

REGULAR MEETING OF THE BOARD OF COMMISSIONERS, MEMPHIS-SHELBY COUNTY AIRPORT AUTHORITY (MSCAA) December 17, 2020

CALL TO ORDER

Board Meeting provided via ZOOM Webcast to Airport Authority Staff and the Public.

APPROVAL OF BOARD MEETING MINUTES: ***November 19, 2020***

Resolutions for Approval This Month

Approval of Purchase- Two (2) Utility Tractors- Deere & Company

Approval of Amendment No. 1 – Glycol Management Program - Control Facility/Design - Ross Witt Architecture, PLLC

Approval of Amendment to the 401A Supplemental Defined Contribution Plan to Comply with the SECURE Act and the CARES Act

Approval of Agreement - Lease and Concession Agreement- The Paradies Shops, LLC

Approval of Agreement – Lease and Concessions Agreement - Anton Airfood, Inc.

Division Reports

TREASURER and PROPERTIES REPORTS

Forrest Artz, Vice President of Finance and Administration/CFO

OPERATIONS REPORT

Terry Blue, Vice President of Operations

INFORMATION ITEMS

NEXT BOARD MEETING – ***January 21, 2021***

RESOLUTION

WHEREAS, the Memphis-Shelby County Airport Authority (“Airport Authority”) is authorized by the public purchasing provisions of state law to participate in the cooperative purchasing of supplies and/or services and, as an exception to the bidding requirements, such authority is set forth in Policy 801(7)(a) of the Airport Authority’s Policy Manual; and,

WHEREAS, by Resolution #14-4684, dated September 18, 2014, the Airport Authority approved purchases pursuant to the Joint Exercise of Powers Agreement (“Agreement”) with the National Joint Powers Alliance, which is now known as “Sourcewell”; and,

WHEREAS, pursuant to this Agreement, the Airport Authority desires to purchase two (2) utility tractors; and,

WHEREAS, Deere & Company, pursuant to Sourcewell Contract #110719-JDC, has proposed to furnish two (2) John Deere 5125R Utility Tractors at a price of \$111,954.48 each, or \$223,908.96 for both, to the Airport Authority; and,

WHEREAS, Airport Authority Management recommends approval;

NOW, THEREFORE, BE IT RESOLVED, by the Board of Commissioners of the Memphis-Shelby County Airport Authority, that the President and CEO or his designee is hereby authorized to purchase two (2) utility tractors from Deere & Company, as herein described, cost to be paid from the Airport Authority’s Operating Funds or a funding source identified by the CFO.

12-17-20

RESOLUTION

WHEREAS, the Airport Authority's Capital Program Committee, by action taken on September 6, 2019, approved the award of Contract No. 08-1260-04 with Ross Witt Architecture, PLLC,; and,

WHEREAS, by Resolution No. 19-4903, adopted September 19, 2019, approval was granted by the Memphis-Shelby County Airport Authority ("Airport Authority") Board of Commissioners to award a contract for professional engineering services to complete construction documents for the Glycol De-Ice Facility at Memphis International Airport in the amount of \$717,000.00 (not including contingency) for the project described as:

**GLYCOL MANAGEMENT PROGRAM – CONTROL FACILITY - DESIGN
Memphis International Airport
MSCAA PROJECT NO. 08-1260-04**

WHEREAS, FedEx will be leasing a portion of the building, and company officials determined the original layout did not meet their current and future needs and requested a larger maintenance bay area; and,

WHEREAS, additional Contract Support Services are needed to accommodate tenant-requested increases to the project scope including additional design and construction administration, among others; and,

WHEREAS, additional Design Services are needed to increase the maintenance bay building size from approximately 16,000 square feet to 30,000 square feet, resulting in additional Structural, MEP, Architectural, and Civil designs, which were not included in the original project scope; and,

WHEREAS, it is now the Airport Authority Management's desire to implement Contract Amendment No. 1 for additional Contract Support Services, as well as additional Design Services, with Ross Witt Architecture, PLLC; and,

WHEREAS, Airport Authority Staff has negotiated Contract Amendment No. 1 for additional Contract Support Services in the amount of Fifteen Thousand and 00/100 Dollars (\$15,000.00), and additional Design Services in the amount of One Hundred Six Thousand and 00/100 Dollars (\$106,000.00), for a total amount of One Hundred Twenty-One Thousand and 00/100 Dollars (\$121,000.00); and,

WHEREAS, Airport Authority Management proposes to amend the Contract with Ross Witt Architecture PLLC, as follows:

