Agenda Item: 3F3

PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

| Meeting Date: Dec | ember 15, 2015 | [x] | Consent | | Regular |
|---|---|--|--|--|---|
| Department: Submitted By: Dep | outpoont of Airmonto | [] | Workshop | [] | Public Hearing |
| Submitted For: Dep | artment of Airports | | | | |
| | | /E DDIE | | | |
| BR 45 1 TO | I. EXECUTIV | | | | |
| a Florida limited liab date of beneficial occ compressed natural station(s); the provisi | elopment Site Lease (R-2) lity company (WPB Plaza upancy deadlines to May gas (CNG) facilities; to on of free wireless interne LCD for airport-related i | 013-025), provid 1, 2016; he insta : access | 7) with West I ing for exten removal of the llation of el within the ce | Palm I sion o e requ ectric II phor | Beach Plaza, LLC, of construction and uirement to provide vehicle charging ne waiting lot area: |
| Airport travel plaza a and to remove the real The Amendment removes the installation provides for the exterior area in addition to the display of airport mest from \$3,482,250 to maintenance and utificallities. In addition inside the travel plazarea will permit cus | aza has requested an exitate and date of beneficial occurrence over the requirement for its on of one dual port or two insion of free wireless interest interior of the travel places ages; and provides for a \$4,500,000. WPB Place 10 to having the option of war, providing wireless interest to check flight in incles. Countywide (HF) | ipancy filed natural nstallation single properties accurately accu | om October al gas (CNG) on of compressiont electric volumes to the exires the instance in the minimal stations, LC he flight inforces to the extension of the e | 1, 20° be pressed nechicle terior mum cole for mation terior error of the properties | 15 to May 1, 2016 rovided at the site. natural gas pumps; charging stations; cell phone waiting a LCD for the capital investment or all installation, wireless internet on display screens cell phone waiting |
| Site Lease Agreeme ground as an on-airp wash, food service faconstruct and maintai was estimated to be at the service provider requested an extension delays in obtainin plaza, including pern | stification: On March 12, nt (Lease) with WPB Plaz ort travel plaza, which will acilities, and related amen a collocated cell phone of approximately \$900,000 re and WPB Plaza for the on of the construction and g all required permits necessation in the provements necessation in the construction of the cons | ta for leadinclude ities. The vaiting a sulting ir constructed date of be essary to fan extention of an extention of the constructed date of the const | ase and deverse gas station as Lease also rea. Extension an impasse stion of CNG reneficial occurrences complete complete compansion of the | elopme conv requition of the in negonalist facilion upanconstrue colle | ent of unimproved renience store, car res WPB Plaza to the natural gas line gotiations between ties. WPB Plaza y deadlines based action of the travel posted cell phone |
| Attachments: 1. Second Amendme | ent (3) | | | | |
| ======== 00 | | ===== | | _ = = = = | |
| Recommended By: | In Sell | | | 1/ | 10 115 |
| | | rector | | _// ' | Date \ |
| Approved By: | ~ 1/CBak | e | | [[] | 3/1/5 |
| 7 | Čounty Admini | strator | | 1 | Date |

