



CITY COUNCIL STAFF REPORT

DATE: July 7, 2010 CONSENT AGENDA
SUBJECT: Sky Chefs Inc. Non-Exclusive Airline Catering Concession and Space Agreement
FROM: David H. Ready, City Manager
BY: Airport Department

SUMMARY

This action would approve a three-year non-exclusive agreement with Sky Chefs, Inc. for airline catering services at Palm Springs International Airport.

RECOMMENDATION:

1. Approve a three-year Non-Exclusive Airline Catering Concession and Space Agreement at Palm Springs International Airport (PSP) with Sky Chefs, Inc. retroactive to April 15, 2010 through April 14, 2013 with two one-year options at a monthly rental rate of \$559.00 per month for an airside catering vehicle parking space and 12.25% portage fee of gross revenue from in-flight catering services.
2. Authorize City Manger to execute all necessary documents.

STAFF ANALYSIS

Some of the airlines at PSP Airport still contract with vendors that provide non-exclusive airline in-flight catering. This agreement will be with a long standing vendor named Sky Chefs, Inc. to allow them continued PSP Airport access and service the airlines.

This new agreement includes a portage fee of 12.25% of gross annual revenues, and a space rental fee of \$6,708 per year. The rental fee is a brand new charge because the firm's vehicles will now have a dedicated space on the aircraft apron for parking, compared to just making drop-offs through the security gates. An annual Consumer Price Index (CPI) increase is also being applied to both of these fees.


The new agreement will also increase the insurance limits for both general liability and

auto liability from \$3M to \$5M. The new agreement then requires an annual outside certified public accountant audit of gross revenue, which was not required in the previous agreement.

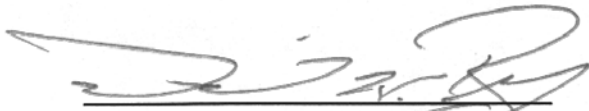
The Airport Commission at its June 16, 2010 meeting recommended City Council approval of this agreement.

FISCAL IMPACT:

The new arrangement will generate an additional \$12,700 (about 25%) in gross revenue per year to the Airport Enterprise Fund when compared to the previous agreement.



Thomas Nolan,
Executive Director, Airport



David H. Ready, City Manager

Attachment:

Sky Chefs, Inc. Non-Exclusive Airline Catering Concession and Space Agreement

SKY CHEFS INC.
NON-EXCLUSIVE AIRLINE CATERING CONCESSION AND SPACE AGREEMENT
AT PALM SPRINGS INTERNATIONAL AIRPORT

THIS CONCESSION AND SPACE AGREEMENT ("Agreement") is made and entered into this 15th day of April 2010, by and between the CITY OF PALM SPRINGS, a charter city and California municipal corporation ("City"), and Sky Chefs, Incorporated, a Delaware corporation ("Concessionaire"). City and Concessionaire may hereinafter be referred to individually as a "Party" and collectively as "Parties".

RECITALS

A. Concessionaire desires to provide non-exclusive airline catering services and requires space to park one Airport permitted airline catering vehicles in the secure apron area at Palm Springs International Airport ("Airport").

B. City agrees airline catering services are necessary to meet the service requirements of the airlines.

NOW THEREFORE, City and Concessionaire mutually agree as follows:

AGREEMENT

Section 1. **AGREEMENT SUMMARY**

Certain fundamental Agreement provisions are presented in this Section and represent the agreement of the parties hereto, subject to further definition and elaboration in the respective referenced Sections and elsewhere in this Agreement. In the event of any conflict between any fundamental Agreement provision and the balance of this Agreement, the latter shall control.

