change to use of existing facility.

GENERAL PLAN (City Charter § 727):

Conformity Determination:

	No Project – conformity determination not required because proposed action does not change use of or make alterations to an existing facility, or create a new facility.
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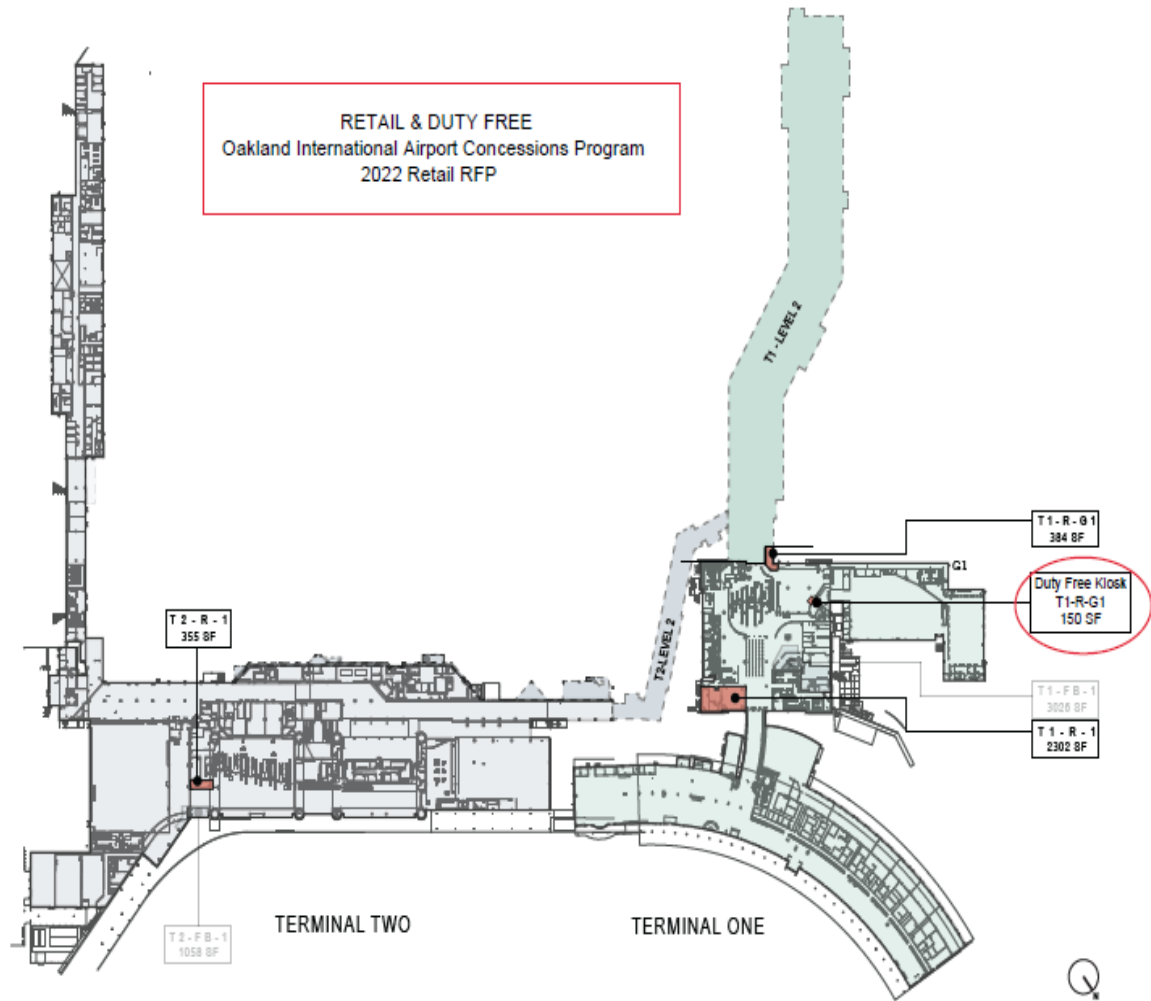
STRATEGIC PLAN. The proposed action would help the Port achieve the following goal(s) and objective(s) in the Port’s Strategic Business Plan:

- | | |
|---|--|
| <input checked="" type="checkbox"/> Grow Net Revenues | <input type="checkbox"/> Modernize and Maintain Infrastructure |
| <input type="checkbox"/> Improve Customer Service | <input type="checkbox"/> Pursue Employee Excellence |
| <input type="checkbox"/> Strengthen Safety and Security | <input type="checkbox"/> Serve Our Community |
| <input type="checkbox"/> Care for Our Environment | |

EXHIBIT A

06 LOCATION PLANS

6.3 LOCATION PLAN - RETAIL - LEVEL ONE



6.4 LOCATION PLAN - RETAIL - LEVEL TWO

