



CITY COUNCIL STAFF REPORT

DATE: July 15, 2015

CONSENT CALENDAR

SUBJECT: AMENDMENT NO 2. TO AGREEMENT NO. 5966 WITH EVA'S AT PALM SPRINGS INTERNATIONAL AIRPORT, EXTENDING THE TERM UP TO FOUR YEARS

FROM: David H. Ready, City Manager

BY: Department of Aviation

SUMMARY

An action approving Amendment No. 2 to the current agreement with Eva Karlstrom, owner of Eva's at Palm Springs International Airport, for operation of a retail kiosk, extending the term of the original agreement up to an additional four years.

RECOMMENDATION:

1. Approve Amendment No. 2 to Agreement No. 5966 with Eva's at Palm Springs Airport, extending the term three years effective September 1, 2015, to August 31, 2018, with an option for a fourth year.
2. Authorize the City Manager to execute all necessary documents.

STAFF ANALYSIS:

Eva's at Palm Springs International Airport is a retail concessionaire operating out of a portable kiosk on the Bono Concourse. It is one of two airport gift concessions, and is a certified Disadvantaged Business Enterprise (DBE) operating at the airport at this time.

The current agreement for Eva's was a result of a public bid process in 2010 and is set to expire on August 31, 2015. The proposed three-year extension would be effective September 1, 2015, through August 31, 2018, and include a fourth year option at the discretion of the City.

The Airport Commission has recommended extending this agreement, which will coincide with the expiration of the two other major food and gift concessions. At that time, a study of the concessions programs is planned prior to the rebidding process to identify opportunities for concept changes and expansions, similar to the one conducted in 2008 with the addition of Starbucks, LaBrea Bakery, Zia, and CNBC.

FISCAL IMPACT:

The current annual rent amount is \$18,194. This agreement renewal also includes an annual Consumer Price Index (CPI) rent adjustment.



Thomas Nolan
Executive Director, Airport



David H. Ready, Esq. Ph.D.
City Manager

Attachment:
Amendment No. 2
Photos



AGREEMENT NO. 5966

AMENDMENT NO. 2

EVA KARLSTROM DBA EVA'S AT PALM SPRINGS AIRPORT
NON-EXCLUSIVE OPERATING AND LEASE AGREEMENT
FOR TWO RETAIL MERCHANDISING UNITS
AT PALM SPRINGS INTERNATIONAL AIRPORT

This SECOND AMENDMENT to Agreement No. 5966 for a two-retail merchandising units concession (Herein "Agreement") made and entered into on the Fifteenth day of July 2015, by and between the CITY OF PALM SPRINGS (herein "City"), and EVA KARLSTROM a sole proprietor doing business as Eva's At Palm Springs Airport (herein "Concessionaire") is hereby effective July 15, 2015 as follows:

RECITALS

WHEREAS, the City and Concessionaire entered into that certain Non-Exclusive Operating and Lease Agreement No. 5966 for Two Retail Merchandising Units ("Agreement"), as may be duly amended from time to time.

WHEREAS, the parties wish to amend the Agreement pursuant to the terms of Amendment No. 2 as follows:

NOW, THEREFORE, in consideration of the mutual promises of the parties hereto and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and Contractor agree to amend the Agreement as follows:

Section 1. Lease Summary

- 1.2 Lease Term. The current term of this agreement is hereby extended three years and shall terminate on August 31, 2018, unless extended as provided herein.
- 1.3 Extension Options. One (1) one-year option 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 Lease Rental Payments. Rental payment is due on the first of each month of the agreement period as follows: Year 1: \$2,350.00 monthly rental payment x 8 months, or 12% of total gross sales generated each year of the agreement, whichever is greater. Monthly rental for the eight months shall be October 1st to May 31st of each year, any additional months may

be prorated if the retail units are in service. Year 2 through 3 and year 4 if extension is exercised: the monthly rent shall be automatically adjusted on October 1st 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 June preceding the adjustment date as compared to the preceding base index. The CPI-U for June 2015 shall be the first base (100%).

Section 3. Rental

3.9 Independent Statement of Gross Revenue. No later than ninety (90) days after each agreement year, Concessionaire shall furnish to the City the written statement of an independent licensed and bonded accounting firm stating that the Airport Fee paid by the Concessionaire to the City pursuant to this Agreement during each of Concessionaire's fiscal years is accurate. Such statement shall also state Gross Revenues as shown on the books and records of Concessionaire that were used to compute the Percentage Fee or the minimum monthly rent, whichever is greater, that will be made to the Director of Aviation during the period covered by the statement.

Section 5. Alterations and Repairs

5.2 Maintenance and Repair. Concessionaire shall, subject to City's obligations hereinafter provided, at all times during the term hereof, and at Concessionaire's sole cost and expense, keep, maintain and repair the Demised Premises and other improvements (including the Retail Merchandising Units) within the Demised Premises in good and sanitary order, condition, and repair. Concessionaire shall also at its sole cost and expense be responsible for any alterations or improvements to the Demised Premises necessitated as a result of the requirement of any municipal, state or federal authority. [jmd1]Concessionaire shall be deemed to have accepted the Premises and two Retail Merchandising Units as being in good and sanitary order, condition and repair. Concessionaire agrees on the last day of said term or sooner termination of this Lease to surrender the two Airport supplied Retail Merchandising Units, in the same condition as when received and in a good, clean and sanitary condition, reasonable use and wear thereof and damage by fire, act of God or by the elements accepted.

Full Force and Effect. Except as expressly modified herein, all other provisions of the Agreement shall remain unmodified and in full force and effect.

Corporate Authority. The persons executing this Amendment 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 Amendment on behalf of such part, (iii) by so executing this Amendment, such party is formally bound to the provisions of this Amendment, and (iv) the entering into this Amendment does not violate any provisions of any other agreement to which said party is bound.

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

**“CITY”
City of Palm Springs**

Date: _____

By: _____
David H. Ready
City Manager

APPROVED AS TO FORM:

ATTEST

By: _____
Douglas C. Holland,
City Attorney

By: _____
James Thompson,
City Clerk

APPROVED BY CITY COUNCIL:

Date: _____ Agreement No. _____

Corporations require two notarized signatures. One signature must be from Chairman of Board, President, or any Vice President. The second signature must be from the Secretary, Assistant Secretary, Treasurer, Assistant Treasurer, or Chief Financial Officer.

COMPANY NAME:

Check one ___ Individual ___ Partnership ___ Corporation

Address

By _____
Signature (Notarized)

By _____
Signature (Notarized)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1180

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 _____)

On _____ before me, _____
Date Here Insert Name and Title of the Officer

personally appeared _____
Name(s) of Signer(s)

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.

WITNESS my hand and official seal.

Signature _____
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____

Signer is Representing: _____

Signer is Representing: _____