- 1.1 **Demised Premises.** The "Demised Premises" shall refer to 520 square feet located on the secure airside apron, space more particularly described in Exhibit "A" attached hereto.
- 1.2 **Agreement Term.** The term of this Agreement shall commence on April 15, 2010 and shall terminate on April 14, 2013, unless extended as provided herein.
- 1.3 **Extension Options.** Two one-year options at the sole discretion of the City. City will notify Concessionaire at least sixty (60) days in advance of the current term ending date if the option will be exercised.
- 1.4 **Space Agreement Rental Payments.** Rental payment due on the first of each month of the agreement period as follows: Year 1: \$559.00 monthly rental payment x 12 months. Year 2-5: The monthly rent shall be automatically adjusted April 15th of each term year in an amount equal to the increase in the Consumer Price Index for All Urban Consumers (CPI-U) in the Los Angeles-Riverside-Orange County, CA for the month of January preceding the adjustment date as compared to the preceding base index. The CPI-U for January 2010 shall be the first base (100%). City shall send Concessionaire written notice of the applicable rent increase of each successive year along with documentation evidencing the

calculation used to arrive at that figure no less than thirty (30) days prior to the date the increase becomes effective.

- 1.5 Security Deposit. \$1,000.00 US Dollars
- 1.6 Use of Demised Premises. Demised Premises may be utilized for parking of one Airport permitted airline catering vehicle with onsite electricity hook-ups provided by City. No food preparation or other activity may take place on the Demised Premises.
- 1.7 Days / Hours of Operation: Seven days per week as requested by the Airlines.
- 1.8 Concession Fee: 12.25% of gross revenue payable on the fifteenth of each month for the prior month. The concession fee shall be automatically adjusted April 15th of each term year in an amount equal to the increase in the Consumer Price Index for All Urban Consumers (CPI-U) in the Los Angeles-Riverside-Orange County, CA for the month of January preceding the adjustment date as compared to the preceding base index. The CPI-U for January 2010 shall be the first base (100%). City shall send Concessionaire written notice of the applicable rent increase of each successive year along with documentation evidencing the calculation used to arrive at that figure no less than thirty (30) days prior to the date the increase becomes effective.

Section 2. TERM

- 2.1 Term. The term of this Agreement shall commence on the date specified in Section 1.2 ("Agreement Term") and shall continue for the period specified therein unless earlier terminated as provided herein.
- 2.2 Termination Prior to Expiration Of Term. This Section shall govern any termination of this Agreement. The City reserves the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days' written notice to Concessionaire, except that where termination is due to the fault of the Concessionaire, the period of notice may be such shorter time as may be determined by the City. In addition, the Concessionaire reserves the right to terminate this Agreement at any time with or without cause, upon thirty (30) days' written notice to City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as the Concessionaire may determine. Upon receipt of any notice of termination, Concessionaire shall immediately cease all services hereunder, except such as may be specifically approved by the City. If Concessionaire terminates the Agreement, City shall retain the Security Deposit as its remedy hereunder, and upon payment by Concessionaire to City of all amounts otherwise due under this Agreement through the date of termination, Concessionaire and City shall thereafter have no rights or obligations under this Agreement.

Section 3. RENTAL AND CONSESSION FEE.

- 3.1 Monthly Rental. Concessionaire shall pay to City, during the term of this Agreement from and after the Commencement Date as monthly rental for the Demised Premises the sum specified in Section 1.4 hereof, which sum shall be paid in advance on the first day of each calendar month. All rent to be paid by Concessionaire to City shall be in lawful money of the United States of America and shall be paid without deduction or offset, prior notice or demand at the address designated in Section 16.11 hereof.

