

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

DEPARTMENT: Aviation
AGENDA DATE: May 11, 2010
CONTACT PERSON/PHONE: Monica Lombraña, A.A.E. -780-4793
DISTRICT(S) AFFECTED: All

SUBJECT:

Resolution authorizing the City Manager to sign a First Amendment to the Lease and Concession Agreement for the Development and Operation of News, Gifts, & Specialty Retail Concessions at El Paso International Airport and Lessor's Approval of Assignment.

BACKGROUND / DISCUSSION:

The City and The Paradies Shops, Inc. entered in to a Lease and Concession Agreement for the Development and Operation of News, Gifts, & Specialty Retail Concessions (Agreement) effective December 22, 2006 to provide news, gifts, & specialty retail concession services at El Paso International Airport.

The First Amendment and Approval of Assignment addresses the following items:

- Approves and consents to the Restructuring and Change of Control Transaction. The shareholders of The Paradies Shops, Inc. have entered into a stock purchase agreement with Fulton Holding Corp. pursuant to which they have agreed to sell effectively 70% of their various equity interests in the group of companies comprising the Paradies Shops business to the buyer. After the closing, Fulton Holding Corp. will own approximately 70% of the stock with the Paradies family retaining the remaining 30%. Fulton Holding Corp. is an investment firm which takes a "hands off" approach and will allow the Paradies companies to continue to manage the company as they have done in the past. There will be no change in management of any of our local stores.
- Consents to the Assignment of the Agreement to Paradies-El Paso, LLC which is 10% owned by a DBE.
- Amends the square footage of the Leased Premises to reflect actual build out drawings of leased space as added by the new Terminal Modification Project.
- Substitutes The New York Times Bookstore for Borders as the bookstore concept for Concourse B. Borders terminated their commitment to The Paradies Shops for bookstore concept. Paradies new brand for bookstores is the New York Times Bookstore with locations in 6 other airports.

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.

AMOUNT AND SOURCE OF FUNDING:

N/A - Revenue Generating

BOARD / COMMISSION ACTION:

N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:



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

Information copy to appropriate Deputy City Manager

RESOLUTION

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

That the City Manager be authorized to sign a 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 is made by and between the City of El Paso ("Lessor"), The Paradies Shops, Inc. ("Concessionaire"), and Paradies-El Paso, LLC ("Assignee").

ADOPTED this ____ day of _____ 2010.

THE CITY OF EL PASO:

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:



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

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

This 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 (the "First Amendment and Assignment") is made by and between the City of El Paso, a municipal corporation existing under the laws of the State of Texas (the "Lessor"), The Paradies Shops, Inc., a corporation organized under the laws of the State of Georgia (the "Concessionaire"), and Paradies-El Paso, LLC, a limited liability corporation organized under the laws of the State of Texas ("Assignee").

WHEREAS, Lessor and Concessionaire 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, the Concession Agreement expressly provides for the addition and deletion of space;

WHEREAS, Concessionaire has requested Lessor's permission to substitute a new vendor to provide the services required pursuant to the bookstore concept of its proposal;

WHEREAS, Concessionaire has also requested Lessor's approval and consent of the assignment of the Concession Agreement from Concessionaire to Assignee, which is a subsidiary of Concessionaire in which Concessionaire holds a 90% equity interest;

WHEREAS, Concessionaire has also requested Lessor's approval and consent of a transaction pursuant to which (i) the shareholders of Concessionaire desire to transfer all of the direct and interest interests held by them in Concessionaire to Paradies Holdings, LLC (the "Restructuring") and (ii) thereafter sell a 70% interest in such Paradies Holdings, LLC to Fulton Holding Corp., a Delaware corporation owned by FS Equity Partners VI, L.P. thereby effectuating a change in control (the "Change in Control Transaction");

WHEREAS, the requests for Lessor's consent to the Assignment of the Concession Agreement from Concessionaire to Assignee and for Lessor's consent to the Restructuring and Change in Control Transaction are consistent with the terms and conditions of the Concession Agreement, including Article 14 and Section 14.1 thereof.

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 and to approve the Assignment of the Concession Agreement as follows:

1. Section 1.2, Incorporation of Concessionaire's Proposal, of the Concession Agreement is amended to read as follows:

Section 1.2 Incorporation of Concessionaire's Proposal

Portions of Concessionaire's timely response to Lessor's "Request for Proposals to Lease, Develop and Operate News, Gifts, & Specialty Retail Concessions at El Paso International Airport", issued August 15, 2006, and supplemental information thereto including, without limitation, Concessionaire's written proposal is attached hereto as Exhibit B, and is incorporated and made of part of this Agreement by reference (said portions of which are hereinafter referred to as the "Concessionaire's Proposal").

