



City Council Staff Report

DATE: January 4, 2012

CONSENT

SUBJECT: APPROVE DESTINATION PALM SPRINGS AGREEMENT WITH PS RESORTS, A MUTUAL BENEFIT CORPORATION, TO CREATE, FOSTER, AND ENHANCE EVENTS, ATTRACTIONS, CONVENTIONS, AND ACTIVITIES THAT WILL ATTRACT VISITORS TO PALM SPRINGS AND PROMOTE PALM SPRINGS AS A PREMIER DESTINATION.

FROM: David H. Ready, City Manager

BY: Douglas Holland, City Attorney

SUMMARY

The major resort hotels of the City are in the process of forming PS Resorts, a mutual benefit corporation, that will create, foster, and enhance events, attractions, conventions, and activities that will attract visitors to Palm Springs and promote Palm Springs as a premier destination. This Agreement provides that the City will provide an initial "seed" grant of funds to PS Resorts in an amount equal to 50% of the transient occupancy tax revenues paid to the City and attributed solely to resort fees paid to and collected by the resort hotels for three years, commencing on December 1, 2010.

RECOMMENDATION:

APPROVE AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE DESTINATION PALM SPRINGS AGREEMENT WITH PS RESORTS IN A FORM APPROVED BY THE CITY ATTORNEY UPON THE COMPLETION OF THE INCORPORATION OF PS RESORTS.

STAFF ANALYSIS:

Prior to November 1, 2010, the City's resort hotels did not collect and did not pay to the City transient occupancy taxes on resort fees paid to and collected by the resort hotels. Originally, the City understood the resort fee was an "optional" service and therefore was not considered a taxable event under the City Transient Occupancy Tax ordinance. In recent years, the resort fee structures for each hotel evolved into a mandatory fee assessed on all hotel customers. As a result of this change, the City determined that resort fees were taxable events under the City's ordinance and subject to the transient

occupancy tax. Hence as of November 1, 2010, resort hotels commenced collecting and paying to the City transient occupancy taxes on resort fees.

Additionally, part of the discussions during this policy reevaluation on the resort fees was the general desire of the City to encourage and work with the tourism stakeholders to provide additional events or attractions in Palm Springs during certain transitional periods of time between the summer months and the "season" with the goal of attracting visitors to Palm Springs. The resort hotels acknowledged this need and expressed a willingness to assist the City in attaining the goal. The City and resort hotels identified that a portion of the transient occupancy taxes on resort fees could be used for a period of time to provide "seed" funds to help finance the efforts of creating events, conventions, and attractions.

The proposed Destination Palm Springs Agreement is an agreement between the City and a mutual benefit corporation, PS Resorts (a consortium of hotels that charge resort fees), which is in the process of completing its incorporation process and its registration as a non-profit corporation. This Agreement essentially provides that the City will grant to PS Resorts 50% of the transient occupancy tax revenues derived solely from resort fees paid to and collected by the resort hotels for 36 months commencing on December 1, 2010, to create, foster, and enhance events, attractions, conventions, and activities that will attract visitors to Palm Springs and promote Palm Springs as a premier destination.

FISCAL IMPACT

The cost of the grant provided under the Destination Palm Springs Agreement will be 50% of the transient occupancy tax revenues attributed solely to the resort fees collected by the resort hotels commencing on December 1, 2010. For the period of time between December 1, 2010 and November 30, 2011, the amount of the grant to PS Resorts would be \$260,000 (this figure represents actual figures for December through October, with an estimated amount for November, at the time of this staff report) based on the 50% formula described in this staff report.



Douglas Holland, City Attorney



David H. Ready, City Manager

Attachment: Destination Palm Springs Agreement



DESTINATION PALM SPRINGS AGREEMENT

THIS DESTINATION PALM SPRINGS AGREEMENT (the "Agreement") is made and entered into this ___ day of _____ 2012, by and between the City of Palm Springs, a California charter city ("City"), and PS RESORTS, a California mutual benefit corporation ("PS Resorts"). Collectively the City and PS Resorts are referred to as the Parties.

