

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

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Meeting Date: May 6, 2014	<input checked="" type="checkbox"/> Consent	<input type="checkbox"/> Regular
	<input type="checkbox"/> Workshop	<input type="checkbox"/> Public Hearing

Department: Department of Airports

Submitted By: Department of Airports

Submitted For: Department of Airports

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I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: First Amendment to Fixed Based Operator Lease Agreement (Amendment) with Galaxy Aviation of Lantana, Inc. (Galaxy), modifying insurance provisions and updating non-discrimination language.

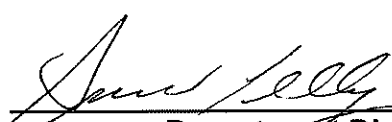
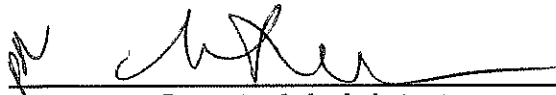
Summary: Galaxy provides fixed based operator services at the Palm Beach County Park Airport (Lantana Airport) pursuant to the Fixed Base Operator Lease Agreement dated December 17, 2013 (R-2013-1795) (Lease). Galaxy is a Florida corporation with its principal place of business in Boca Raton, Florida. The Lease provides for the lease of the general aviation facilities located at the Lantana Airport, including the terminal building and aircraft hangars. This Amendment provides the option to allow the County to continue to insure the buildings and improvements located at the Lantana Airport under the County's property, windstorm and flood insurance policy for up to three years after which Galaxy will be required to obtain separate coverage. Galaxy will reimburse the County for any increased insurance costs, if any, associated with the coverage. This Amendment also updates standard non-discrimination language. Countywide (HJF)

Background and Justification: Florida Airmotive, Inc., previously provided fixed base operator services at the Lantana Airport pursuant to a Lease Agreement entered into May 13, 1986 (R-86-712) (1986 Lease), which expired on March 31, 2014. In anticipation of the expiration of the 1986 Lease, the Department of Airports issued RFP No. LN 13-4 for fixed base operator services at the Lantana Airport. Galaxy's proposal was selected, and, on December 17, 2013, the Board approved the Lease. Florida Airmotive was not required to maintain property, windstorm or flood insurance pursuant to the 1986 Lease. Galaxy has requested the option of allowing the County to continue to maintain property, windstorm and flood insurance for a period of up to three years in an effort to maintain lower costs to airport subtenants during the initial transition period.

Attachments:

1. First Amendment (3)

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JB	Recommended By: <u></u>	<u>4/14/14</u>
	Department Director	Date
Approved By: <u></u>	County Administrator	<u>4/14/14</u>
		Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
Operating Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>-0.74</u>	<u>See below</u>	_____	_____	_____
# ADDITIONAL FTE	_____	_____	_____	_____	_____
POSITIONS (Cumulative)	_____	_____	_____	_____	_____

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

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

☒ There is no fiscal impact associated with this item.

C. Departmental Fiscal Review: CM Simmer

III. REVIEW COMMENTS

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

4/15 4/15 OFMB
4/15 4/15

4-16-14 4/16/14
Contract Dev. and Control

B. Legal Sufficiency:

4/17/14
Assistant County Attorney

C. Other Department Review:

Department Director

**FIRST AMENDMENT TO FIXED BASE OPERATOR LEASE AGREEMENT
BETWEEN PALM BEACH COUNTY AND GALAXY AVIATION OF LANTANA, INC.**

This First Amendment to Fixed Based Operator Lease Agreement (this "Amendment") is made and entered into this _____, 2014 by and between Palm Beach County, a political subdivision of the State of Florida ("County"), and Galaxy Aviation of Lantana, Inc., a Florida corporation, having its office and principal place of business at 2225 Glades Road, Suite 321A, Boca Raton, Florida 33431 ("Tenant").