- 3.2 Additional Rental. For purposes of this Agreement, all monetary obligations of Concessionaire under this Agreement, including, but not limited to, insurance premiums, property taxes (if any), maintenance expenses, and late charges shall be deemed additional rental.
- 3.3 Real Property Taxes. In addition to all rentals herein reserved, Concessionaire shall pay, at the election of City, either directly to the taxing authority or to City, any annual real estate taxes and assessments levied upon the Demised Premises (including any possessory interest taxes), as well as taxes of every kind and nature levied and assessed in lieu of, in substitution for, or in addition to, existing real property taxes, if any. (Concessionaire specifically acknowledges that the interest granted under this Agreement may be subject to possessory interest taxes.) Such amount shall be paid on the date that is twenty (20) days prior to the delinquent date or, if City receives the tax bill, ten (10) days after receipt of a copy of the tax bill from City, whichever is later. Even though the term of this Agreement has expired and Concessionaire has vacated the Demised Premises, when the final determination is made of Concessionaire's share of such taxes and assessments, Concessionaire shall immediately pay to City the amount of any additional sum owed.
- 3.4 Personal Property Taxes. During the term hereof Concessionaire shall pay prior to delinquency all taxes (if any) assessed against and levied upon fixtures, furnishings, equipment and all other personal property of Concessionaire contained in the Demised Premises, and when possible concessionaire shall cause said fixtures, furnishings, equipment and other personal property to be assessed and billed separately from the real property of City.
- 3.5 Utilities. Cost for electricity used by the one vehicles parked in the Demised Premises shall be paid by City. No other utilities are available in the Demised Premises.
- 3.6 Late Payment. Concessionaire hereby acknowledges that late payment by Concessionaire to City of rental or other sums due hereunder will cause City to incur costs not contemplated by this Agreement, the exact amount of which is extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, any payment of any sum to be paid by Concessionaire not paid within five (5) days of its due date shall be subject to a five percent (5%) late charge. City and Concessionaire agree that this late charge represents a reasonable estimate of such costs and expenses and is fair compensation to City for its loss suffered by such late payment by Concessionaire.
- 3.7 Interest. Any sum to be paid pursuant to the terms of this Agreement not paid when due shall bear interest from and after the due date until paid at a rate equal to three percent (3%) over the reference rate being charged by Bank of America, N.A. from time to time during such period so long as the rate does not exceed the maximum non-usurious rate permitted by law in which case interest shall be at the maximum non-usurious rate allowed by law at the time the sum became due.
- 3.8 Security Deposit. Concessionaire shall provide a security deposit in the amount specified in Section 1.5 hereto. Said deposit shall be paid at the commencement of Agreement Term. Upon termination of this Agreement and provided that all amounts due to the City are paid, and the Demised Premises has been returned to the City in the same condition as received by the Concessionaire, reasonable wear and tear excepted, the full deposit shall be returned to the Concessionaire. In the event fees are not paid or if the Demised

Premises are damaged beyond reasonable wear and tear, City shall have the right, but not the obligation to draw upon the deposit to cover said costs. Upon termination of this Agreement any balance of the deposit not drawn against shall be paid to the Concessionaire.

- 3.9 Monthly Concession Fee & Report. Within fifteen (15) days after the close of each month throughout the term of this Agreement, Concessionaire shall submit to the City, in a form and detail satisfactory to the City, A Statement of Gross Revenues that details Gross Revenues for the prior calendar month from all activity at Palm Springs International Airport. The concessionaire shall attach payment per Section 1.8 to its Statement of Gross Revenues.
- 3.10 Accounting Records. Concessionaire shall keep, throughout the term of this Agreement, all books of accounts and records customarily used in this type of operation, in accordance with the International Financial Reporting Standards prescribed by the International Accounting Standards Board or any successor agency thereto. Such books of accounts and records shall be retained and be available for three (3) years from the end of each Agreement year, including three (3) years following the expiration or termination of this Agreement. City shall have the right to audit and examine during normal business hours all such books of accounts and records relating to Concessionaire's operations hereunder. Concessionaire shall, at City's sole cost and expense, arrange for the records to be brought to a location convenient to the auditors for City in order for City to conduct the audits and inspections as set forth in this Article. The obligations arising under this Section 3.10 shall survive the expiration or termination of the Agreement
- 3.11 Audit Requirement. Within one hundred twenty (120) days after the close of each Agreement year, Concessionaire shall provide to the City an audit report on all Gross revenues from operations at Palm Springs International Airport. The audit report shall cover the preceding Agreement year. The audit report shall be prepared by an independent Certified Public accountant, not a regular employee of Concessionaire, in accordance with the International Financial Reporting Standards prescribed by the International Accounting Standards Board or any successor agency thereto as appropriate.

Section 4. USE OF THE PREMISES.

