

Agenda Item: **3F4**

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: November 16, 2010 [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: First Amendment to Advertising Concession Agreement (Amendment) with In-Ter-Space Services, Inc., d/b/a Clear Channel Airports (Clear Channel), providing for a modification to audit reporting requirements.

Summary: On February 24, 2009, the Board approved the Advertising Concession Agreement (R2009-0280) for the operation of an advertising concession in the Palm Beach International Airport. In addition to reporting total gross revenues, the audit provisions in the Advertising Concession Agreement require reporting of revenue by advertising display unit. Clear Channel has indicated that it does not maintain revenue information by unit and has requested the right to provide the revenue information by advertising contract. The modification to the audit requirements is minor and is not essential to verifying the accuracy of payments to the County. This Amendment also includes provisions pertaining to audits and inspections by the Inspector General. Countywide (AH)

Background and Justification: In addition to monthly reports, Clear Channel is required to provide an annual audit to the County performed by an independent certified public accountant. The audit is required to include detailed information regarding the advertising revenues generated as a result of its advertising concession. The audit requirement that Clear Channel has requested to modify is primarily used by the Department for statistical purposes for future solicitations and not to verify the accuracy of payments to the County.

Attachments:

1. First Amendment (3)

Recommended By:  10/15/10
Department Director Date

Approved By:  10/16/10
County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

| Fiscal Years | <u>2011</u> | <u>2012</u> | <u>2013</u> | <u>2014</u> | <u>2015</u> |
|-------------------------|-----------------------|-------------|-------------|-------------|-------------|
| Capital Expenditures | _____ | _____ | _____ | _____ | _____ |
| Operating Costs | _____ | _____ | _____ | _____ | _____ |
| Operating Revenues | _____ | _____ | _____ | _____ | _____ |
| Program Income (County) | _____ | _____ | _____ | _____ | _____ |
| In-Kind Match (County) | _____ | _____ | _____ | _____ | _____ |
| Operating Costs | _____ | _____ | _____ | _____ | _____ |
| NET FISCAL IMPACT | <u>-0-</u> *see below | _____ | _____ | _____ | _____ |
| # ADDITIONAL FTE | _____ | _____ | _____ | _____ | _____ |
| POSITIONS (Cumulative) | _____ | _____ | _____ | _____ | _____ |

Is Item Included in Current Budget? Yes _____ No X
 Budget Account No: Fund _____ Department _____ Unit _____ RSource _____
 Reporting Category _____

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

* No fiscal impact.

C. Departmental Fiscal Review: CM Simon

III. REVIEW COMMENTS

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

[Signature]
 OFMB *WA*

[Signature] 10/22/10
 Contract Dev. and Control
E. Jones 10/21/10

B. Legal Sufficiency:

This amendment complies with
 our review requirements.

Anne Delmont 10/25/10
 Assistant County Attorney

C. Other Department Review:

 Department Director

**FIRST AMENDMENT TO
ADVERTISING CONCESSION AGREEMENT**

THIS FIRST AMENDMENT TO ADVERTISING CONCESSION AGREEMENT ("First Amendment"), made and entered into _____, by and between **Palm Beach County**, a political subdivision of the State of Florida (the "County"), and **In-Ter-Space Services, Inc., d/b/a Clear Channel Airports**, a Pennsylvania corporation ("Concessionaire"), with its office and address at 4635 Crackersport Road, Allentown, PA 18104.

WITNESSETH:

WHEREAS, the County, by and through its Department of Airports, owns and operates the Palm Beach International Airport, located in Palm Beach County, Florida, for the promotion, accommodation, and development of air commerce and transportation; and

WHEREAS, the County and Concessionaire have entered into that certain Advertising Concession Agreement dated February 24, 2009 (R2009-0280) (the "Agreement") for the operation of an advertising concession in the Airport; and

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

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained and for such 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 recitals set forth above are true and correct and incorporated herein by this reference. Terms not defined herein shall have the meaning ascribed to them in the Agreement.

2. Modification of Section 5.12 – Audit. Subsections (C) and (E) of Section 5.12 of the Agreement are deleted in their entirety and replaced with the following subsections (C) and (E):

C. A schedule of Gross Receipts by Advertising Contract;

E. The audit report shall include an opinion on: the total amount of Gross Receipts for the preceding Contract Year; the schedule of Gross Receipts by month; the schedule of Gross Receipts by Advertising Contract; the schedule of payments to the County; any exclusion from Gross Receipts; and the calculation of payments.

3. Article 22 of the Agreement is modified to add the following Section 22.25:

22.25 Inspector General. County has established the Office of the Inspector General in Ordinance 2009-049, as may be amended, which is authorized and empowered to review past, present and proposed County contracts, transactions, accounts and records. The Inspector General has the power to subpoena witnesses, administer oaths and require the production of records, and audit, investigate, monitor, and inspect the activities of Concessionaire and its officers, agents, employees and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud. Failure to cooperate with the Inspector General or interference or impeding any investigation shall be in violation of Ordinance 2009-049, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

4. 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.
5. 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.
6. Incorporation by Reference. Exhibits and terms referenced herein shall be deemed to be incorporated in this Amendment by such reference.
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 be considered effective as of the Effective Date set forth in the Agreement.

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

ATTEST:
SHARON R. BOCK
Clerk & Comptroller

PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

Deputy Clerk

Chair

(Seal)

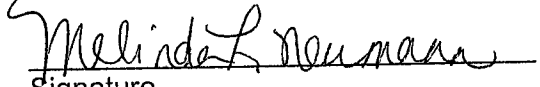
APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:

Assistant County Attorney

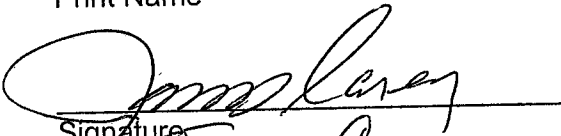
APPROVED AS TO TERMS AND
CONDITIONS:


Director, Department of Airports

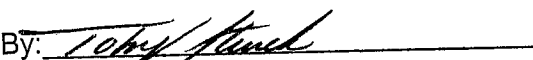
Signed, sealed & delivered in the presence
of two witnesses for Concessionaire:


Signature

Melinda L. Neumann
Print Name


Signature
James Carey
Print Name

CONCESSIONAIRE:
In-Ter-Space Services, Inc. d/b/a
Clear Channel Airports

By: 
Signature

Toby Sturek
Print Name
Co-President
Title

(Corporate Seal)