WITNESSETH:

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

WHEREAS, County issued a Request for Proposals for Fixed Base Operator Lease Agreement at the Palm Beach County Park Airport, RFP No. LN 13-4, for the provision of fixed base operator services; and

WHEREAS, the parties entered into that certain Fixed Base Operator Lease Agreement dated December 17, 2013 (R-2013-1795) (the "Lease"); and

WHEREAS, the parties now desire to amend the Lease as provided for 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. 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 Lease.

2. Section 13.08, Property, Wind & Flood Insurance, of the Lease is hereby deleted in its entirety and replaced with the following:

13.08 Property, Wind, & Flood Insurance. Tenant shall: (i) maintain Property, Flood and Windstorm Insurance (hereinafter collectively referred to as "PF&W Insurance"), at Tenant's sole cost and expense, insuring the buildings, betterments and improvements located on the Premises in accordance with the requirements set forth below; or (ii) reimburse County for the Department's allocated cost of maintaining PF&W Insurance to insure the buildings, betterments and improvements located on the Premises. The option to use County's PF&W Insurance coverage shall be limited to a three (3) year period beginning on the Commencement Date of the Lease, after which expiration, Tenant shall procure and maintain PF&W Insurance in accordance with the requirements set forth below. During the aforementioned three (3) year period, Tenant may change its election under this Section upon ninety (90) days prior written notice to County; provided, however, Tenant shall not cancel its PF&W Insurance until County has notified Tenant that the buildings, betterments and improvements are covered under the County's PF&W Insurance. In the event Tenant elects to reimburse County's cost of maintaining PF&W Insurance, Tenant shall reimburse County within thirty (30) days of the date of County's invoice. In the event Tenant elects to maintain PF&W Insurance in lieu of reimbursing County as provided above, and upon the expiration of the aforementioned three (3) year period, Tenant shall procure and maintain PF&W Insurance, at Tenant's sole cost and expense, insuring the buildings, betterments and improvements located on the Premises in accordance with the requirements set forth below:

- (A) Property Insurance in an amount not less than one hundred percent (100%) of the total replacement cost of the buildings, betterments and improvements, including those made by or on behalf of Tenant as well as Tenant's contents located on the Premises. The settlement clause shall be on a Replacement Cost basis. Coverage shall be written with a Special - Cause of Loss (All-Risk) form and include an

endorsement for Ordinance & Law in an amount not less than twenty-five percent (25%) of the Property insurance limit.

- (B) Flood Insurance, regardless of the flood zone, in an amount not less than one hundred percent (100%) of the total replacement cost of the buildings, betterments and improvements, including, without limitation, those made by or on behalf of Tenant as well as Tenant's contents, located on the Premises, or the maximum amount available from the National Flood Insurance Program.
- (C) Windstorm Insurance, unless included as a covered peril in the property insurance, in an amount not less than one hundred percent (100%) of the total replacement cost of the building, betterments and improvements, including, without limitation, those made by or on behalf of Tenant as well as Tenant's contents, located on the Premises, or the maximum amount available under the Florida Windstorm Underwriting Association.

3. The parties acknowledge and agree that Tenant has elected to reimburse County for its allocated cost of PF&W Insurance in lieu of procuring a separate PF&W policy. County acknowledges that Tenant may modify its election as provided above.

4. Article 25, Nondiscrimination, of the Lease is hereby deleted in its entirety and replaced with the following:

25.01 Non-Discrimination in County Contracts. Tenant acknowledges that County is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Tenant is prohibited from discriminating against any employee, applicant, or client because of race, color, creed, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, or gender identity and expression, or genetic information.