- 4.1 Permitted Uses. Demised Premises may only be used for parking one Airport permitted catering vehicles with access to onsite electrical hook-ups. No other activity of any kind may take place on the Demised Premises. Only Airport security badged company employees and Airport security permitted company airline catering vehicles will be allowed on the demised premises.
- 4.2 Rules and Regulations. Concessionaire shall faithfully observe and comply with the rules and regulations that City shall from time to time promulgate and/or modify. Any amendment or modification of the Airport Rules and Regulations shall be binding upon the Concessionaire upon delivery of a copy of such amendment or modification to Concessionaire at the address set forth in Section 16.11 and to the Concessionaire's local general manager. City shall not be responsible to Concessionaire for the nonperformance of any said rules and regulations by any other concessionaires or occupants. The Airport Rules and Regulations shall apply and be enforced as to all concessionaires in the Demised Premises on a uniform basis.

- 4.3 Security Requirements. Concessionaire shall comply with all Transportations Security Administration requirements concerning the security of Airline catering products, vehicles and employees. Concessionaire shall be responsible with complying with all current Airport security requirements regarding employee security badging and vehicle permitting process to obtain access to the secure area of the Airport. Concessionaire will be responsible for all costs associated with the security requirements.

Section 5. ALTERATIONS AND REPAIRS.

- 5.1 Improvements, Alterations and Fixtures. No improvements, alterations or fixtures may be added to the Demised Premises.
- 5.2 Free From Liens. Concessionaire shall keep the Demised Premises free from any liens arising out of any work performed, material furnished, or obligation incurred by Concessionaire or alleged to have been incurred by Concessionaire.
- 5.4 City's Reserved Rights.

(a) Airport Development and Safety. City reserves the right to further develop or improve the aircraft operating area of the Airport as it sees fit, and City reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, together with the right to prevent Concessionaire from erecting or permitting to be erected any building or other structure of the Demised premises which, in the opinion of City, would limit the usefulness of the Airport or constitute a hazard to aircraft.

(b) Right to Relocate Demised Premises. City reserves the right to relocate the Demised Premises within the secure area of the Airport if required to ensure the operational effectiveness of the Airport.

Section 6. INSURANCE AND INDEMNIFICATION.

- 6.1 Insurance. Prior to its ability to access the Demised Premises, Concessionaire will provide City with proof of insurance, at Concessionaire's sole cost and expense, to remain in full force and effect during the entire term of this Agreement. The following policies of insurance shall be maintained:

6.1.1 Workers' Compensation Insurance. Statutory Workers' Compensation Insurance with employer's liability limits of ONE MILLION DOLLARS (\$1,000,000).

6.1.2 Commercial General Liability. Commercial General Liability Insurance written on a per-occurrence and not a claims-made basis with a combined single limit of at least FIVE MILLION DOLLARS (\$5,000,000) bodily injury and property damage including coverages for contractual liability, personal injury, independent contractors, broad form property damage, products and completed operations.

6.1.3 Automobile Liability Insurance. FIVE MILLION DOLLARS (\$5,000,000) per accident for bodily injury and property damage.

6.1.5 General Provisions. The above insurance coverages shall be primary and no other insurance maintained by the City will be called upon to contribute to a loss. All

policies except Workers Compensation shall have the City named as an additional insured. Workers Compensation insurance of the Concessionaire shall contain a waiver-of-subrogation clause in favor of the City, its officers, directors, officials, agents, employees, volunteers, and representatives. All policies of insurance required to be obtained by Concessionaire hereunder shall be issued by insurance companies authorized to do business in California and must be rated no less than A-, VII or better in Best's Insurance Guide. Prior to engaging in any operations hereunder, Concessionaire shall deliver to City certificate(s) of insurance and original endorsements evidencing the coverages specified above. Such policies shall not be cancelled or materially altered to the detriment of City or Concessionaire without the insurer providing City with thirty (30) days' written notice.