Original Contract Amount	\$ 717,000.00
Amendment No. 1	\$ 121,000.00
TOTAL AMENDED CONTRACT AMOUNT	\$ 838,000.00

WHEREAS, the Airport Management's Capital Program Executive Staff, by action taken on December 10, 2020, recommends approval of Contract Amendment No. 1; and,

WHEREAS, in furtherance of its Disadvantaged Business Enterprise (DBE) Program, the Airport Authority established a DBE goal of 30% for the full term of this contract; and,

WHEREAS, Management recommends approval of Contract Amendment No. 1;

NOW, THEREFORE, BE IT RESOLVED, by the Board of Commissioners of the Memphis-Shelby County Airport Authority, that the President and CEO or his designee, is hereby authorized to execute Amendment No. 1 to Contract No. 08-126-04 with Ross Witt Architecture, PLLC, as herein described, cost to be paid from Bond funds.

12/17/20

**RESOLUTION AUTHORIZING ADOPTION
OF THE SECURE ACT AND THE CARES ACT AMENDMENTS
TO THE AMENDED AND RESTATED
MEMPHIS-SHELBY COUNTY AIRPORT AUTHORITY
SUPPLEMENTAL DEFINED CONTRIBUTION PLAN**

WHEREAS, Memphis-Shelby County Airport Authority (hereinafter, "the Employer"), originally adopted the Memphis-Shelby County Airport Authority Supplemental Defined Contribution Plan (hereinafter "Plan") originally effective July 1, 1999, and since amended and restated effective January 1, 2016; and,

WHEREAS, Article XII, Section 12.1 gives the Employer the authority to amend this Plan by ordinance or other permissible action; and,

WHEREAS, the Employer wishes to now adopt amendments to the Plan to reflect and to comply with certain provisions of:

- a. the Further Consolidated Appropriations Act, 2020 (H.R. 1865), including the Setting Every Community Up for Retirement Enhancement Act (H.R. 1865, Division O), the Bipartisan American Miners Act (H.R. 1865, Division M), and the Disaster Relief Assistance provisions (H.R. 1865, Division Q)(collectively referred to as the "SECURE Act" for purposes of this Resolution); and
- b. the Coronavirus Aid, Relief, and Economic Security Act, (the "CARES Act" for purposes of this Resolution),

and,

WHEREAS, the SECURE Act allows for amendment of the plan to increase the age for Required Minimum Distribution (RMD), required beneficiary distribution period, and adding a lifetime annuity payment option, among others; and,

WHEREAS, the CARES Act allowed for amendment to the plan to suspend the RMD; and,

WHEREAS, management, general counsel and special outside counsel all

recommend passage of this resolution;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Employer that the above-referenced amendments be hereby adopted to reflect certain provision of and to comply with both the SECURE Act and the CARES Act.

BE IT FURTHER RESOLVED, that the President or his designee, on behalf of the Employer, be authorized to execute the adoption of the above-referenced amendments and be hereby adopted to reflect certain provisions of and to comply with both the SECURE Act and the CARES Act, a copy of which is attached hereto, which shall be effective retroactively to the respective dates of January 1, 2020 for the SECURE Act, and March 27, 2020 for the CARES Act, and take any and all actions that are deemed necessary and proper in order to effectuate these amendments.

12-17-20

RESOLUTION

WHEREAS, the Memphis-Shelby County Airport Authority (“Airport Authority”) is the owner and operator of the Memphis International Airport (“Airport”) located in Memphis, Shelby County, Tennessee and, in connection with its operation of the Airport, the Airport Authority leases space within the Terminal and grants concession rights for the operation of retail businesses within such space; and,

WHEREAS, The Paradies Shops, LLC (“Concessionaire”) is engaged in the news, gifts and specialty retail concession business and desires to lease areas on Airport property for the operation of news, gifts and specialty retail concession businesses in accordance with the terms and provisions of a Lease and Concession Agreement between the Airport Authority and Concessionaire (“Concession Agreement”); and,

WHEREAS, the Parties previously entered into a Concession Agreement, which is scheduled to expire upon the Date of Beneficial Occupancy of the newly modernized B Concourse; and,

WHEREAS, Airport Authority has agreed to rent and lease to Concessionaire, and Concessionaire has agreed to take and rent from Authority, the Premises for the purpose of operating retail concession businesses on Airport property upon the terms and conditions of the Concession Agreement; and,

WHEREAS, the Concession Agreement is expected to be executed upon approval of this Resolution, as outlined herein; and,

