

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: Aviation

AGENDA DATE: September 26, 2023

CONTACT PERSON NAME AND PHONE NUMBER: Sam Rodriguez, Aviation Director, (915) 212-7301

DISTRICT(S) AFFECTED: 3

CITY STRATEGIC GOAL 1: Create an Environment Conducive to Strong, Sustainable Economic Development.

SUBJECT:

Resolution to authorize the City Manager, or designee, be authorized to sign the Third Amendment to Lease and Concession Agreement for the Development and Operation of News, Gifts & Specialty Retail Concessions at El Paso International Airport ("Concession Agreement") by and between the City of El Paso ("Lessor") and Paradies-El Paso, LLC ("Concessionaire") to extend the Primary Term an additional two (2) years and increase the Concessionaire's refurbishment obligation.

BACKGROUND / DISCUSSION:

The City and Paradies entered into a Lease and Concession Agreement for the Development and Operation of News, Gifts, & Specialty Retail Concessions (Agreement) effective December 22, 2006 (expiration date of July 31, 2020) to provide news, gifts, & and specialty retail concession services at the El Paso International Airport (Airport). The agreement requires a mid-term refurbishment of \$566,000.00 on or before November 22, 2023.

Concessionaire was unable to complete the Second Mid-Term Refurbishment due to the COVID-19 pandemic by the original July 31, 2021, stated deadline; the parties desire to extend the Primary Term of the Agreement for an additional two (2) years to provide Concessionaire additional time to complete its refurbishment obligations under the Second Mid-Term Refurbishment for a total investment of \$566,000.00 prior to November 23, 2023. The Concessionaire will be upgrading the Plaza News store located in the Airport's main lobby.

The Extended Term shall commence on the termination of the Primary Term and continue through July 31, 2028.

PRIOR COUNCIL ACTION:

- Lease and Concession Agreement for the Development and Operation of News, Gifts, and Specialty Retail Concessions awarded to The Paradies Shops, Inc. on December 22, 2006.
- First Amendment and Lessor's Approval of Assignment was approved on May 11, 2010.
- Second Amendment was approved on February 23, 2016.

AMOUNT AND SOURCE OF FUNDING:

N/A – Revenue Generating Item

BOARD / COMMISSION ACTION:

N/A

DEPARTMENT HEAD:



Sam Rodriguez, Aviation Director

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager, or designee, be authorized to sign the Third Amendment to Lease and Concession Agreement for the Development and Operation of News, Gifts & Specialty Retail Concessions at El Paso International Airport ("Concession Agreement") by and between the City of El Paso ("Lessor") and Paradies-El Paso, LLC ("Concessionaire") to extend the Primary Term an additional two (2) years and increase the Concessionaire's refurbishment obligation.

APPROVED this ____ day of _____ 2023.

THE CITY OF EL PASO

Oscar Leeser
Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Ignacio Troncoso
Assistant City Attorney

APPROVED AS TO CONTENT:



Samuel Rodriguez, P.E.
Director of Aviation

STATE OF TEXAS)
)
COUNTY OF EL PASO) **THIRD AMENDMENT TO THE LEASE AND
CONCESSION AGREEMENT FOR THE
DEVELOPMENT AND OPERATION OF NEWS,
GIFTS, & SPECIALTY RETAIL CONCESSIONS
AT EL PASO INTERNATIONAL AIRPORT**

This Third Amendment to the Lease and Concession Agreement for the Development and Operation of News, Gifts, & Specialty Retail Concessions (the "Third Amendment") is made and entered into this ___day _____ of 2023, by and between the City of El Paso, a municipal corporation existing under the laws of the State of Texas (the "Lessor"), and Paradies-El Paso, LLC, a limited liability corporation organized under the laws of the State of Texas ("Concessionaire").