- 6.2 Indemnification by Concessionaire. Concessionaire shall indemnify, defend (with counsel designated by City), protect and hold harmless City, its officers, directors, officials, agents, employees, volunteers, and representatives from and against any and all claims, demands, judgments, actions, damages, losses, penalties, liabilities, costs and expenses (including, without limitation, reasonable attorney's fees and court costs) arising at any time directly or indirectly from or in connection with (i) any default in the performance of any obligation by Concessionaire to be performed under the terms of this Agreement, (ii) Concessionaire's use of the Demised Premises, or (iii) the conduct of Concessionaire's business or any activity, work or things done, permitted or suffered by Concessionaire in or about the Demised Premises, except to the extent caused by City's sole negligence or willful misconduct. The obligations of Concessionaire under this Article 6 shall survive the expiration or earlier termination of this Agreement.

Concessionaire, as a material part of the consideration to City, hereby assumes all risk of damage to the Demised Premises, including, without limitation, injury to persons in, upon or about the Demised Premises during Concessionaire's use of the Demised Premises, except where such damage or injury is caused by the sole negligence or willful misconduct of the City or its officers, directors, officials, agents, employees, volunteers, and representatives. Concessionaire hereby waives all claims with respect thereof against City. City shall not be liable for any injury to the Concessionaire, or injury to or death of any of Concessionaire's officers, directors, officials, agents and/or employees, or injury to or death of any other person in or about the Demised Premises from any cause except to the extent caused by the sole negligence or willful misconduct of the City or its officers, directors, officials, agents, employees, volunteers, and representatives

- 6.3 Assumption of All Risks and Liabilities. Concessionaire assumes all risks and liabilities arising out of any and all use of the Demised Premises by Concessionaire or its officers, directors, officials, agents and/or employees except where such damage or injury is caused solely by the sole negligence or willful misconduct of the City or its officers, directors, officials, agents, employees, volunteers, and representatives .

Section 7. ABANDONMENT AND SURRENDER.

- 7.1 Abandonment. Concessionaire shall not vacate or abandon the Demised Premises at any time during the term of this Agreement; and if Concessionaire shall abandon, vacate or surrender the Demised Premises or be dispossessed by process of law, or otherwise, any personal property belonging to Concessionaire and left on the Demised Premises shall be deemed to be abandoned, at the option of City, except such property as may be mortgaged to City.

- 7.2 Surrender of Agreement. The voluntary or other surrender of this Agreement by Concessionaire or a mutual cancellation thereof, shall not work a merger, and shall, at the option of City, terminate all provisions of existing Agreement.

Section 8. ASSIGNMENT.

Concessionaire shall not assign this Agreement, or any interest therein without prior written approval of the City. Any assignment without the prior written consent of City shall be void, shall constitute a material breach of this Agreement, and shall, at the option of City, terminate this Agreement.

Section 10. ENCUMBRANCE.

Concessionaire shall not encumber this Agreement.

Section 11. DEFAULT AND REMEDIES.

- 11.1 In the event Concessionaire fails to perform any obligations under this Agreement and after the expiration of any cure period, City may terminate Concessionaire's right to possession of the Site by any lawful means, in which case the Agreement shall terminate.
- 11.2 In the event of any dispute arising under this Agreement, the injured party shall notify the injuring party in writing of its contentions by submitting a claim therefore. The injured party shall continue performing its obligations hereunder so long as the injuring party commences to cure such default within ten (10) days of service of such notice and completes the cure of such default within thirty (30) days after service of the notice or if such default cannot be reasonably be cured within thirty (30) days, such mutually agreed longer period of time is permissible to effect such cure if the defaulting party furnishes to the injured party within such thirty (30) day cure period a feasible plan demonstrating that it is capable of curing the default if it diligently implements such a plan to completion; provided that if the default is an immediate danger to the health, safety and general welfare, such immediate action may be necessary. Compliance with the provisions of this Section shall be a condition precedent to termination of this Agreement for cause and to any legal action, and such compliance shall not be a waiver of any party's right to take legal action in the event that the dispute is not cured, provided that nothing herein shall limit City's or the Concessionaire's right to terminate this Agreement without cause pursuant to Subsection 5.5(c).

