



City Council Staff Report

DATE: March 1, 2017 CONSENT CALENDAR

SUBJECT: APPROVE AN AMENDMENT TO DESTINATION PALM SPRINGS AGREEMENT NO. 6187 WITH PS RESORTS, EXTENDING THE AGREEMENT FOR AN ADDITIONAL THREE YEARS

FROM: David H. Ready, City Manager

BY: Geoffrey S. Kiehl, Director of Finance and Treasurer

SUMMARY

Consideration of Amendment No. 2 to the Destination Palm Springs Agreement with PS Resorts, extending the agreement for an additional three years, contingent upon City Council annual budget appropriations. As part of the agreement, PS Resorts will continue a funding obligation of \$100,000 annually for operational expenses of the Buzz Trolley Program.

RECOMMENDATION:

1. Approve Amendment No. 2 to the Destination Palm Springs Agreement (A6187) with PS Resorts, a California mutual benefit corporation, for a three year term commencing December 1, 2016, through November 30, 2019; and
2. Authorize the City Manager to execute the amendment to the agreement.

STAFF ANALYSIS:

Prior to November 1, 2010, hotel transient occupancy taxes (TOT) on resort fees were not collected and paid to the City. Originally, the fee was an "optional" service provided by the hotel and therefore was not considered a taxable event under the City Transient Occupancy Tax Ordinance.

In more recent years, as a result of changing hotel industry norms, resort fee structures evolved into a mandatory fee assessed on all hotel customers. Pursuant to 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 TOT on resort fees.

As part of the discussion at that time, the City and major resort hotels considered a partnership that would use a portion of the new TOT collected on resort fees to further

the City's tourism marketing efforts. Subsequently, these hotels formed PS Resorts, a mutual benefit corporation, to create, foster, and enhance events, attractions, conventions, and activities that attract visitors to Palm Springs and promote Palm Springs as a premier destination. In May 2012, the City entered into a partnership agreement with PS Resorts – providing them with funding equal to 50% of the transient occupancy tax revenues paid to the City, attributed solely to resort fees paid to and collected by the hotels, for three years commencing on December 1, 2010, to November 30, 2013. The purpose of the agreement was to share a portion of the collected resort fee TOT with PS Resorts to further their mission of attracting new tourism business to the City.

On December 4, 2013, the City Council approved Amendment No. 1, which extended the Destination Palm Springs Agreement for an additional three years - from December 1, 2013, to November 30, 2016. Incorporated as an obligation of the Destination Palm Springs Agreement through Amendment No. 1 is funding in the amount of \$100,000 annually of the Buzz Trolley Program.

For the last three years, PS Resorts has continued to work with the City and tourism stakeholders to provide additional events and/or attractions in Palm Springs, especially during transitional periods of time between the summer months and "season", with the goal of attracting visitors to Palm Springs. A sampling of recent projects contributed to by PS Resorts include the following:

- Festival of Lights Parade
- PS Pride Parade
- Film Friendly Program
- PS Restaurant Week
- Tachevah: A PS Block Party
- Special Olympics
- So Cal Energy & Water Summit
- United Way – Tram Road Challenge
- Operation Good Works – El Gato Classic
- PS International Health & Fitness Event
- Aluminaire Foundation – to help bring the Albert Frey Aluminaire home to Palm Springs

Anticipated events to be funded over the next three-year amendment period will include in part, the following:

BUZZ Trolley	300,000
CUE Transportation	30,000
ESRI Transportation	35,000
Film Incentive Program	45,000
Forever Marilyn	200,000
PS International Film Festival - tourism FAM trips	105,000

Pride Week	45,000
SPA New Year's Eve	105,000
Splash House (June & August)	150,000

The proposed Amendment No. 2 will extend the Destination Palm Springs Agreement another three years through November 30, 2019, including the continuing obligation to allocate \$100,000 annually to fund the Buzz Trolley Program. Additionally, this amendment clarifies that any community charitable donation by PS Resorts must be in furtherance of a tourism related purpose.

City Council assigned Councilmember Kors (member of the Finance Sub-Committee) as liaison to further communication between City Council and PS Resorts on marketing and tourism initiatives.

FISCAL IMPACT:

The percentage of funding provided under the Destination Palm Springs Agreement has shared 50% of the transient occupancy tax revenues with PS Resorts attributed solely to the resort fees collected by the resort hotels. Under the current agreement, for the past 12 month period, PS Resorts received \$576,000 in revenue. Approval of Amendment No. 2 would facilitate continuance of the shared 50% transient occupancy tax revenues, estimated at \$575,000 to \$625,000 annually. Payments to PS Resorts under this agreement are contingent upon annual City Council budget appropriations.