25.02 Federal Non-Discrimination Covenants.

- (A) Tenant, for itself, its personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as follows:
 - (1) In the event facilities are constructed, maintained or otherwise operated on the Premises for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, Tenant shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, as said regulations may be amended.
 - (2) No person, on the grounds of race, color or national origin, shall be unreasonably excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in Tenant's personnel policies and practices or in the use or operation of Tenant's services or facilities.
 - (3) Tenant agrees that in the construction of any improvements on, over, or under Airport land and the furnishing of services thereon, no person, on the grounds of race, color, or national origin, shall be unreasonably excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.
 - (4) Tenant shall use the Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, as said regulations may be amended.

- (5) In the event of a breach of any of the above nondiscrimination covenants, County shall have the right to terminate this Lease and re-enter the Assigned Premises as if this Lease had never been made or issued. This Lease shall not be terminated pursuant to this paragraph until the procedures of 49 CFR Part 21 are followed and completed, including exercise or expiration of appeal rights.
 - (B) Tenant assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age or handicap be excluded in participating in any activity conducting with or benefitting from Federal assistance.
 - (C) Tenant assures that, in performance of its obligations hereunder, it will fully comply with the requirements of 14 CFR Part 152, as now or hereafter amended, to the extent applicable to Tenant, to ensure that no person will be excluded from participation in any employment, contracting or leasing activities covered by such regulations on the grounds of race, creed, color, national origin or sex. Tenant, if required, will provide assurances to County that Tenant will undertake an affirmative action program or steps for equal employment opportunity and will require the same of its subcontractors.
 - (D) Tenant acknowledges that Tenant may be required to provide certain non-discrimination notices and training as required by County and/or FAA pursuant to this Section.
5. Except as modified herein, all terms and conditions of the Lease shall remain in full force and effect.
6. This Amendment shall become effective when signed by both parties and approved by the Palm Beach County Board of County Commissioners.

(Remainder of page intentionally left blank)

IN WITNESS WHEREOF, the parties hereto have duly executed this Amendment, or have caused the same to be executed by their duly authorized representatives, as of the day and year first above written.

ATTEST:

SHARON R. BOCK
Clerk and Comptroller

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

By: _____
Deputy Clerk

By: _____
Priscilla A. Taylor, Mayor

(SEAL)

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS
AND CONDITIONS

By: _____
Assistant County Attorney

By: _____
Director, Department of Airports

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

TENANT:
Galaxy Aviation of Lantana, Inc.

Laurie Funder
Signature

Laurie Funder
Print Name

Jeff Swaters
Signature

JEFF SWATERS
Print Name

By: _____
Signature

Jonathan Miller
Print Name

President
Title

(SEAL)

CERTIFICATE
(Corporation)

The undersigned hereby certifies that the following are true and correct statements:

1. That Michael Faren is the Secretary of Galaxy Aviation of Lantana Inc., a corporation organized and existing in good standing under the laws of the State of Florida hereinafter referred to as the "Corporation", and that the following Resolutions are true and correct copies of certain Resolutions adopted by the Board of Directors of the Corporation as of the 9th day of April, 2014, in accordance with the laws of the State of Florida, the Articles of Incorporation and the By-laws of the Corporation:

RESOLVED, that the Corporation shall enter into that certain First Amendment to Fixed Base Operator Lease Agreement between Palm Beach County, a political subdivision of the State of Florida and the Corporation (the "Agreement"), a copy of which is attached hereto; and be it

FURTHER RESOLVED, that Jonathan Miller, the President of the Corporation, is hereby authorized and instructed to execute such Agreement and such other instruments as may be necessary and appropriate for the Corporation to fulfill its obligations under the Agreement.

2. That the foregoing resolutions have not been modified, amended, rescinded, revoked or otherwise changed and remain in full force and effect as of the date hereof.

3. That the Corporation is in good standing under the laws of the State of Florida, and has qualified, if legally required, to do business in the State of Florida and has the full power and authority to enter into such Agreement.

IN WITNESS WHEREOF, the undersigned has set his hand and affixed the Corporate Seal of the Corporation the 9th day of April, 2014.


[Signature]

Corporate Seal

Michael Faren, Secretary