



## CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 9/25/2018

District B

Item Creation Date: 9/13/2018

HAS - Compromise, Settlement, and Release Agreement with ATU Americas, LLC at IAH

Agenda Item#: 66.

### **Background:**

### **RECOMMENDATION:**

Enact an ordinance approving and authorizing a Compromise, Settlement, and Release Agreement between the City of Houston and ATU Americas, LLC, ("ATU") to resolve certain disputes at George Bush Intercontinental Airport/Houston (IAH).

### **SPECIFIC EXPLANATION:**

In June 2014, the City entered into a Memorandum of Agreement ("MOA") with United Airlines ("United") which, among other things, provided for the development of a new Terminal C North and the demolition of the existing Terminal C North.

In October 2014, the City advertised an RFP for a concession to operate duty-free and retail facilities in Terminals A, B, C and D at George Bush Intercontinental Airport/Houston ("IAH"). The MOA, along with the plans to develop a new Terminal C North and demolish the existing Terminal C North, were disclosed in the City's RFP and at an industry day with prospective proposers.

In March 2015, the City entered into a concession agreement with ATU Americas, LLC for the operation of the duty-free concession at IAH ("Concession Agreement").

In April 2015, the City and United entered into a Terminal C South Net Lease and Use Agreement which, among other things, assigned certain concession facilities to United, to be managed under its contract with Westfield for concession management.

In April 2016, United opened the new Terminal C North and transitioned its concession manager from Westfield to OTG. OTG has since developed additional concession facilities in the United-operated areas of Terminal B South, Terminal C (North and South), and Terminal E.

With the opening of the new Terminal C North, Terminals B and C South experienced a decline in passenger traffic as United underwent an operational reallocation to leverage the facilities of new terminal.

ATU alleges it is currently operating at a loss with no expectation of material improvement over the term of the Concession Agreement due to (a) lower enplanements; (b) United's operational reallocation of passenger traffic; (c) the City's assignment of certain concession facilities to United; (d) higher than average percentage rental rates; and (e) various negative trends in travel duty-free sales. ATU further alleges the City is responsible in part for the conditions affecting ATU's financial performance.

The City disputes responsibility for lower than projected financial performance on the Concession Agreement as: (a) the City made no guarantee of any level of enplanements; (b) the plans for the development of Terminal C North was public knowledge and disclosed in the RFP; (c) the City had no advance knowledge and/or control over United's change in operations; and (d) ATU is responsible for the management of its facilities which includes, among other things, choice of concept, brand, their proposed percentage rental rates, and pricing. The City disputes any connection between its assignment of certain concession facilities to United and ATU's financial performance. United's operational reallocation of passenger traffic was motivated by its desire to leverage the capabilities of the new Terminal C North and consolidate its regional carrier operations.

In July 2018, ATU notified the City of ATU's intention to close their facilities in Terminals A and B and subsequently closed the subject facilities on July 19, 2018.

To provide uninterrupted first-class retail services and high-quality products to travelers and airport users and to avoid the uncertainties, expenses, and delay of litigation of this dispute, the City and ATU have decided it is in their best interests to enter into a Compromise, Settlement, and Release Agreement ("CSA") to facilitate the transition of facilities and terminate the Concession Agreement.

Key terms of the CSA include:

1. To allow the City time to procure a new duty-free concession operator, ATU shall continue to operate the facilities under the Concession Agreement in Terminal D through March 2019, unless extended by mutual agreement between the HAS Director and ATU.
2. ATU will assist with a smooth transition to the new operator, including leaving in place its investment in the facilities. The City will use commercially reasonable efforts to negotiate a buy-in from the entity selected to take over the facilities, to compensate ATU for its forfeited unamortized investment.

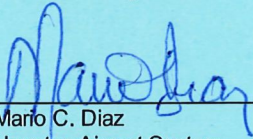
3. As inducement for ATU's continued operation of the facilities in a first-class manner until the City selects a new duty-free operator, the percentage rental rates shall be reduced to 22% for all merchandise categories (currently range between 24% to 42%) except for merchandise in the Chanel store in Terminal D which shall remain at 14%.

4. Upon ATU's fulfillment of its obligations under the CSA, the Concession Agreement shall terminate and the City will release the performance security provided by ATU.

Fiscal Note:

Funding for this item is included in the FY2019 Adopted Budget. Therefore, no Fiscal Note is required as stated in the Financial Policies.

**Director's Signature:**

A handwritten signature in blue ink, appearing to read "Mario C. Diaz", is written over a horizontal line.

Mario C. Diaz  
Houston Airport System

**Prior Council Action:**

3/25/15 (O) 2015-212

**Amount of Funding:**

**Contact Information:**

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