II. FISCAL IMPACT ANALYSIS

| A. Five Year Summary of Fisc | ai impact: | | | | |
|---|--|---|--|--|--|
| Fiscal Years | <u>2016</u> | <u>2017</u> | <u>2018</u> | <u>2019</u> | <u>2020</u> |
| Capital Expenditures Operating Costs Operating Revenues Program Income (County) In-Kind Match (County) | \$51,455 | | | | |
| NET FISCAL IMPACT # ADDITIONAL FTE POSITIONS (Cumulative) | <u>\$51,455</u> | | | | |
| Is Item Included in Current Bu Budget Account No: Fund | • | es <u>X</u> No <u>.</u> eartment <u>120</u> Reporting C | Unit <u>845</u> | 2 Rsource | <u>4416</u> - |
| B. Recommended Sources of Payment of rental commendment provides for example 2015 to May 1, 2016, resurved 2016 revenue by \$51,455. is subject to adjustment pur 2016, and each three-year will commence two years at the County cannot be estimated that the tenant's fuel sales and example 2016. C. Departmental Fiscal Review | nences upon tension to the lting in a def The fiscal in rsuant to the anniversary fter the date mated at this gross revenu | on the date ne date of benderral of rent rempact analysis terms of the Lathereof. The for beneficial of the because | of beneficial eficial occuparate venue by 7 m s only reflects ease commer uel flowage au ccupancy; how | ncy from Oct nonths reduct fixed rental. ncing on Oct nd concession wever, paym | ober 1, cing FY Rental ober 1, on fees eents to |
| | | <i></i> | | | |
| | III. REVIEV | V COMMENTS | <u> </u> | | |
| A. OFMB Fiscal and/or Contra | nct Developr | ment and Con | Anie | ts: Dev. and Co | Control 11124/15 |
| B. Legal Sufficiency: | | | | | |
| Assistant County Attorney | 5/15 | | | | |
| C. Other Department Review: | | | | | |
| Department Director | | | | | |

REVISED 9/03 ADM FORM 01 (THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT)

SECOND AMENDMENT TO DEVELOPMENT SITE LEASE AGREEMENT BETWEEN PALM BEACH COUNTY AND WEST PALM BEACH PLAZA, LLC

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 Development Site Lease Agreement dated March 12, 2013 (R-2013-0257), as amended by that certain First Amendment dated September 9, 2014 (R-1291) (hereinafter collectively referred to as 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 3.01, <u>Term</u>, of the Lease is hereby deleted in its entirety and replaced with the following:
 - 3.01 Term. The term of this Lease shall commence on the Effective Date and expire thirty (30) years from the first to occur of: (a) the date of substantial completion of the Required Improvements; (b) the date Tenant commences using the Premises (or any part thereof) for the conduct of its business (other than construction); or (c) May 1, 2016 (the "Date of Beneficial Occupancy"), unless sooner terminated pursuant to the terms of this Lease (the "Term"). Substantial completion of the Required Improvements will occur when the applicable governmental authority issues a temporary or permanent certificate of occupancy for any building constructed on the Premises. Tenant shall promptly notify County in writing of the issuance of all certificates of occupancy and of the date Tenant commences using the Premises (or any part thereof) for the conduct of its business. Tenant will use due diligence and make good faith efforts to complete construction, open for business and cause the Date of Beneficial Occupancy to occur as soon as reasonably practicable. In the event construction of Required Improvements is

delayed due to causes beyond the reasonable control of Tenant, as determined by the Department, the Date of Beneficial Occupancy may be extended by the Department upon written request for approval of an extension by Tenant. Tenant's written request for an extension shall detail the reasons for the delays. Tenant acknowledges and agrees that the Department may grant or deny the request for an extension in its sole and absolute discretion.