In addition, Concessionaire and Lessor acknowledge the following modifications to the Concessionaire's Proposal: Lessor and Concessionaire agree that The New York Times Bookstore is substituted for Borders in the Concessionaire's Proposal as the bookstore concept for Concourse B of the Airport terminal.

Concessionaire and the Lessor acknowledge that Concessionaire's Proposal was a valuable consideration in the award of this Agreement to Concessionaire, and is an authoritative reference for understanding the intention of the parties to this Agreement. Accordingly, Concessionaire shall be obligated to meet all specifications described in Concessionaire's Proposal and this First Amendment; provided, however, that where an express provision of the Concession Agreement and any subsequent amendments conflict with any provision of Concessionaire's Proposal, the Concession Agreement and any subsequent amendments shall control.

2. Section 2.1, Description of Lease Premises, of the Concession Agreement is amended to read as follows:

Section 2.1 Description of Leased Premises

For and in consideration of the mutual covenants hereof, Lessor hereby leases to Concessionaire and Concessionaire hereby agrees to lease from Lessor approximately 6,777 square feet, more or less, of concession space comprising the Facilities and 1,878 more or less, of support space comprising the Storage and Support Space in several locations in the Terminal, the locations being specifically described in Revised Exhibits A-1 and A-2 and described in Exhibit A-3, attached hereto and by this reference made a part hereof.

3. **CONSENT TO ASSIGNMENT; CONSENT TO CHANGE OF CONTROL.** Lessor hereby approves and consents to the assignment of the Concession Agreement from

Concessionaire to Assignee, on the condition that Assignee assumes and becomes liable to pay any and all sums owing or becoming due Lessor under terms of the Agreement from and after the effective date of the assignment of the Agreement to Assignee, and upon the further condition that Assignee agrees to accept and abide by all the terms, covenants, and conditions of the Concession Agreement. Lessor hereby approves and consents to the Restructuring and Change of Control Transaction. Lessor does not hereby consent to any further change of control of Concessionaire or Assignee, or any further assignment or transfer of an interest in the Concession Agreement to any party without the prior written consent of the Lessor to the extent and on the terms provided in the Concession Agreement, as applicable.

4. **PROOF OF INSURANCE AND INDEMNIFICATION.** Assignee has provided a certificate of insurance to evidence compliance with the insurance requirements of the Concession Agreement and expressly agrees to be bound by the indemnification provisions contained in the Concession Agreement.

5. **GUARANTOR.** Concessionaire guarantees payment of rent and other charges or fees due to the Lessor and shall remain fully liable for the prompt and complete performance of any and all obligations arising, or to arise, under the Concession Agreement.

6. **ADDRESS FOR NOTICE.** Notices to Assignee and Concessionaire shall be sufficient if sent by certified mail, postage prepaid, addressed to:

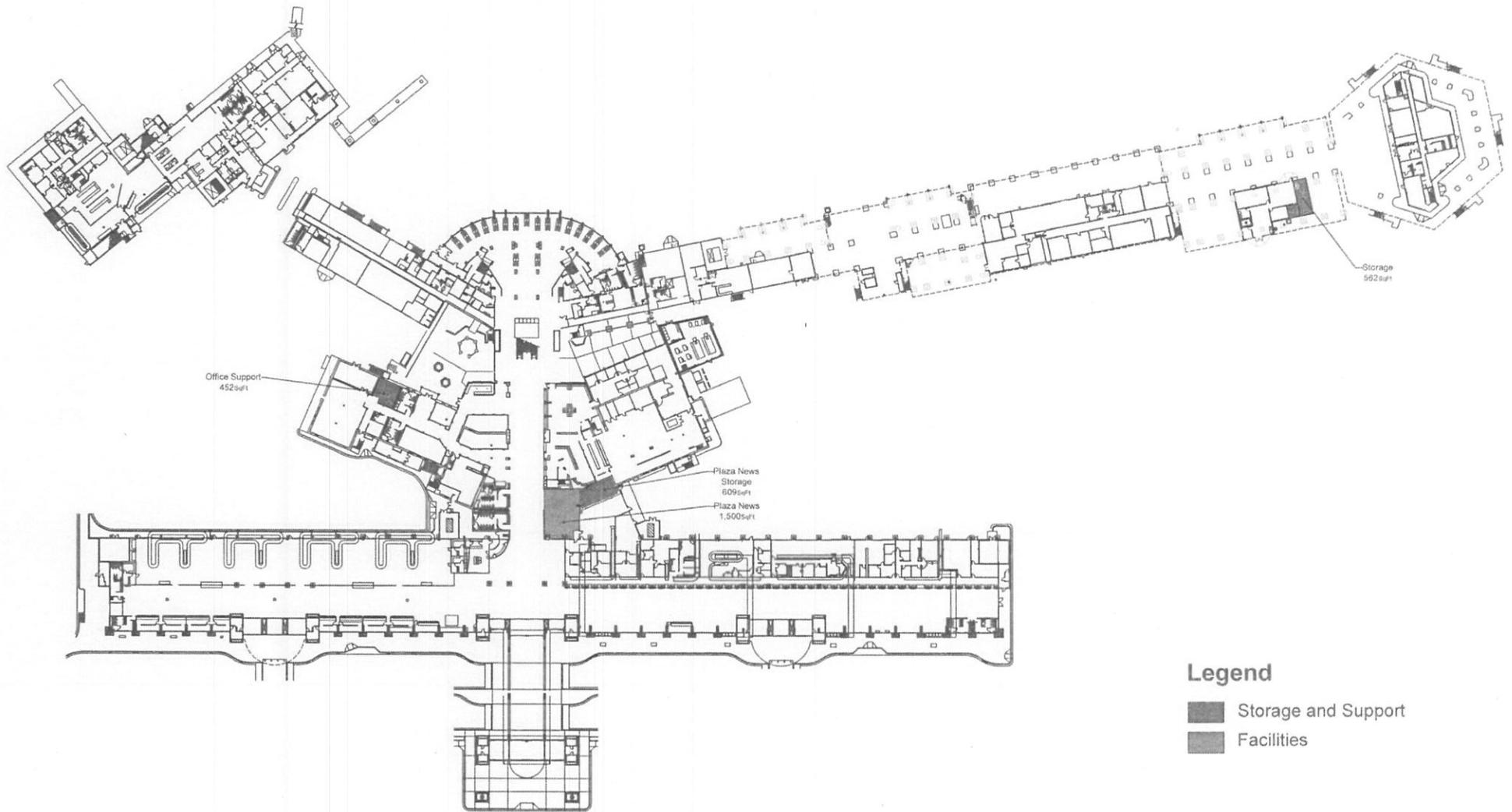
ASSIGNEE: Paradies-El Paso, LLC
701 Brazos Street, Suite 1050
Austin, Texas 78701

CONCESSIONAIRE: The Paradies Shops Inc.
5950 Fulton Industrial Boulevard, S.W.
Atlanta, Georgia 30336
Attn: Lou Bottino, Senior Vice President/Chief Operating Officer

7. **AUTHORIZED REPRESENTATIVE.** The persons signing this Lessor's Approval of Assignment on behalf of the Assignee and Concessionaire represent and warrant that they have the authority legally to bind the Assignee or Concessionaire, respectively, to the provisions of this First Amendment and Assignment.

8. **NON-WAIVER.** This Lessor's Approval of Assignment hereby given by Lessor shall not end the need for Lessor's consent for any future assignments of the Concession Agreement.

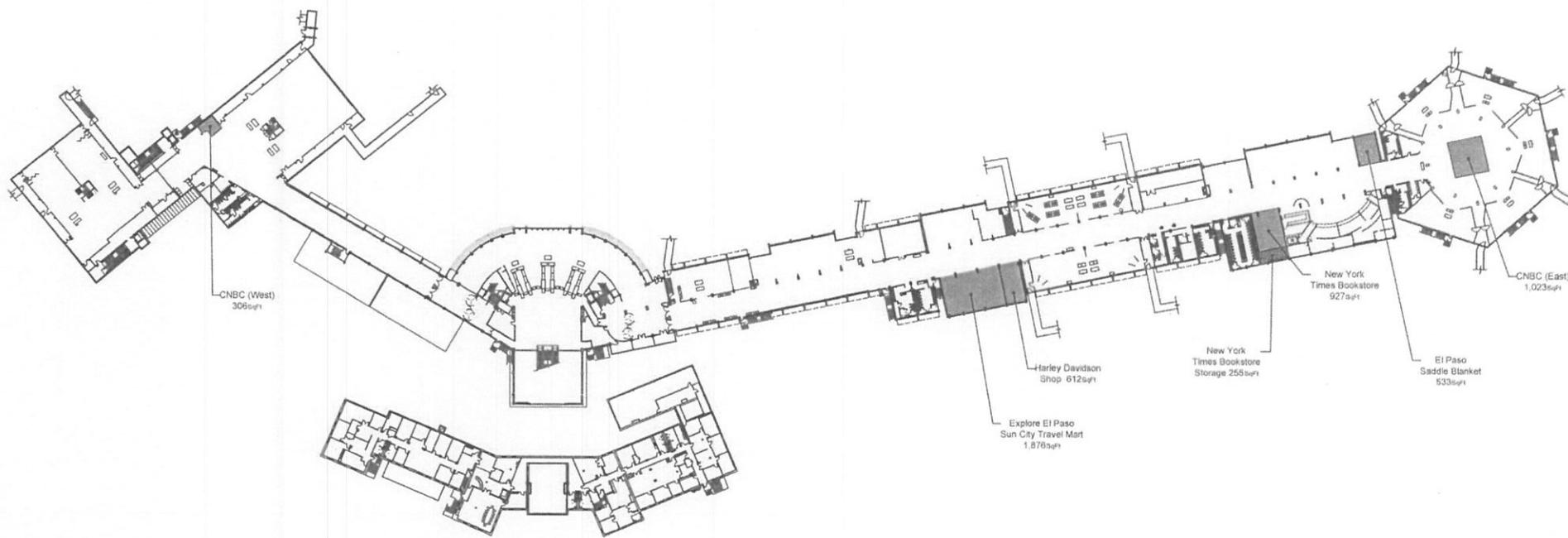
9. **RATIFICATION OF AGREEMENT.** Except as herein amended, all other terms and conditions of the Concession Agreement not specifically modified by this First Amendment shall remain unchanged and in full force and effect. Except as expressly modified herein, no provision of this consent alters or modifies any of the terms and conditions of the Agreement; all other terms and conditions of the Agreement shall remain in full force and effect.



