

AGENDA ITEM SUMMARY

☒ Consent ☐ Regular
☐ Workshop ☐ Public Hearing

I. EXECUTIVE BRIEF

Summary: Paradies is the retail concessionaire at PBI. The term of the Agreement expires on September 30, 2024. The Amendment extends the term of the Agreement for up to 18 months and provides the County with the right to terminate Paradies' leasehold interest as to individual concession units to allow for the phased transition of concession units to new food, beverage and retail concepts. The Agreement currently provides for payment of concession fees based on the greater of percentage rent equal to 15.1% of food and beverage sales, 12% to 20% of sales from specialty-retail concepts, and 22% of all other retail sales, or a minimum annual guarantee (MAG) based on 90% of the preceding year's concession payments. For the year ending September 30, 2023, Paradies paid concession fees in the amount of \$4,230,037. During the extended term, Paradies will continue to pay percentage rent based on monthly sales at the same percentages for sales from the concession units it continues to operate during the transition period. An Airport Concession Disadvantaged Business Enterprise (ACDBE) goal of 25% was established for this Agreement, which is achieved through Paradies' joint venture partnership with Tito Enterprises, LLC and Bryant Retail Consultant Enterprise, LLC, both of which are ACDBE-certified business partners holding a 12.5% interest each in the joint venture. Approval of the Amendment will ensure quality, uninterrupted concession services remain available at PBI during the transition period.

Countywide (AH)

Background and Justification: The Department of Airports is issuing Request for Proposals No. PB 24-10 (RFP) for combined retail, food and beverage concessions at PBI. This Amendment will extend the term for up to 18 months to allow for the orderly transition of units to new food, beverage and retail concepts.

1. Amendment (3)

Approved By: *Danni C. Ayala* ^{ALA} *for* *4/29/24*
County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

| Fiscal Years | 2024 | 2025 | 2026 | 2027 | 2028 |
|-------------------------|------|------|------|------|------|
| Capital Expenditures | | | | | |
| Operating Costs | | | | | |
| Operating Revenues | | | | | |
| Program Income (County) | | | | | |
| In-Kind Match (County) | | | | | |
| NET FISCAL IMPACT | | | | | |
| # ADDITIONAL FTE | | | | | |
| POSITIONS (Cumulative) | | | | | |

Is Item Included in Proposed Budget? Yes No X
Does this item include the use of federal funds? Yes No X
Does this item include the use of state funds? Yes No X

Budget Account No: Fund 4100 Department 120 Unit 8430 RSource 4469
Reporting Category

B. Recommended Sources of Funds/Summary of Fiscal Impact:

Through September 30, 2024, the Agreement provides for payment of concession fees based on the greater of a percentage of retail sales, or a MAG, which is currently \$3,807,033, based on 90% of the preceding year's concession payment of \$4,230,037. Although Paradies will not pay a MAG during the extended term, Paradies will continue to pay a percentage of all sales. The Department is unable to estimate concession fees during the extended term at this time since the Agreement will be terminated as to individual concession units through the remainder to the extended term.

C. Departmental Fiscal Review: Webb W. Mancanson 4/15/24

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

ASD Dele 4/18/24
KK OFMB 4/18/24
Brenda Mack 4/22/24
Contract Dev. and Control
Tm 4/22/24

B. Legal Sufficiency:

Anne Delgant 4-24-24
Assistant County Attorney

C. Other Department Review:

Department Director

REVISED 11/17

(THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT)

**TWELFTH AMENDMENT TO
RETAIL CONCESSION AGREEMENT**

THIS TWELFTH AMENDMENT TO RETAIL CONCESSION AGREEMENT (this "Amendment") is made and entered into this May 14, 2024, by and between Palm Beach County, a political subdivision of the State of Florida ("County"), and Paradies-Palm Beach, LLC, a Florida limited liability company, having its office and principal place of business at 2849 Paces Ferry Road, Overlook I, Fourth Floor, Atlanta, GA 30339 ("Company").

WITNESSETH:

WHEREAS, County, by and through its Department of Airports, owns and operates the Palm Beach International Airport, which is located in Palm Beach County, Florida; and

WHEREAS, the parties entered into that certain Retail Concession Agreement dated November 6, 2007 (R-2007-2052, as amended) (the "Agreement"); and

WHEREAS, Company acknowledges County is in the process of issuing a new solicitation for Airport concessions at the Airport, and desires to provide for the phased transition to new concession operators to ensure quality, uninterrupted concession services remain available in the Terminal during the Term of this Agreement and upon its termination; and

WHEREAS, Company desires to cooperate with County for the transition of the concessions to such new concession operator(s); and

WHEREAS, the parties desire to amend the Agreement in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, and other good and valuable consideration, the receipt of which the parties hereby expressly acknowledge, the parties hereto covenant and agree to the following terms and conditions:

1. **Recitals.** The foregoing recitals are true and correct and are hereby incorporated herein by reference. Terms not defined herein shall have the meanings set forth in the Agreement.

2. **Extended Term; Termination for Convenience.** The Term of the Agreement shall be extended from October 1, 2024, to April 1, 2026 (such period the "Extended Term"); provided, however, during such Extended Term, County, in County's sole and absolute discretion, may terminate this Agreement for convenience, in whole or in part as to any or all location(s) or storage area(s), without compensation whatsoever to Company, at any time upon not less than thirty (30) days' written notice to Company in advance of such termination.