- 3. Section 4.02, <u>Description of Specific Privileges</u>, <u>Uses and Rights</u>, of the Lease is hereby deleted in its entirety and replaced with the following:
 - 4.02 <u>Description of Specific Privileges.</u> Tenant shall have the right and obligation to use the Premises, exclusive of the Cell Phone Waiting Area, for the purpose of constructing, operating and maintaining an on-Airport travel plaza in accordance with the requirements of this Lease, which shall include a gas station, car wash, convenience store, food service facilities with drive-through access, electric vehicle charging station(s) (one dual port or two single port, level 2 EV charging stations) and related amenities as well as public restrooms for customers of the travel plaza and Cell Phone Waiting Area. Tenant's use of the Cell Phone Waiting Area shall be limited to the construction and maintenance of the Cell Phone Waiting Area on behalf of County as specified herein. The Cell Phone Waiting Area shall be made available for use by the public and Airport customers waiting for arriving passengers at the Airport and shall be subject to rules and regulations established by the Department, in its sole discretion, including restrictions on use and hours of operation. County shall have the right to sell, install and maintain advertising within the Cell Phone Waiting Area.
- 4. Section 5.03, <u>Gas Station/Convenience Store Quality of Services</u>, is hereby amended to delete Sections 5.03(C), 5.03(G) and 5.03(H) in their entirety and replace them with the following:
 - (C) A sufficient number of self-service pumps shall be available to serve anticipated customer demand, offering low-grade regular unleaded; midgrade unleaded and premium gasoline; and diesel fuel. Self-service pumps shall be fully automated allowing customers to pay-at-the-pump with the credit and debit cards normally accepted by Tenant pursuant to Section 5.10.
 - (G) Tenant shall provide the following customer amenities, at Tenant's sole cost and expense, unless otherwise approved by the Department in writing, which approval may be granted or denied in Department's sole and absolute discretion: ATM services; air pumps for inflating tires; and a customer loyalty program.
 - (H) Tenant agrees provide County with a discount for purchases of fuel for use by vehicles owned, leased and/or operated by or on behalf of the County's

Department of Airports. The amount of the discount will be no less than five cents (\$.05) per gallon (CPG) from the posted retail fuel prices and will be subject to separate agreement between the parties and/or County's designated contractor(s).

- 5. Section 5.03, <u>Gas Station/Convenience Store Quality of Services</u>, is hereby amended to add the following:
 - (I) Tenant shall install and maintain the items listed below, in locations that are visible to the public and reasonably acceptable to the Department, at Tenant's sole cost and expense:
 - (1) One (1) LCD flat panel television of no less than forty eight (48) diagonal inches in size for the display of local tourism information, welcome messages and the promotion of the Airport and Airport programs or services. The Department shall be responsible for managing all content on the LCD. Tenant shall be responsible for the cost of installing all necessary data and utility connections and on-going utility costs, including, but not limited to, electrical and internet services.
 - One (1) flight information display screen ("FIDS") of no less than forty eight (48) diagonal inches in size for the provision of real-time flight information regarding flights arriving at the Airport. Tenant shall be responsible for the cost of installing all necessary data and utility connections, and on-going utility services, including, but not limited to, electrical and internet services, and all equipment, hardware and software costs associated with the operation of the FIDS.
 - (3) One (1) dual port or two (2) single port, level two (2), electric vehicle charging station(s) for use by customers of the on-Airport Travel Plaza or Cell Phone Waiting Area. Tenant shall be responsible for the cost of installing all necessary utility connections and on-going utility services. Tenant shall be responsible for the operation and management of the electric vehicle charging stations. Tenant shall not charge a fee for use of the electric vehicle charging stations without the approval of the Department, which approval may be granted, withheld or conditioned in the Department's sole and absolute discretion.
 - (J) Tenant shall provide, at Tenant's sole cost and expense, free wireless internet access ("<u>WiFi</u>") to customers of on-Airport travel plaza and Cell Phone Waiting Area. Tenant shall prominently post signage of the

availability of free WiFi in locations visible to the public. Tenant shall be responsible for the installation of all equipment and facilities necessary for the provision of WiFi within the on-Airport travel plaza and Cell Phone Waiting Area and for the cost of installing all necessary data and utility connections, and on-going utility services, including, but not limited to, electrical and internet services. WiFi shall be have a minimum bandwidth sufficient to allow each user to quickly and effectively browse the internet and check e-mail and shall have shall have adequate capacity to support the total number of customers utilizing the on-Airport travel plaza and Cell Phone Waiting Area during peak travel periods. Tenant shall not require customers to pay any fees, watch advertisements or provide information in order to access WiFi unless otherwise approved by the Department, which approval may be granted, withheld or conditioned in the Department's sole and absolute discretion. Tenant shall notify the Department of any temporary WiFi outages or disruptions in service for repairs or maintenance.