WHEREAS, Lessor and The Paradies Shops, Inc. entered into a Lease and Concession Agreement for the Development and Operation of News, Gifts, & Specialty Retail Concessions (the "Concession Agreement"), with an effective date of December 22, 2006, to provide news, gifts, & specialty retail concession services at the El Paso International Airport (the "Airport") on a non-exclusive basis;

WHEREAS, effective May 11, 2010 the Concession Agreement was amended by that First Amendment to the Lease and Concession Agreement for the Development and Operation of News, Gifts, & Specialty Retail Concessions and Lessor's Approval of Assignment ("First Amendment") which substituted a new vendor for the bookstore concept of its proposal and approved the assignment of the Concession Agreement to Paradies-El Paso, LLC;

WHEREAS, effective February 23, 2016 the Concession Agreement was amended by the Second Amendment to Lease and Concession Agreement to extend the Primary Term an additional six years and amend the Concessionaire's refurbishment obligation investment to add an additional \$175,000 on or about July 31, 2021 (the "Second Mid-Term Refurbishment"); and

WHEREAS, Concessionaire was unable to complete the Second Mid-Term Refurbishment due to the COVID pandemic by the original July 31, 2021 stated deadline; and

WHEREAS, the parties desire to extend the Primary Term of the Agreement for an additional two (2) years to provide Concessionaire additional time to complete its refurbishment obligations under the Second Mid-Term Refurbishment for a total investment of \$566,000.00 prior to November 23, 2023.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree to this Third Amendment of the Concession Agreement as follows:

1. Section 3.1 B is amended to read as follows:

B. The Primary Term shall commence on the termination of the Interim Term and continue until July 31, 2028.

2. Section 7.3 Mid-Term Refurbishment is amended to read as follows:

In addition to the ongoing, routine maintenance described in Section 9.2 herein and the Mid-Term Refurbishment, Concessionaire shall budget for and expend such funds as necessary, but not less than FIVE HUNDRED SIXTY-SIX THOUSAND AND 00/100 DOLLARS (\$566,000.00) to maintain a First-Class standard of quality of the Facilities (hereinafter referred to as the "Second Mid-Term Refurbishment"). The scope and extent of necessary renovation, remodeling, upgrade, redecorating and/or reconcepting for each Facility shall be jointly determined by Director and Concessionaire. The Second Mid-Term Refurbishment costs shall not include financing costs, interest, inventory, or intra-company charges related to construction and shall be spent without additional consideration or privileges and without extension of the Term. If Concessionaire and Director cannot jointly agree upon the necessary scope and extent of refurbishment for any particular Facility, the Director may determine the refurbishment required and Concessionaire agrees to be bound by such decision.

Concessionaire shall complete the Second Mid-Term Refurbishment of the Facilities prior to November 23, 2023. All plans, specifications, and documents for the Second Mid-Term Refurbishment are subject to the approval of the Director in accordance with the provisions of ARTICLE 8 herein.

3. Section 7.4 Submission of Required Documents is amended to read as follows:

All plans, specifications, and documents necessary for the Transition Plan, the Mid-Term Refurbishment, and the Second Mid-Term Refurbishment shall be submitted in accordance with the provisions of ARTICLE 8 herein.

4. The parties agree that Concessionaire, in accordance with Section 2.2, will update the design of Plaza News. The parties also agree that the Concessionaire will reconceive and change the format, design, name and trade dress of Plaza News. The details of the changes shall be handled in the manner envisioned by Section 2.2 and related sections of the Concession Agreement, as amended, no later than November 23, 2023.

