

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

DEPARTMENT: Aviation

AGENDA DATE: January 10, 2017

CONTACT PERSON/PHONE: Monica Lombraña, A.A.E. - 212-7301

DISTRICT(S) AFFECTED: All

CITY STRATEGIC GOAL #1:

Create an Environment Conducive to Strong, Sustainable Economic Development.

SUBJECT: This is a resolution authorizing the City Manager to sign a Third Amendment to the Concession Agreement by and between the City of El Paso and 24-Hour Flower, Inc. to extend the term of the Agreement an additional five (5) years through December 31, 2021.

BACKGROUND / DISCUSSION:

The Aviation department is requesting approval to extend the term of the Concession Agreement for an additional five (5) years through December 31, 2021 for the operation of a self-dispensing, refrigerated kiosk to sell flowers on the ground floor of the El Paso International Airport.

PRIOR COUNCIL ACTION:

Concession Agreement approved October 17, 2000

First Amendment to Concession Agreement to extend the term approved July 11, 2006

Second Amendment to Concession Agreement to extend the term approved November 29, 2011

AMOUNT AND SOURCE OF FUNDING:

N/A - Revenue Generating

BOARD / COMMISSION ACTION:

N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:



Monica Lombraña, A.A.E., Director of Aviation

Information copy to appropriate Deputy City Manager

RESOLUTION

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

THAT the City Manager be authorized to sign the Third Amendment to the Concession Agreement by and between the City of El Paso ("City") and 24-Hour Flower, Inc. ("Concessionaire") to extend the term of the Agreement through December 31, 2021 for the continued operation of a self-dispensing, refrigerated kiosk to sell flowers on the ground floor of the El Paso International Airport.

ADOPTED this ____ day of _____ 201__.

THE CITY OF EL PASO

Oscar Leaser
Mayor

ATTEST:

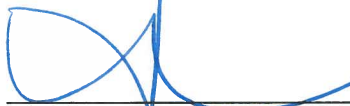
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Marvin Foust
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Monica Lombrana, A.A.E.
Director of Aviation

STATE OF TEXAS)
)
COUNTY OF EL PASO)

**THIRD AMENDMENT TO
CONCESSION AGREEMENT**

This Third Amendment to the Concession Agreement is made and entered into this ____ day of _____, 201__ by and between the City of El Paso ("City") and 24-Hour Flower, Inc. ("Concessionaire").

WHEREAS, the City and Concessionaire entered into a Concession Agreement ("Agreement") with an effective date of November 1, 2000 for the operation of a self-dispensing refrigerated retail kiosk to sell fresh flowers at the El Paso International Airport ("Airport");

WHEREAS, the term of the Agreement was extended to December 31, 2011 by that First Amendment to Concession Agreement dated July 11, 2006, and further extended to December 31, 2016 by that Second Amendment to Concession Agreement dated November 29, 2011; and

WHEREAS, City and Concessionaire now desire to amend the Agreement for the purpose of extending the term an additional five (5) years to expire December 31, 2021.

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 as follows:

1. **EXTENDED TERM.** The Lessor and Lessee mutually agree that the term of the Agreement is hereby extended through December 31, 2021.

2. **EFFECTIVE DATE.** Regardless of the date of execution, this Third Amendment shall be effective on January 1, 2017.

3. **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. During the term of this Lease, Lessee for itself, its successors in interest, and assigns, as a part of the consideration hereof, agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 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);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (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);

- Titles II and III of the Americans with Disabilities Act of 1990, which 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 (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination 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;
- 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). Grantee shall take reasonable steps to ensure that LEP persons have meaningful access to its programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination because of sex in education programs or activities (20 U.S.C. 1681 et seq).

B. 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].

4. TERMS AND CONDITIONS. All remaining terms and conditions of the Agreement not specifically amended by this Third Amendment shall remain in full force and effect.

(SIGNATURES BEGIN ON THE FOLLOWING PAGE)

IN WITNESS WHEREOF, this Third Amendment was executed on this _____ day of _____ 201____.

LESSOR: CITY OF EL PASO

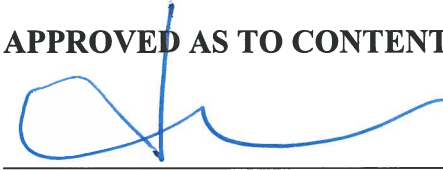
Tomás González
City Manager

APPROVED AS TO FORM:



Marvin Foust
Senior Assistant City Attorney

APPROVED AS TO CONTENT:


for: Monica Lombraña, A.A.E.
Director of Aviation

ACKNOWLEDGMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this _____ day of _____ 201____,
by **Tomás González** as **City Manager** of the **City of El Paso**.

Notary Public, State of Texas

My Commission Expires:

(SIGNATURES CONTINUE ON FOLLOWING PAGE)

CONCESSIONAIRE:
24-Hour Flower, Inc.

By: Loren K. Watkins
Name: LOREN K. WATKINS
Title: President

ACKNOWLEDGMENT

STATE OF _____)

COUNTY OF _____)

This instrument was acknowledged before me on this _____ day of _____, 201____,
by _____ as _____ of 24-Hour Flower, Inc.
(Concessionaire)

My Commission Expires:

Notary Public, State of _____

please see attached

All-purpose Acknowledgment California only

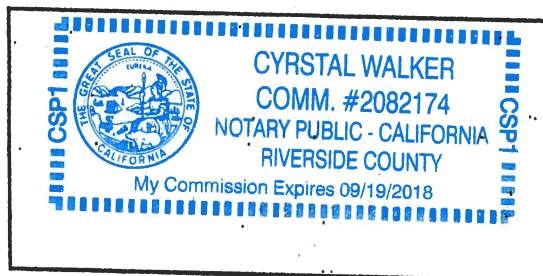
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of RiversideOn 12-21-2014 before me, Cystal Walker, notary public (here insert name and title of the officer),personally appeared Loren K. Watkins

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.



Notary Seal

WITNESS my hand
and official seal.

Signature

Description of Attached Document

Type or Title of Document

^{3rd} ^② Amendment to concession agreement

Document Date

12-21-2014

Number of Pages

6

Signer(s) Other Than Named Above