6. Section 7.01(A)(1), <u>Required Improvements</u>, of the Lease is hereby deleted in its entirety and replaced with the following:

(A) Required Improvements.

(1) Tenant agrees that it shall construct, at its sole cost and expense, the following improvements: (a) an on-Airport travel plaza consisting of a gas station, car wash, convenience store, food service facilities with drive-through access, electric vehicle charging station(s), and related amenities, including indoor public restroom facilities for customers of the travel plaza and Cell Phone Waiting Area, which shall include appropriate lighting, striping, landscaping and signage; (b) a Cell Phone Waiting Area consisting of not less than eighty five (85) vehicular parking spaces, which shall include not less than sixty five (65) standard vehicular parking spaces and the Oversized Vehicle Parking Area, and related improvements such as lighting, striping, landscaping and separate signage identifying the location of the Cell Phone Waiting Area, including signage designating areas for the parking of oversized vehicles; and (c) all other improvements/infrastructure necessary to support the development of the Premises and Cell Phone Waiting Area(s), including, but not limited to, electrical systems, sewage, wastewater disposal, landscaping, lighting, signage, parking, roadways and driveways necessary for ingress, egress and circulation, stormwater control systems and security measures. Tenant shall also construct and maintain, at Tenant's sole cost and expense, a freestanding monument sign

complementary to the design of the travel plaza identifying the Airport entrance at the corner of Belvedere Road and Florida Mango. The location and design of the monument sign, including all wording/messages, shall be subject to prior written approval of the Department. The improvements required to be constructed by Tenant pursuant to this Section 7.01(A)(1) shall hereinafter be referred to as the "Required Improvements". Construction of the Required Improvements shall be completed no later than March 1, 2016. Upon the date the Cell Phone Waiting Area is open for use by the public, County agrees to close the existing cell phone waiting area currently located to the East of the Premises.

- 7. The first sentence of Section 7.01(B), <u>Minimum Capital Expenditure for Required Improvements</u>, of the Lease is hereby deleted in its entirety and replaced with the following:
 - (B) <u>Minimum Capital Expenditure for Required Improvements.</u> Tenant shall expend not less than Four Million Five Hundred Thousand Dollars (\$4,500,000) on the design, construction and installation of the Required Improvements.
- 8. Section 9.01, <u>Maintenance/Repair of Premises</u>, is hereby amended to add the following:
 - (H) Be responsible for the operation, maintenance, repair and replacement of: electric vehicle charging stations located within the Premises and Cell Phone Waiting Area; the equipment and facilities necessary for the operation of the WiFi serving the on-Airport travel plaza and Cell Phone Waiting Area; and the FIDS and LCD equipment required to be installed pursuant to this Lease.
- 9. Section 25.01, <u>Non-Discrimination in County Contracts</u>, and Section 25.02, <u>Federal Non-Discrimination Covenants</u>, of the Lease are hereby deleted in its entirety and replaced with the following:
 - 25.01 <u>Non-Discrimination in County Contracts.</u> Tenant warrants and represents to County that all of its employees are treated equally during employment without regard to race, color, national origin, religion, ancestry, sex, age, familial status, marital status, sexual orientation, gender identity and expression, disability, or genetic information. Tenant has submitted to County a copy of its non-discrimination policy, which is consistent with the above, as contained in Resolution R-2014-1421, as may be amended, or in the alternative, if Tenant does not have a written non-discrimination policy, it has acknowledged through a signed statement provided to

County affirming their non-discrimination policy conforms to R-2014-1421, as may be amended.