Lease and Concession Agreement for the Development and Operation of News, Gifts, and Specialty Retail Concessions

El Paso International Airport

Revised Exhibit A-1 Lower Level Leased Premises March 2010



Legend
 ■ Facilities
 ■ Storage and Support

Lease and Concession Agreement for the Development and Operation of News, Gifts, and Specialty Retail Concessions

El Paso International Airport
 Revised Exhibit A-2 Upper Level Leased Premises March 2010

Exhibit A-3

El Paso International Airport – News, Gifts, & Specialty Retail Concessions Distribution

	Space Allocation <u>(square feet)</u>
<u>Storage & Support (Green on Exhibits)</u>	
Upper Level (Concourse B)	
Storage Room	255
Lower Level (Concourse B)	
Storage Room	562
Lower Level	
Plaza News Storage	609
Office	<u>452</u>
Total Storage & Support	1,878
<u>Facilities (Blue on Exhibits)</u>	
Upper Level (Concourse B)	
Explore El Paso/Sun City Travelmart	1,876
Harley Davidson Shop	612
New York Times Bookstore	927
El Paso Saddle Blanket	533
CNBC (East)	1,023
Upper Level (Concourse A)	
CNBC (West)	306
Lower Level	
Plaza News	<u>1,500</u>
Total Facilities	6,777
Total News, Gifts, & Specialty Retail Concession Space	<u><u>8,655</u></u>

EXHIBIT B

CONCESSIONAIRE'S RESPONSE TO "REQUEST FOR PROPOSALS TO LEASE, DEVELOP AND OPERATE NEWS, GIFTS, & SPECIALTY RETAIL CONCESSIONS AT EL PASO INTERNATIONAL AIRPORT" IS ON FILE IN THE EL PASO CITY CLERK'S OFFICE AND IS ATTACHED TO THE LEASE AND CONCESSION AGREEMENT FOR THE DEVELOPMENT AND OPERATION OF NEWS, GIFTS, & SPECIALTY RETAIL CONCESSIONS, WITH AN EFFECTIVE DATE OF DECEMBER 22, 2006. A COPY OF THE FIRST PAGE OF EXHIBIT "B" WHICH IS ON FILE IS ATTACHED AS A REFERENCE.

Transmittal Letter

TAB

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October 6, 2006

Mr. Patrick T. Abeln, A.A.E.
Director of Aviation
The City of El Paso
City Hall, 7th Floor - Purchasing Department
2 Civic Center Plaza
P.O. Box 1919
El Paso, Texas 79901

**Request for Proposals, News, Gifts & Specialty Retail Concessions
Solicitation #2007-003R**

Dear Mr. Abeln:

We are pleased to submit our Proposal for the News, Gifts and Specialty Retail Concessions at the El Paso International Airport. We believe you will find it responsive to your Request for Proposals.

For simplicity, the following pages represent the Highlights of our proposal.

We are very excited about our proposal. We hope you will give us the opportunity to implement our plans in order to enhance both revenue to the airport and service to your passengers.

Please refer to the attached signed acknowledgement of received addenda.

If you have any questions, please do not hesitate to call.

Sincerely,



Gregg Paradies
President/CEO
The Paradies Shops