RECITALS

- A. PS Resorts is a recently organized mutual benefit corporation, consisting of representatives from each of the resort hotels operating within the corporate limits of the City and who charge or assess resort fees. The purpose of PS Resorts is to create, foster, and enhance events, attractions, and activities that will attract visitors to Palm Springs and otherwise promote Palm Springs as a premier destination ("Project").
- B. City is a charter city that levies and collects a transient occupancy tax on guests for the privilege of occupancy at hotels, motels, and other visitor serving facilities as provided in Chapter 3.24 of the Palm Springs Municipal Code.
- C. It is the desire of the City to provide an initial "seed" grant of funds to PS Resorts and assist PS Resorts in the furtherance of this Agreement purpose and to ensure that there is an appropriate level of start-up funds to reasonably enable PS Resorts to commence the Project.

NOW, THEREFORE, in consideration of the mutual agreements contained herein, City agrees to grant to PS Resorts an annual amount equal to Fifty Percent (50%) of the transient occupancy tax revenues paid to the City and attributed solely to resort fees paid to and collected by the member hotels of PS Resorts for thirty-six consecutive calendar months, commencing on December 1, 2010 and PS Resorts agrees to undertake the Project, and create, foster, and enhance events, attractions, and activities that will attract visitors to Palm Springs and otherwise promote Palm Springs as a premier destination, subject to the following terms and conditions:

AGREEMENT

1. **Term.** The term of this Agreement shall commence on December 1, 2010 and terminate on November 30, 2013, unless terminated pursuant to the provisions of Section 15 of this Agreement.
2. **Project.** PS Resorts shall initiate and reasonably pursue the creation, fostering, and enhancement of events, attractions, and activities that will attract visitors to Palm Springs and otherwise promote Palm Springs as a premier destination.

3. Status of PS Resorts. PS Resorts is an independent entity, apart from the City, and shall be wholly responsible for the manner in which it performs the Project as required by the terms of this Agreement. Nothing in this Agreement shall be construed as creating a relationship of employer and employee or principal and agent between the City and PS Resorts or any of PS Resorts' agents or employees. The City shall neither have nor exercise any control or direction over the methods by which PS Resorts shall perform its obligations under this Agreement. The City shall not be responsible or liable for the acts or failure to act, whether intentional or negligent, of any employee, agent, or volunteer of PS Resorts.

4. Operation as a Non-Profit. PS Resorts shall at all times during the term of this Agreement operate and otherwise conduct itself as a bona fide mutual benefit corporation in full compliance with the laws of the State of California and shall timely file all statement, documents, and submissions required under the laws of the State of California and the United States. PS Resorts shall also implement appropriate financial procedures and administrative practices that will ensure that the Board of Directors of PS Resorts will be accountable for all actions taken in the name of PS Resorts, including without limitation inclusion on the Board of Directors a representative from each hotel in the City that collects transient occupancy taxes on resort fees, Board of Directors review and approval by a majority of the membership of each and every expenditure in excess of One Thousand Dollars (\$1,000.00), and the preparation of minutes of all Board meetings that reflect all actions taken during each Board meeting. PS Resorts warrants that it has, or that it will timely secure all necessary licenses and permits required by the laws of the United States, State of California, or the City, and all other appropriate governmental agencies, and agrees to maintain these licenses and permits in effect for the duration of this Agreement. In addition, PS Resorts warrants that its officers, directors, employees, agents, and contractors shall conduct themselves in compliance with the laws and licensure requirements including, without limitation, compliance with laws applicable to non discrimination, sexual harassment, and ethical behavior.

5. Delegation and Assignment. PS Resorts shall not delegate or assign or otherwise transfer its duties, nor assign its rights under this Agreement, either in whole or in part, without the prior written consent of the City's City Manager. The request must be in writing with a full explanation for the request. Any consent granted by the City Manager may be conditioned upon and subject to certain actions by PS Resorts as determined by the City Manager. Any attempted assignment or delegation in derogation of this Section 5 shall be deemed void.

