

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: November 06, 2007

[X] Consent [] Regular
[] Workshop [] Public Hearing

Department:

Submitted By: Department of Airports

Submitted For:

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: the Second Amendment to the Airline-Airport Use and Lease Agreement with Delta Air Lines, Inc. (Delta), (R-2007-0386), authorizing Delta to use certain common use tenant areas for an annual fee of approximately \$42,323.

Summary: This Amendment authorizes Delta to use certain common use areas within the Palm Beach International Airport Terminal building, including a common bathroom and break room area, on a nonexclusive basis. In exchange for use of the common areas, Delta will pay an annual fee of approximately \$42,323. The annual fee will be adjusted each October 1st concurrent with adjustment of airline rates and charges. **(Countywide) JMB**

Background and Justification: Delta has requested the right to use certain common use areas within the Terminal. All tenants using the common use areas will be charged a portion of the costs based on an allocation formula established by the Department. The charge is consistent with the rental rates and fees for adjacent and similar space.

Attachments:

1. Second Amendment to Airline-Airport Use and Lease Agreement with Delta Air Lines, Inc. (3)

Recommended By:

Department Director

Date

Approved By:

County Administrator

Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2008	2009	2010	2011	2012
Capital Expenditures					
Operating Costs					
Operating Revenues	(42,323)	(42,323)	(42,323)	(42,323)	(42,323)
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT	(42,323)	(42,323)	(42,323)	(42,323)	(42,323)

ADDITIONAL FTE

POSITIONS (Cumulative)

Is Item Included in Current Budget? Yes _____ No ☒

Budget Account No: Fund 4100 Department 120 Unit 8430 Object 4414
Reporting Category _____

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

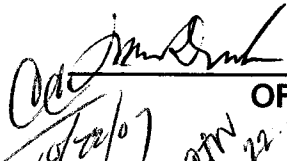
The Amendment will provide for additional rent revenue to the County. Revenue in future periods are subject to annual adjustment of Terminal rental rates.

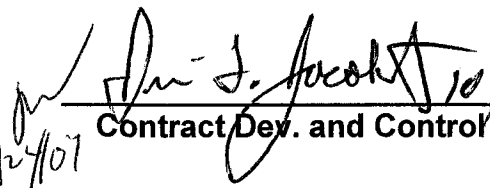
C. Departmental Fiscal Review:

III. REVIEW COMMENTS

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

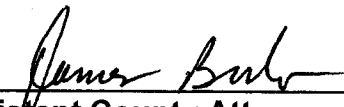
This Tenant's share is calculated as approximately 49% of \$86,324.80, which is 1,304 square feet at \$66.20.

 10-22-07
OFMB
10/22/07

 10/24/07
Contract Dev. and Control

B. Legal Sufficiency:

This amendment complies with our review requirements.


Assistant County Attorney

C. Other Department Review:

Department Director

**SECOND AMENDMENT TO AIRLINE-AIRPORT USE AND LEASE AGREEMENT
BETWEEN PALM BEACH COUNTY AND DELTA AIR LINES, INC.**

THIS SECOND AMENDMENT TO THE AIRLINE-AIRPORT USE AND LEASE AGREEMENT is made and entered into this _____ day of _____, 2007, by and between Palm Beach County, a political subdivision of the State of Florida ("COUNTY"), and Delta Airlines, Inc., a Delaware corporation, having its offices and principal place of business at Hartsfield-Jackson International Airport, Atlanta, GA 30320 ("AIRLINE").

WITNESSETH:

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

WHEREAS, pursuant to the Airline-Airport Use and Lease Agreement between COUNTY and AIRLINE dated January 30, 2007 (R2007-0386) (the "Agreement"), AIRLINE leases various Airport Terminal facilities and equipment in connection with its operations as a commercial air carrier; and

WHEREAS, the Department desires to establish a license fee for certain common area spaces that AIRLINE will have nonexclusive license to use in common with other tenants.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, and for 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. The foregoing recitals are true and correct and are hereby incorporated herein by reference and made a part hereof. Terms not defined herein shall have the meaning ascribed to them in the Agreement.

2. Article 1 of the Agreement is hereby amended to delete the definition of "Airline Premises" in its entirety and replace it with the following:

Airline Premises means those areas leased to or licensed for use by AIRLINE herein, which is comprised of Exclusive Use, Preferential Use, Joint Use Premises and ATO Office Common Area Space.

3. Article 1 of the Agreement is hereby amended to add the following definitions:

ATO Office Common Area means the common hallways, bathrooms and break area, more particularly identified on the attached Exhibit "B" as "ATO Office Common Area" that AIRLINE shall have the nonexclusive license to use in common with other tenants of the ATO Office Space.