WHEREAS, the Term will commence upon the execution of the Concession Agreement (“Effective Date”) and continue through and including the last day of the

Operating Period, unless sooner terminated in accordance with the terms and provisions of the Concession Agreement; and,

WHEREAS, the Term of the Concession Agreement shall be comprised of (i) the Pre-Occupancy Period commencing on the Effective Date and expiring upon the commencement of the Construction Period; (ii) the Construction Period in which Concessionaire will complete installation and construction of the Initial Capital Improvements in the Concession Locations; and (iii) the Operating Period which will commence on the B Concourse Opening Date and continue through the completion of the fifteenth (15th) Agreement Year ending on or about June 30, 2036; and,

WHEREAS, in consideration of the rights and privileges granted to the Concessionaire by the Authority, the Concessionaire shall pay the Authority, commencing on the Operating Period and continuing throughout the Term, Periodic Rent shall be determined as follows:

- (i) For the portion of the Operating Period commencing on the B Concourse Opening Date and continuing through and including the Enplanement Passenger Return Date:
 - (A) Eleven percent (11.0%) of Gross Receipts derived from News & Conveniences Concession Operation (except for Gross Receipts derived from the sale of Bottled Alcoholic Beverages); and
 - (B) Ten percent (10.0%) of Gross Receipts derived from Specialty Retail Concession Operations (except for Gross Receipts derived from the sale of Bottled Alcoholic Beverages); and
 - (C) Eleven percent (11.0%) of Gross Receipts derived from the sale of Bottle Alcoholic Beverages at any Concession Location approved by Authority for such sales pursuant to the Concession Agreement; and
- (ii) For the portion of the Operating Period commencing on the day immediately following the Enplanement Passenger Return Date and continuing through and including the Agreement Year ending June 30, 2031:

- (A) Thirteen percent (13.0%) of Gross Receipts derived from News & Conveniences Concession Operation (except for Gross Receipts derived from the sale of Bottled Alcoholic Beverages); and
 - (B) Ten percent (10.0%) of Gross Receipts derived from Specialty Retail Concession Operations (except for Gross Receipts derived from the sale of Bottled Alcoholic Beverages); and
 - (C) Thirteen percent (13.0%) of Gross Receipts derived from the sale of Bottle Alcoholic Beverages at any Concession Location approved by Authority for such sales pursuant to Concession Agreement; and
- (iii) For the portion of the Operating Period commencing on July 1, 2031 and continuing through and including the expiration of the Operating Period:
- (A) Fourteen percent (14.0%) of Gross Receipts derived from News & Conveniences Concession Operation (except for Gross Receipts derived from the sale of Bottled Alcoholic Beverages); and
 - (B) Ten percent (10.0%) of Gross Receipts derived from Specialty Retail Concession Operations (except for Gross Receipts derived from the sale of Bottled Alcoholic Beverages); and
 - (C) Fourteen percent (14.0%) of Gross Receipts derived from the sale of Bottle Alcoholic Beverages at any Concession Location approved by Authority for such sales pursuant to Concession Agreement;

and,

WHEREAS, This Concession Agreement is a revenue-producing contract awarded to Concessionaire and will result in the provision of goods and services to passengers, patrons and tenants at the Airport. Federal law and regulations impose an ACDBE participation goal upon the performance of this Concession Agreement by Concessionaire, and Authority encourages Concessionaire to voluntarily strive to include significant involvement of ACDBEs in Concessionaire's performance under this Concession Agreement. Authority has established an ACDBE participation goal for Concessionaire's performance of this Concession Agreement equal to twenty-one percent (21.0%) of Gross Receipts from Concession Operations and/or the procurement of goods and services from ACDBEs for Concession Operations; and,

WHEREAS, Airport Authority Management recommends approval;

NOW, THEREFORE, BE IT RESOLVED, by the Board of Commissioners of the Memphis-Shelby County Airport Authority, that the President and CEO or his designee is hereby authorized to negotiate and enter into a Lease and Concession Agreement with The Paradies Shops, LLC as referenced herein.