6. Contingent on Funding and Budget. The obligations of the City under this Agreement are contingent upon the availability of funds and inclusion of sufficient funds for the payment of any or all obligations hereunder in the budget approved by the City Council each fiscal year this Agreement remains in effect or operation. In the event such funding is terminated or reduced, the City Manager may immediately terminate this agreement, reduce the City's obligations, if any, or modify this Agreement, without penalty. The decision of the City Manager shall be binding on PS Resorts. The City Manager shall provide PS Resorts with written notification of such determination and PS Resorts shall immediately comply with the City Manager's decision.

7. Indemnification. PS Resorts agrees to and shall indemnify, defend, and hold harmless City and its officers, agents, and employees from and against all liability, claims, losses and demands, damages to property or injuries to or death of any person or persons, including property of officers, employees, or agents of City, including defense costs (together, "Claims"), whether resulting from court action or otherwise, resulting from, related in any manner to, or arising out of the intentional, malicious, negligent acts, inactions, errors or omissions of PS Resorts, its officers, employees, agents, and/or its Subcontractors in the performance of this Agreement.

8. Insurance. Without limiting PS Resorts' liability for indemnification of City as set forth in Section 7 above, PS Resorts shall obtain and maintain in effect, during the term of this Agreement, reasonable insurance coverage consistent with best practices applicable to non-profit corporations doing business in the State of California.

9. Covenant against Discrimination. In the performance of this Agreement, PS Resorts shall not engage in, nor permit any employee or agent to engage in discrimination in employment of persons or provision of Services or assistance, nor exclude any person from participation in, nor deny any person the benefits of, nor or subject any person to discrimination under any program or activity funded in whole or in part with funds under this Agreement on the grounds of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, gender or sexual orientation, except as permitted by applicable provisions of Federal and State law. PS Resorts shall comply with Title II of the Americans with Disabilities Act, (42 U.S.C. §12101, *et. seq.*) as it relates to public accommodations.

10. Notice. Any notice, demand, request, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by United States Postal Service, pre-paid, first-class mail to the address set forth below. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

To City:

City of Palm Springs
Attention: City Manager
3200 E. Tahquitz Canyon Way
Palm Springs, California 92262

To PS Resorts:

Palm Springs, CA _____

11. Integrated Agreement. This Agreement contains all of the agreements of the parties and cannot be amended or modified except by the mutual consent of the parties

by an instrument in writing.

12. Amendment. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

13. Severability. In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement, which shall be interpreted to carry out the intent of the parties hereunder.

14. Audits. PS Resorts shall prepare and maintain adequate records of its performance under this agreement in sufficient detail to permit an evaluation of the work and services as generally provided in this Agreement. In this regard, PS Resorts' books and financial records shall be made available to the City Manager or the City Manager's designee for inspection at the City Manager's request. Owner shall indemnify and hold harmless, the City, its elected and appointed officials, agents, employees and independent contractors free and harmless from any liability whatsoever based and asserted upon any act or omission of the City for property damage, bodily injury, or death or any other element of damage of any kind or nature, relating to or in any way connected with PS Resorts performance of its obligations under this Agreement, except to the extent such damage is due solely to the City's negligence or willful misconduct.

15. Termination. The City and PS Resorts each reserves the right to terminate this Agreement at any time, without cause, upon thirty (30) days written notice to the other party. In the event the agreement is terminated without cause, PS Resorts will retain any funds paid to PS Resorts under this Agreement and PS Resorts will expend such funds only in the manner and for the purposes provided in this Agreement.

16. Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by so executing this Agreement the parties hereto are formally bound to the provisions of this Agreement.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates stated below.

City of Palm Springs

Date: _____

By: _____

David H. Ready, Esq., PhD.
City Manager

ATTEST:

APPROVED AS TO FORM:

By: _____

James Thompson
City Clerk

By: _____

Douglas C. Holland
City Attorney

Palm Springs PS Resorts

Date: _____

By: _____

(_____)

Date: _____

By: _____

(_____)