ATO Office Common Area Charge means a license fee assessed to AIRLINE for its use of ATO Office Common Area pursuant to Article 6.02(B) of this Agreement.

ATO Office Space means the ticket office spaces located on the third level of the Terminal Building, which are more particularly identified on the attached Exhibit "B" as "ATO Office Space" and includes the Ticket Offices leased to AIRLINE.

4. Article 4 of the Agreement is hereby amended to delete Article 4.01 in its entirety and to replace it with the following:

4.01 Use of the Airport. Subject to the terms and conditions of this Agreement, AIRLINE shall have the nonexclusive right to use the Public Airport Facilities for the conduct of AIRLINE's Air Transportation Services at the Airport in common with other Air Transportation Companies operating at the Airport, which includes the non-exclusive right to: (i) use the Airport's airfield facilities, including, without limitation, runways and taxiways; (ii) the use of the public common areas within the Terminal; and (iii) the use of all public facilities and improvements that have been provided for common use at the Airport. AIRLINE shall also have the nonexclusive right to use the ATO Office Common Area. AIRLINE's right to use the ATO Common Area shall be in common with all other tenants of the ATO Office Space. The rights provided for herein shall be subject to rules and regulations established by COUNTY and the Department and any and all reasonable, nondiscriminatory fees and charges established by COUNTY for such uses.

5. Article 6 of the Agreement is hereby amended to delete Article 6.02 in its entirety and replace it with the following:

6.02 Additional Fees and Charges.

A. AIRLINE shall pay to COUNTY the ATO Office Common Area Charge for its use of ATO Office Common Area commencing on June 01, 2007. The ATO Office Common Area Charge shall be calculated as follows:

ATO Office Common Area Charge =

$$\frac{\text{Square Footage of Ticket Offices Leased to AIRLINE}}{3440 \text{ Square Feet of ATO Office Space}} \times 1304 \text{ square feet} \times \text{Type 2 Space Rate}$$

The ATO Office Common Area Charge shall be payable in advance, without demand, in equal monthly installments on or before the first (1st) day of each month. The ATO Office Common Area Charge shall be adjusted each October 1st throughout the term of this Agreement in accordance with Article 7.01 of this Agreement. In addition to any other remedy provided for in this Agreement, the Department, on behalf of COUNTY, shall have the right to revoke AIRLINE's license to use the ATO Office Common Area in the event AIRLINE fails to pay the ATO Office Common Area Charge when due.

B. AIRLINE agrees to pay to COUNTY reasonable and non-discriminatory fees and charges for any other services or facilities provided by COUNTY, which are not specifically provided for in this Agreement, and accepted by AIRLINE. Further, if COUNTY is required by any governmental entity having jurisdiction over the Airport (except COUNTY acting in its proprietary role) to provide any additional services or facilities, AIRLINE shall pay its pro rata share of the costs for the provision of the additional services or facilities.

6. As of June 01, 2007, the parties agree that the total square footage of Ticket Office space leased to AIRLINE shall be 1,686.57 square feet.

7. 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.

8. This Amendment shall become effective when signed by both the parties hereto and approved by the Palm Beach County Board of County Commissioners.

IN WITNESS WHEREOF, COUNTY has caused this First Amendment to the Airline-Airport Use and Lease Agreement to be signed by the Chair or Vice Chair of the Palm Beach County Board of County Commissioners (the "Board") pursuant to the authority granted by the Board, and AIRLINE, Delta Air Lines, Inc., has caused these presents to be signed in its corporate name by its duly authorized officer, the _____, acting on behalf of AIRLINE, and the seal of AIRLINE to be affixed hereto and attested by the Secretary of AIRLINE the day and year first written above.

ATTEST:

Sharon R. Bock, Clerk & Comptroller

By: _____
Deputy Clerk

PALM BEACH COUNTY, a political subdivision of the State of Florida, by its Board of County Commissioners

By: _____
Addie L. Greene, Chairperson

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____
County Attorney

APPROVED AS TO TERMS
AND CONDITIONS

By: _____
Director - Department of Airports

ATTEST:

By: _____
Secretary
Leslie P. Klemperer
Corporate Secretary

AIRLINE:
DELTA AIR LINES, INC.

By: _____
David Hamm
Typed or printed name of Corporate Officer

Title: Director - Corp. Real Estate

(Corporate Seal)

Signed, sealed and delivered in the
Presence of two (2) witnesses for AIRLINE

Signature _____
James Massey
Print Name

Signature _____
Althea Webb
Print Name