Section 12 ENFORCEMENT OF LAW

- 12.1 Governing Law. This Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California.
- 12.2 Compliance with Law. All services rendered hereunder shall be provided in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State, or local governmental agency having jurisdiction in effect at the time service is rendered.

- 12.3 Waiver. The waiver of any breach of any provision hereunder by City or Concessionaire shall not be deemed a waiver of any preceding or subsequent breach hereunder. No failure or delay of any Party in the exercise of any right given hereunder shall constitute a waiver thereof nor shall any partial exercise of any right preclude further exercise thereof.
- 12.4 Severability. If any paragraph, section, sentence, clause or phrase contained in this Agreement shall become illegal, null or void, against public policy, or otherwise unenforceable, for any reason, or held by any court of competent jurisdiction to be illegal, null or void, against public policy, or otherwise unenforceable, the remaining paragraphs, sections, sentences, clauses or phrases contained in this Agreement shall not be affected thereby.
- 12.5 Termination Prior to Expiration of Term. The parties agree that if Concessionaire: (i) files a petition in bankruptcy, (ii) is adjudicated bankrupt, (iii) if a petition in bankruptcy is filed against Concessionaire and not discharged within thirty (30) days, (iv) if Concessionaire becomes insolvent or makes an assignment for the benefit of its creditors or an arrangement pursuant to any bankruptcy law, or (v) if a receiver is appointed for Concessionaire or its business during the Term of this Agreement, City may terminate this Agreement upon twenty-four (24) hours' written notice to Concessionaire.
- 12.6 Attorney's Fees. If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding in addition to any other relief, which may be granted, shall be entitled to reasonable attorney's fees and costs.

Section 13. CITY OFFICERS AND EMPLOYEES; NON-DISCRIMINATION.

- 13.1 Non-liability of City Officers and Employees. No officer or employee of the City shall be personally liable to the Concessionaire, or any successor in interest, in the event of any default or breach by the City or for any amount, which may become due to the Concessionaire or to its successor, or for breach of any obligation of the terms of this Agreement.
- 13.2 Conflict of Interest. No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to this Agreement which effects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. Concessionaire warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.
- 13.3 Standard Covenant Against Discrimination. Concessionaire covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement. Concessionaire shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin, or ancestry.

- 13.4 Americans With Disabilities Act. In its operation of Demised Premises, Concessionaire shall comply with the Americans with Disabilities Act and all federal regulations applicable under the Act.

Section 14. FAA REQUIRED PROVISIONS.

- 14.1 Concessionaire, as a part of the consideration for this Agreement, covenants and agrees "as a covenant running with its interest in property" that in the event facilities are constructed, maintained, or otherwise operated on the Airport or the Demised Premises for a purpose for which a Department of Transportation ("DOT") program or activity is extended or for another purpose involving the provision of similar services or benefits, the Concessionaire shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations DOT, Part 23, Nondiscrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, as such regulations may be amended from time to time.
- 14.2 This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The Concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or other agreement covered by 49 CFR part 23.
- 14.3 The Concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and causes those businesses to similarly include the statements in further agreements.
- 14.4 In the event of a breach of the covenants specified in Subsection 14.1 and 14.2 of this Agreement, City shall have the right to terminate this Agreement and to reenter and repossess the Demised Premises and the facilities thereon and hold the same as if said Agreement had never been made or issued. This provision does not become effective until the procedures of Title 49, Code of Federal Regulations, Part 23 are followed and completed, including the expiration of any appeal rights.
- 14.5 Concessionaire shall furnish its services on a fair, equal, and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable, and not unjustly discriminatory prices for its services; provided that Concessionaire may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar type of price reductions to volume purchases or other rational, reasonable basis. Non-compliance with this provision shall constitute a material breach of this Agreement and in the event of such non-compliance, City shall have the right to terminate this Agreement and any interest in property created without liability or at the election of the City or the United States either or both Governments shall have the right to judicially enforce this provision.
- 14.6 Concessionaire agrees that it shall insert the above five provisions in any Agreement or contract by which Concessionaire grants a right or privilege to any person, partnership, or corporation to render services to the public on the Demised Premises pursuant to this Agreement. Nothing in this provision shall be construed as waiving any obligations or

requirements of the Concessionaire pursuant to Subsection 4.3 of this Agreement or abrogate the rights of the City pursuant to such subsection.

