

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

**DEPARTMENT:** Aviation

**AGENDA DATE:** January 26, 2016

**CONTACT PERSON/PHONE:** Monica Lombraña, A.A.E. -780-4793

**DISTRICT(S) AFFECTED:** All

**SUBJECT:**

Resolution authorizing the City Manager to sign a Second Amendment to the Lease and Concession Agreement for the Development and Operation of News, Gifts, & Specialty Retail Concessions (Agreement) at El Paso International Airport (Airport) by and between the City of El Paso and Paradies-El Paso, LLC (Paradies).

**BACKGROUND / DISCUSSION:**

The City and Paradies entered in to 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, & specialty retail concession services at the Airport. The recent merger between American Airlines and U.S. Airways has resulted in approximately 7% of airport passenger traffic shifting from Concourse B to Concourse A. Paradies desires to expand its offerings in Concourse A and reduce its offerings in Concourse B to accommodate this shift.

The agreement requires a mid-term refurbishment of \$236,495 on or before July 31, 2016 which will be increased by \$163,505 for a total of \$400,000 to refurbish existing facilities and accommodate the cost for new facilities in Concourse A. Paradies is requesting an extension of the term (6 years) to July 31, 2026 to allow for a return on investment for these improvements. With the extension, Paradies will invest \$175,000 for a second mid-term refurbishment on or about July 31, 2021.

The Airport believes the provisions of this amendment adequately address concerns with the passenger shift to Concourse A due to the merger and provide airport passengers with the desired level of customer service.

**PRIOR COUNCIL ACTION:**

- Lease and Concession Agreement for the Development and Operation of News, Gifts, & Specialty Retail Concessions awarded to The Paradies Shops, Inc. on December 5, 2006.
- First Amendment and Lessor's Approval of Assignment was approved on May 11, 2010.

**AMOUNT AND SOURCE OF FUNDING:**


N/A - Revenue Generating

**BOARD / COMMISSION ACTION:**

N/A

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:**

  
for:

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

# RESOLUTION

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

That the City Manager be authorized to sign the Second 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 six years and amend the Concessionaire's refurbishment obligation.

**ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2016.**


**THE CITY OF EL PASO**

**ATTEST:**


\_\_\_\_\_  
Oscar Leeser  
Mayor

\_\_\_\_\_  
Richarda Duffy Momsen  
City Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Marvin Foust  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

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

ft:

Additional information:

- Space changes:
  - Close CNBC in rotunda – 1,023
  - Close El Paso Saddleblanket – 533 sf
  - Close CNBC in Concourse A – 306
    - Total sf of closed stores – 1,862
  - Open new store in Concourse A - 1,435 sf
    - Decrease of 427 sf
- Exceed MAG every year so decrease in SF will not have an impact on revenue. The shift to Concourse A should result in higher percentage rents.
- Revenue to EPIA FY2015 - \$587,442
- Decline in passenger traffic since RFP issued and contract award in 2006:

Calendar Year	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015 (through November)
ENPLANED	1,714,552	1,713,868	1,662,855	1,540,195	1,544,488	1,480,032	1,455,382	1,389,428	1,395,138	1,261,160
DEPLANED	1,687,778	1,688,832	1,639,909	1,522,993	1,520,905	1,467,604	1,438,494	1,375,285	1,383,110	1,259,809
<b>TOTAL</b>	<b>3,402,330</b>	<b>3,402,700</b>	<b>3,302,764</b>	<b>3,063,188</b>	<b>3,065,393</b>	<b>2,947,636</b>	<b>2,893,876</b>	<b>2,764,713</b>	<b>2,778,248</b>	<b>2,520,969</b>

From the Paradies Website:

- Paradies operates more than 550 stores in over 75 airports and hotels across the United States and Canada
- Paradies is the most recognized and acclaimed airport concessionaire. Airport Revenue News (ARN), the industry's leading publication, has named us the nation's "Best Airport Retailer" for 20 consecutive years.
- Paradies has invested \$2,921,044 in capital improvements since the beginning of the agreement.

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

This Second Amendment to the Lease and Concession Agreement for the Development and Operation of News, Gifts, & Specialty Retail Concessions (the "Second Amendment") is made and entered into this \_\_\_ day \_\_\_\_\_ of 2016, 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**, the merger between American Airlines and U.S. Airways has resulted in the consolidation of those airlines in Concourse A, resulting in approximately 7% of the total airport passengers shifting from Concourse B to Concourse A;

**WHEREAS**, Concessionaire desires to expand its concession offerings in Concourse A because of the airlines' movement and the increase in passengers using Concourse A and is requesting a six (6) year extension to the Primary Term to realize a return on the investment in that expansion;

**WHEREAS**, Concessionaire is contractually obligated to invest \$236,495 for a Mid-Term Refurbishment of existing Facilities prior to July 31, 2016 and the parties wish to amend the Concession Agreement to increase the refurbishment obligation such that Concessionaire will now invest \$236,495 originally obligated plus an additional \$163,505 for a total of \$400,000 for the Mid-Term Refurbishment; and

**WHEREAS**, in partial consideration for this Second Amendment, Concessionaire is willing to invest an additional \$175,000 on or about July 31, 2021 for a refurbishment of Facilities for the six (6) year extension (the "Second Mid-Term Refurbishment"); and

**WHEREAS**, the Concession Agreement expressly provides for the addition and deletion of space as well as reconcepting of concessions due to changes in Airport usage; and

**WHEREAS**, the parties are desirous that the Concessionaire construct new facilities in Concourse A of approximately 1,435 square feet in size, eliminate facilities in Concourse B, and refurbish all other existing facilities.

**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 amend 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, 2026.

2. Section 7.3 is amended to read as follows:

In addition to the ongoing, routine maintenance described in Section 9.2 herein, Concessionaire shall budget for and expend such funds as necessary, but not less than FOUR HUNDRED THOUSAND AND 00/100 DOLLARS (\$400,000.00) to maintain a First Class standard of quality of the Facilities (hereinafter referred to as the "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 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 Mid-Term Refurbishment of the Facilities prior to July 31, 2016. All plans and specifications for the Mid-Term Refurbishment are subject to the approval of the Director in accordance with the provisions of ARTICLE 8 herein.

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 ONE HUNDRED SEVENTY FIVE

THOUSAND AND 00/100 DOLLARS (\$175,000.00) 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 July 31, 2021. 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 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 will (a) add to the Leased Premises an additional news and gift shop of approximately 1,435 square feet in Concourse A and (b) delete from the Leased Premises approximately 1,023 square feet of news and gift shop space in the rotunda at the end of Concourse B, approximately 533 square feet of retail space near that rotunda, and approximately 306 square feet of news and gift shop space in Concourse A, totaling approximately 1,862 square feet. The parties understand and agree that the exact square footage and the start dates and completion dates of these additions and deletions are, as of the time of this Second Amendment, uncertain and will be influenced by on-site conditions at the Airport; accordingly, the exact square footage will be memorialized via the mechanism set out in Section 2.2. The new spaces in Concourse A shall be completed and open for business no later than 270 days after the effective date of this Second Amendment.

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.

5. Section 15.3.1 is added to read as follows:

**15.3.1 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]

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

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

**(SIGNATURES BEGIN ON THE FOLLOWING PAGE)**