12-17-20

RESOLUTION

WHEREAS, the Memphis-Shelby County Airport Authority (“Airport Authority”) is the owner and operator of the Memphis International Airport (“Airport”) located in Memphis, Shelby County, Tennessee and, in connection with its operation of the Airport, the Airport Authority leases space within the Terminal and grants concession rights for the operation of food and beverage businesses within such space; and,

WHEREAS, Anton Airfood, Inc. (“Concessionaire”) is engaged in the food and beverage concession business and desires to lease areas on Airport property for the operation of food and beverage concession businesses in accordance with the terms and provisions of a Lease and Concession Agreement between the Airport Authority and Concessionaire (“Concession Agreement”); and,

WHEREAS, the Parties previously entered into a Concession Agreement, which is scheduled to expire upon the Date of Beneficial Occupancy of the newly modernized B Concourse; and,

WHEREAS, Authority has agreed to rent and lease to Concessionaire, and Concessionaire has agreed to take and rent from Authority, certain locations for the purpose of operating food and beverage concession businesses on Airport property upon the terms and conditions of the Concession Agreement; and,

WHEREAS, the Concession Agreement is expected to be executed upon approval of this Resolution, as outlined herein; and,

WHEREAS, due to the impacts of COVID-19, the Concessionaire intends to construct concession locations in Concourse B in three separate phases based on enplanement levels at the Airport; and,

WHEREAS, Concessionaire intends and expects to invest approximately \$18 million dollars in various food and beverage concession locations throughout all three phases of this Concession Agreement; and,

WHEREAS, the Term for Phase I of the Concession Agreement will commence upon the execution of the Concession Agreement (“Effective Date”) and continue through and including the last day of the Operating Period (as defined in the respective Lease and Concession Agreement), unless sooner terminated in accordance with the terms and provisions of the Concession Agreement; and,

WHEREAS, the Concession Locations for Phase I will comprise approximately 7,110 square feet of space in four (4) locations throughout B Concourse; and

WHEREAS, Phase II is anticipated to be constructed and open for business in the period in which enplanement levels reach eighty-five percent (85%) of FY2019 enplanement levels for the Airport, subject to approval; and,

WHEREAS, Phase III is anticipated to be constructed and open for business in the period in which enplanement levels reach one hundred percent (100%) of FY2019 enplanement levels for the Airport, subject to approval; and,

WHEREAS, the Term of the Concession Agreement shall be comprised of (i) the Pre-Occupancy Period commencing on the Effective Date and expiring upon the commencement of the Construction Period; (ii) the Construction Period in which Concessionaire will complete installation and construction of the Initial Capital Improvements in the Concession Locations; and (iii) the Operating Period which will commence on the B Concourse Opening Date and continue through the completion of the seventeenth (17th) Agreement Year ending on or about June 30, 2038; and,

WHEREAS, the overall term of this Concession Agreement has been set to recognize the challenges created by COVID-19 and the potential challenges to aviation recovery thereof; and,

WHEREAS, in consideration of the rights and privileges granted to the Concessionaire for Phase I by the Authority, the Concessionaire shall pay the Authority on a monthly basis, commencing on the first day of the Operating Period and continuing throughout the Term, percentage rent based on gross sales as stated in the respective Lease and Concession Agreement (Periodic Rent); and,

WHEREAS, based on projections of sales across the spectrum of products, the blended percentage rent will range from 8% to 11% of gross sales; and,

WHEREAS, due to the impacts of COVID-19, percentage rent will be tiered at 8% of the first \$7.5 million in gross sales and increase up to 12% of gross sales above \$7.5 million based on the products sold, with the only exception being the Chick-fil-A operation, expected to be opened in Phase II, which was requested by airport management, with a percentage rent fixed at 8% of gross sales; and,

WHEREAS, this Concession Agreement is a revenue-producing contract awarded to Concessionaire and will result in the provision of goods and services to passengers, patrons and tenants at the Airport; and,

WHEREAS, under Federal law and regulations, the Airport Authority is required to impose an ACDBE participation goal upon the performance of this Concession Agreement by Concessionaire, and the Authority encourages Concessionaire to voluntarily strive to include significant involvement of ACDBEs in Concessionaire's performance under this Concession Agreement; and,

WHEREAS, the Airport Authority has established an ACDBE participation goal for Concessionaire's performance of this Concession Agreement equal to twenty-one percent (21.0%) of Gross Receipts from Concession Operations and/or the procurement of goods and services from ACDBEs for Concession Operations; and,

WHEREAS, it is anticipated that Concessionaire will meet this goal through a sub-lease partnering with EKG Eatery, a local food and beverage partner; and,

WHEREAS, Airport Authority Management recommends approval;

NOW, THEREFORE, BE IT RESOLVED, by the Board of Commissioners of the Memphis-Shelby County Airport Authority, that the President and CEO or his designee is hereby authorized to negotiate and enter into a Lease and Concession Agreement with Anton Airfood, Inc. as referenced herein.

12-17-20