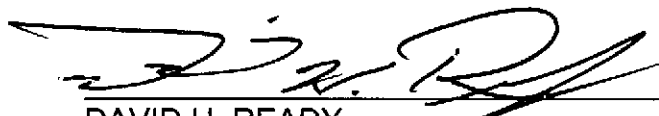
SUBMITTED:



GEOFFREY S. KIEHL
Director of Finance and Treasurer



DOUGLAS HOLLAND
City Attorney



DAVID H. READY
City Manager

Attachments:

Amendment No. 2

**AMENDMENT NO. 2 TO DESTINATION PALM SPRINGS AGREEMENT
PS RESORTS**

This Amendment No. 2 to the Destination Palm Springs Agreement ("Amendment") is made and entered into this 15th day of February, 2017, by and between the City of Palm Springs, California, a California charter city ("City"), and PS Resorts, a California mutual benefit corporation ("PS Resorts").

RECITALS

A. City and PS Resorts have entered into a funding Agreement, dated May 28, 2012, 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, (the "Agreement").

B. City Council approved Amendment No. 1 to the Agreement on December 6, 2013, to extend the term of the Agreement for an additional three years through November 30, 2016.

C. City and PS Resorts are agreeable to modifying certain terms and conditions to the Agreement pursuant to the terms of this Amendment No. 2.

D. City and PS Resorts desire to continue funding to PS Resorts in the furtherance of its purpose and the purposes of the Agreement.

AGREEMENT

In consideration of the promises and covenants contained in this Amendment No. 2 and other good and valuable consideration, the City and the PS Resorts agree:

SECTION 1. Subject to Section 2 herein, the City agrees to grant to PS Resorts an annual amount equal to fifty percent (50%) of the net transient occupancy tax revenues paid to and retained by the City, attributed solely to resort fees paid to and collected by the member hotels of PS Resorts, (the "Resort Fee TOT"), for thirty-six consecutive calendar months, commencing on December 1, 2016, and through November 30, 2019. PS Resorts agrees to continue its purpose 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, (the "Project"), subject to the terms and conditions of the Agreement as hereby amended. For the purposes of this Agreement, "net transient occupancy tax revenues" means 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 less any rebates, refunds, or incentive program payments made by the City pursuant to Chapter 5.26 of the Palm Springs Municipal Code, or by agreement between the City and a Developer or Operator of a hotel.

SECTION 2. The obligations of the City under this Amendment No. 2 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, as amended, remains in effect or operation. In the event such funding is terminated or reduced, the City Manager may terminate this Agreement, as amended, to 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.

SECTION 3. Section 1 of the Agreement is amended to read:

1. Term. Unless earlier terminated in accordance with Section 15 of this Agreement, this Agreement shall continue in full force and effect for a period of three (3) years ending on November 30, 2019, unless extended by mutual written agreement of the parties.

SECTION 4. Subsection (c) of Section 6, titled "Funding," added by Amendment No. 1 to the Agreement, is revised to read:

(c) Funding of the Buzz Trolley by PS Resorts. PS Resorts commits to fund a minimum of \$100,000 annually during the term of the Agreement, as amended, to the Buzz Trolley. One-half of each annual payment to the City for this purpose shall be made by PS Resorts which shall be due and payable on December 1 and June 1 of each fiscal year the Agreement, as amended, remains in effect.

SECTION 5. Section 9, "Covenant against Discrimination," of the Agreement is revised to read:

9a. Covenant Against Discrimination. In connection with its performance under this Agreement, PS Resorts shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, marital status, ancestry, national origin, sexual orientation, gender identity, gender expression, physical or mental disability, or medical condition. PS Resorts shall ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, age, marital status, ancestry, national origin, sexual orientation, gender identity, gender expression, physical or mental disability, or medical condition. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

SECTION 6. Section 9b is added to the Agreement to read:

9b. Non-liability of City Officers and Employees. No officer or employee of the City shall be personally liable to the PS Resorts, 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 PS Resorts or to its successor, or for breach of any obligation of the terms of this Agreement.

SECTION 7. Section 9c is added to the Agreement to read:

9c. Conflict of Interest. PS Resorts acknowledges that no officer or employee of the City has or shall have any direct or indirect financial interest in this Agreement nor shall PS Resorts enter into any agreement of any kind with any such officer or employee during the term of this Agreement and for one year thereafter. PS Resorts warrants that PS Resorts has not paid or given, and will not pay or give, any third party any money or other consideration in exchange for obtaining this Agreement.

SECTION 8. The persons executing this Amendment on behalf of the parties hereto warrant that they are duly authorized to execute this Amendment on behalf of said parties and that by so executing this Amendment the parties hereto are formally bound to the provisions of this Amendment.

SECTION 9. City and PS Resorts agree that the terms of the Agreement shall remain unchanged and in full force and effect, except as specifically provided in this Amendment No. 2.

In witness whereof, City and PS Resorts have executed and entered into this Amendment No. 2 as of the date first written above.

CITY OF PALM SPRINGS,
A California Charter City

PS RESORTS
A California Mutual Benefit Corp.

David H. Ready, City Manager

Aftab Dada, President

ATTEST:

Kathleen D. Hart, Interim City Clerk

Tim Ellis, Vice President

APPROVED AS TO FORM:

Douglas C. Holland, City Attorney