3. **Concession Fees and Rental During the Extended Term.** Notwithstanding any provision of this Agreement otherwise, within fifteen (15) days after the close of each and every month throughout the Extended Term, Company shall pay Concession Fees to County equal to the Monthly Privilege Fee, with no Minimum Annual Guarantee, as otherwise required pursuant to the Agreement. Rental for storage areas shall be paid no later than the first day of each month throughout the Extended Term. In the event any storage area(s) are terminated during the Extended Term, rental shall be prorated on a per-diem basis based on a thirty (30) day month.

4. **Performance Guarantee; Audit Report.** Throughout the Extended Term, and for a period of six (6) months thereafter, Company shall maintain the Performance Guarantee in the amount required by the Agreement, as of September 30, 2024. The audit report for the Extended Period shall be provided to County not later than ninety (90) days following the expiration or earlier termination of the Extended Term. Concession Fees for the Extended Term shall be reconciled in accordance with the provisions of Section 6.14 of the Agreement.

5. **Ratification of Agreement.** Except as specifically modified herein, all of the terms and conditions of the Agreement shall remain unmodified and in full force and effect and are hereby ratified and confirmed by the parties hereto.

6. **Conflict.** In the event of a conflict between any provision of this Amendment and the provisions of the Agreement, or any other amendment thereto, the provisions of this Amendment shall control.

7. **Paragraph Headings.** The heading of the various sections of this Amendment are for convenience and ease of reference only, and shall not be construed to define, limit, augment or describe the scope, context or intent of this Amendment or the Agreement.

8. **Effective Date.** This Amendment shall become effective upon execution by the parties hereto ("Effective Date").

{Remainder of Page Intentionally Left Blank.}

IN WITNESS WHEREOF, the parties hereto have duly executed this Amendment as of the day and year first above written.

ATTEST:
JOSEPH ABRUZZO,
CLERK OF THE CIRCUIT COURT
AND COMPTROLLER

PALM BEACH COUNTY,
A POLITICAL SUBDIVISION OF THE
STATE OF FLORIDA, BY ITS BOARD
OF COUNTY COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Maria Sachs, Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS
AND CONDITIONS

By: Anne Delgad
County Attorney

By: ew Diana R. R.
Director, Department of Airports

Signed, sealed and delivered
in the presence of two witnesses
for Company:

COMPANY:
PARADIES-PALM BEACH, LLC

Karen Suttle
Signature

[Signature]
Signature

Karen Suttle
Print Name

Gregg Paradies
Print Name

Alt Thomas
Signature

President & CEO
Title

Christine Thomas
Print Name

(Seal)



Risk Profile : Standard - General Services
Required Additional Insured : Palm Beach County Board of County Commissioners
Ownership Entity :

AFFIDAVIT OF LIMITED LIABILITY COMPANY

STATE OF GEORGIA

COUNTY OF COBB

BEFORE ME, the undersigned authority, personally appeared, the undersigned who by me being first duly sworn, depose(s) and say(s) that:

1. The undersigned is the Senior Vice President, General Counsel and Secretary, and a Manager of Paradies – Palm Beach LLC, a limited liability company organized and existing under the laws of the State of Florida ("Company").
2. Articles of Organization of the Company have been filed, and are on-file with, the Florida Department of State and such articles are incorporated herein by reference.
3. The Company is in good standing and is authorized to transact business in the State of Florida as of the date hereof.
4. The company is a manager managed limited liability company.
5. That Gregg S. Paradies has been authorized by requisite action of the Company's Board of Managers and its Members to act on behalf of the Company and legally bind the Company and execute contracts and other instruments relating to the transaction of business of the Company.
6. That Gregg S. Paradies has the right and authority to enter into that certain ELEVENTH AMENDMENT TO RETAIL CONCESSION AGREEMENT between Palm Beach County, a political subdivision of the State of Florida and the Company (the "Agreement"), which is incorporated herein by reference and made a part hereof, and such other instruments as may be necessary and appropriate for the Company to fulfill its obligations under such Agreement, including amendment(s) and termination of such Agreement.
7. Upon execution and delivery of such Agreement and documents by the undersigned, all of the aforesaid shall be valid agreements of and be binding upon the Company.
8. The transactions contemplated herein will not violate any of the terms and conditions of the Company's member agreement, operating agreement certificate of organization or of any other agreement and amendments thereto of whatever kind between the Company and any third person.

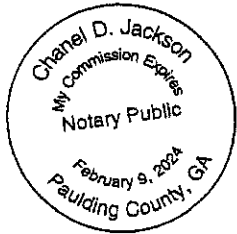
9. The undersigned acknowledges that affiant is familiar with the nature of an oath and the penalties provided by the laws of the State of Florida and that this Affidavit is being given to induce Palm Beach County to enter into the Agreement.

FURTHER AFFIANT SAYETH NAUGHT,

Karen K. Suttle
Karen K. Suttle, Individually and as, Secretary and
Manager of Paradies-Palm Beach LLC

STATE OF GEORGIA)
COUNTY OF COBB)

Sworn to (or affirmed) and subscribed before me by means of physical presence notarization, this 21ST day of May, 2020, by Karen K. Suttle who is personally known to me and who did take an oath.



Chanel D. Jackson
Notary Signature
Chanel D. Jackson
Print Notary Name

NOTARY PUBLIC, State of Georgia at large
My Commission Expires: 2-9-2024