5. Section 2.2 is amended to read as follows:

The Lessor, acting through its Director, and Concessionaire may, from time to time, by mutual written agreement, add additional space or spaces to or delete space or spaces from the Leased Premises and revise Exhibit A-1, Exhibit A-2 and Exhibit A-3 or may add rights, licenses, or privileges, or delete rights, licenses or privileges granted to Concessionaire. All space added to the Leased Premises or rights, licenses, or privileges added pursuant to this Section shall be subject to all the terms, conditions, and other provisions of this Agreement and Concessionaire shall pay to Lessor all sums, fees, and charges applicable to such additional space, rights, licenses, or privileges in accordance with the provisions of this Agreement. It is expressly

understood and agreed that this Agreement anticipates significant construction and renovation of the Lease Premises. During any periods of construction in which the Concessionaire is unable to conduct its concession activities in a construction area normally used for concessions, the Director may provide such other temporary concession spaces as necessary to allow Concessionaire to provide its services. Such approval may be granted in the sole discretion of the Director.

6. Section 15.20 Notices is amended to revise the Lessor's address zip code to 79925-1099:

LESSOR:	City Clerk	Director of Aviation
	City of El Paso	El Paso International Airport
	P.O. Box 1890	6701 Convair Rd.
	El Paso, Texas 79950-1890	El Paso, Texas 79925-1099

7. Section 15.3.1 is amended to read as follows:

15.3.1 General Civil Rights Provision. Concessionaire agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If Concessionaire transfers its obligation to another, the transferee is obligated in the same manner as the transferor.

This provision obligates Concessionaire for the period during which the property is owned, used or possessed by Concessionaire and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

Compliance with FAA Requirements and Nondiscrimination Requirements. Concessionaire shall comply with and shall cause its assignees, successors in interest, and any contractor, subcontractor, lower-tier subcontractor, or service provider of Concessionaire to comply with, to the extent required by applicable law, all provisions of Exhibit A, Federal Aviation Administration Required Provisions, as amended or interpreted by the FAA from time to time, which are incorporated as if fully set forth herein.

Affirmative Action.

Grantee assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, and any amendments thereto, and any other federal statutes or regulations applicable to the receipt of federal assistance from the Department of Transportation by local governments for Airport use, or otherwise applicable to persons leasing premises from the City of El Paso, to insure that no person shall, on the grounds of race, color, sex, age, disability or national origin be excluded from participating in or receiving the services or benefits of any program of activity covered by this Subpart. Grantee assures that it will require that its covered sub-organizations (sublessees) provide assurances to Grantor, as set forth herein, that they similarly will undertake affirmative action programs, and that they will require assurance from their sub-organizations (sublessees) to the same effect.

FAA Order 1400.11. Pursuant to Federal Aviation Administration Order 1400.11, effective August 27, 2013, and because the described premises are located at the El Paso International Airport which is

subject to regulation by, among others, the U.S. Federal Aviation Administration, the parties specifically agree to the following:

1. A. Lessee for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that in the event facilities are constructed, maintained, or otherwise operated on the property described in this Lease for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Lessee will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations set out in Federal Aviation Administration Order 1400.11, Appendix 4, as same may be amended from time to time (the "Acts and Regulations") such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

B. With respect to the Lease, in the event of breach of any of the above nondiscrimination covenants, Lessor will have the right to terminate the Lease and to enter or re-enter and repossess said Premises and the facilities thereon, and hold the same as if said easement had never been made or issued. [FAA Order 1400.11, Appendix C]

2. A. The Lessee for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Lessee will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations.

B. With respect to the Lease, in the event of breach of any of the above nondiscrimination covenants, Lessor will have the right to terminate the Lease and to enter or re-enter and repossess said Premises and the facilities thereon, and hold the same as if said easement had never been made or issued. [FAA Order 1400.11, Appendix D]

3. A. In the event of breach of any of the covenants in this section 3, Lessor shall have the rights and remedies set forth in sections 1 and 2 above, in addition to all other rights and remedies available to it under applicable law. [FAA Order 1400.11, Appendix E]

8. **Ratification.** Except as herein amended, all other terms and conditions of the Concession Agreement, as amended by that First Amendment and Second Amendment not specifically modified by this Third Amendment shall remain unchanged and in full force and effect.

9. **Effective Date.** This Third Amendment shall be effective upon the date it is approved by the El Paso City Council.