- 14.7 This Agreement shall be subordinate to the provisions and requirements of any existing or future agreement between the City and the United States relative to the development, operation, or maintenance of the Airport.
- 14.8 This Agreement, and all provisions hereof, shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation, and taking over of the Airport or the exclusive or non-exclusive use of the Airport by the United States during a time of war or national emergency.

Section 15 AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE)

The Airline catering activity covered by this agreement does not occur in the public area of the Airport Terminal and therefore the Airport Concession Disadvantaged Business Enterprise (ACDBE) program does not apply.

Section 16 MISCELLANEOUS PROVISIONS

- 16.1 Headings. The headings of this Agreement are for purposes of reference only and shall not limit or define the meaning of the provisions of this Agreement.
- 16.2 Counterparts. This Agreement may be signed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one instrument.
- 16.3 Labor Disputes. Concessionaire shall give prompt notice to City of any actual or potential labor dispute which delays or may delay performance of this Agreement.
- 16.4 California Law. This Agreement shall be construed and interpreted both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Riverside, State of California, or any other appropriate court in such county, and Concessionaire covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.
- 16.5 Rights and Remedies are Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.
- 16.6 Legal Action. In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.
- 16.7 Reservation of City Rights. City reserves the right, but shall not be obligated to Concessionaire, to maintain the Demised Premises and keep in good repair the Airport or

the Demised Premises. The City further reserves the right to direct and control all activities of Concessionaire consistent with the provisions of this Agreement.

- 16.8 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.
- 16.9 Integration; Amendment. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels all previous negotiations, arrangements, Agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.
- 16.10 Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.
- 16.11 Notice. Any notice required or permitted to be given hereunder shall be in writing and signed by the Party, officer or agent of the Party to whom it is to be sent, and shall be either: (1) personally delivered to the Party to whom it is to be sent, or (2) sent via overnight courier services, or (3) sent via certified or registered mail, return receipt requested, postage prepaid to the respective addresses, or such other addresses as the Parties may specify in writing:

To City: Palm Springs International Airport
Attn: Executive Director - Airport
3400 East Tahquitz Canyon Way, Suite OFC
Palm Springs, California 92262-6966

To Concessionaire: Sky Chefs, Inc.
Attn: Dir. Of Corporate Real Estate
6191 North State Highway 161
Irving, TX 75038

With a copy to: Sky Chefs, Inc.
Attn: Legal Department
6191 North State Highway 161
Irving, TX 75038

(Signature page follows)

IN WITNESS WHEREOF, the parties have executed and entered into this Agreement as of the date first written above.


ATTEST:

CITY OF PALM SPRING
a municipal corporation

By: _____
City Clerk

By: _____
City Manager

APPROVED AS TO FORM:

By: 
City Attorney

Sky Chefs, Inc.

CONCESSIONAIRE: Check one: Individual Partnership Corporation

Corporations require two notarized signatures: One from each of the following: A. Chairman of Board, President, or any Vice President: AND B. Secretary, Assistant Secretary, Treasurer, Assistant Treasurer, or Chief Financial Officer.

By: _____
Signature (notarized)

By: _____
Signature (notarized)

Name: _____

Name: _____

Title: _____

Title: _____

State of _____

State of _____

County of _____

County of _____

On _____ before me, _____

On _____ before me, _____

personally appeared _____
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.

personally appeared _____
who proved to me on 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 instruments 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.

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

WITNESS my hand and official seal.

WITNESS my hand and official seal.

Notary Signature: _____

Notary Signature: _____

Notary Seal:

Notary Seal:

Exhibit "A"
Demised Premises

520 Square Feet

See Attached

EXHIBIT A

PALM SPRINGS INTERNATIONAL AIRPORT