(Signatures begin on the following page)

APPROVED this ____ day of _____, 2023.



LESSOR: CITY OF EL PASO

Cary S. Westin
Interim City Manager

APPROVED AS TO FORM:



Ignacio Troncoso
Assistant City Attorney

APPROVED AS TO CONTENT:



Samuel Rodriguez, P.E.
Director of Aviation

ACKNOWLEDGMENT


THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this ____ day of _____, 2023, by Cary S. Westin as Interim City Manager of the City of El Paso, Texas (Lessor).

Notary Public, State of Texas

(Signatures continue on the following page)

CONCESSIONAIRE:
Paradies-El Paso, LLC

By: 
Printed Name: Gregg Paradies
Title: President & CEO

ACKNOWLEDGMENT

THE STATE OF GEORGIA)
COUNTY OF COBB)

This instrument was acknowledged before me on this 21st day of August, 2023, by Gregg Paradies, as President / CEO of Paradies-El Paso, LLC (Concessionaire).


Notary Public, State of GA

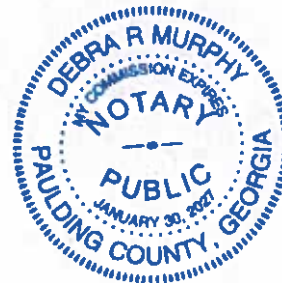


Exhibit "A"
Federal Aviation Administration Required Provisions

A. General Civil Rights Clause.

1. In all its activities within the scope of its airport program, Lessee agrees to comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964. If Lessee transfers its obligation to another, the transferee is obligated in the same manner as Lessee.
2. The above provision obligates Lessee for the period during which the property is owned, used or possessed by Lessee and the Airport remains obligated to the Federal Aviation Administration.

B. Compliance with Nondiscrimination Provisions. During the performance of this Lease, Lessee, for itself, its assignees, and successors in interest (hereinafter collectively referred to as "Contractor") agrees as follows:

1. Compliance with Regulations: The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Lease.
2. Non-discrimination: The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. Solicitations for Agreements, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. Information and Reports: The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access

to its books, records, accounts, other sources of information, and its facilities as may be determined by Lessor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to Lessor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, Lessor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as Lessor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request Lessor to enter into any litigation to protect the interests of Lessor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

C. Title VI List of Pertinent Nondiscrimination Acts and Authorities. During the performance of this contract, Lessee, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

1. Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
2. 49 CFR part 21 (Non-discrimination in Federally-Assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
3. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
4. Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);

5. The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
6. Airport and Airway Improvement Act of 1982 (49 USC § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
7. The Civil Rights Restoration Act of 1987 (PL 100-259) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
8. Titles II and III of the Americans with Disabilities Act of 1990 (42 USC § 12101, et seq) (prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
9. The Federal Aviation Administration's Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
10. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);
11. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. 74087 (2005));
12. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC § 1681, et seq).

D. Transfer of Real Property Acquired or Improved Under the Airport Improvement Program.

1. Lessee for itself, its, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: In the event facilities are constructed, maintained, or otherwise operated on the property described in this Lease for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Lessee will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Title VI List of Pertinent Nondiscrimination Acts and Authorities (as may be amended) such that no person on the grounds of race, color, or national origin,

will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

2. In the event of breach of any of the above Nondiscrimination covenants, Lessor will have the right to terminate the Lease and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the Lease had never been made or issued.

E. Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program.

1. Lessee, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that Lessee will use the premises in compliance with all other requirements imposed by or pursuant to the Title VI List of Pertinent Nondiscrimination Acts and Authorities.
2. With respect to the Lease, in the event of breach of any of the above Non-discrimination covenants, Lessor will have the right to terminate the Lease and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said Lease had never been made or issued.

F. Subcontracts. Lessee agrees that it shall insert in any subcontracts the clauses set forth in paragraphs (A) through (E) above and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. Lessee shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (A) through (E).