25.02 Federal Non-Discrimination Covenants.

- (A) Tenant, for its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:
 - (1) In the event facilities are constructed, maintained, or otherwise operated on the Premises for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Tenant will maintain and operate such facilities and services in compliance with all requirements imposed by the nondiscrimination acts and regulations listed in the Nondiscrimination Authorities (as hereinafter defined), as may be amended, such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
 - (2) No person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of County property, including, but not limited to, the Premises.
 - (3) In the construction of any improvements on, over, or under the Premises and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.
 - (4) Tenant shall comply with, and use the Premises in compliance with, the requirements imposed by or pursuant to the Nondiscrimination Authorities.
 - (5) In the event of breach of any of the above nondiscrimination covenants, County shall have the right to terminate this Lease and to enter, re-enter, and repossess the Premises, and hold the same 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, the exercise or expiration of appeal rights.

- (B) For purposes of this Article, the term "Non-Discrimination Authorities" includes, but is not limited to, the non-discrimination statutes, regulations and authorities listed in Appendix "E" of Appendix "4" of FAA Order 1400.11, Non-discrimination in Federally-Assisted Programs at the Federal Aviation Administration, as may be amended.
- 10. Tenant shall provide County with a written Airport Concession Disadvantaged Business Enterprise ("ACDBE") plan on or before April 1, 2016, which shall identify the ACDBE firms participating in the Lease, the proposed percentage of ACDBE participation of each ACDBE firm, and include a copy of the subcontracts or agreements with each ACDBE firm for review and approval of the Department. In the event the ACDBE goal is not achieved, Tenant shall provide written documentation of its good faith efforts in accordance with Section 25.04 of the Lease in addition to the ACDBE Plan. Tenant acknowledges that ACDBE firms participating in the Lease must be certified as an ACDBE by the Unified Certification Program for the State of Florida. Tenant acknowledges and agrees failure to provide the ACDBE plan to County as required by this provision shall, subject to the Lease's cure provisions, be considered a material default of the Lease.
- 11. Except as modified herein, all terms and conditions of the Lease shall remain in full force and effect.
- 12. 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: 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: |
| Rocess & Acherley Signature Roycs & Ackerley Print Name | By: Signature NRYS an Ragge Kh Print Name |
| Signature | Director, Airports Title |
| Munier Albhar Print Name | (SEAL) |

AFFIDAVIT OF LIMITED LIABILITY COMPANY

| STATE OF | Virjim | |
|-----------|--------|------|
| COUNTY OF | Prince | will |

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 <u>Manager</u> of <u>West Palm Beach Plaza, LLC</u>, 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 <u>manager managed</u> limited liability company.
- 5. The undersigned is the sole managing member of the Company or has been authorized by majority vote of the managing 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. Neysan Rassekh is an authorized representative of Company ("Authorized Representative") and has the right and authority to execute on behalf of Company that certain Second Amendment to Development Site Lease 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 and any future amendments to the Development Site Lease (R-2013-0257).
- 7. Upon execution and delivery of such Agreement and documents by the Authorized Representative, 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 NAUGH | T. |
|------------------------------|----|
|------------------------------|----|

Abdolhossein Ejemai, Individually and as Manager

SWORN TO AND SUBSCRIBED before me on this 2 day of 100, 2015, by Abdologiem Ejemai, Manager of West Palm Beach Plaza, LLC on behalf of the Company who is personally known to me OR who produced as identification and who did take an oath.

Notary Signature

Howker Mustan Mustan Print Notary Name

REGISTRATION NO.

7164426

MY COMM. EXPIRES

05/31/2016

OF VIRGINIA

NOTARY PUBLIC

State of Umb in at large

My Commission Expires:

05/31/2016

AFFIRMATION OF NON-DISCRIMINATION POLICY

| The u | ndersigned is the | Director | of, |
|--|---|--|---|
| West Palm Be | each Plaza, LLC ("Co | ompany"), <u>a Florida limited liability compa</u> | , |
| appropriate funational origing gender identification 2014-1421, as a copy of their 2014-1421, as 2014-1421, as | nissioners that Palm unds for any organiza n, religion, ancestry, ty and expression, o s may be amended, r written non-discrim as may be amende | nat it is the express policy of the Palm Be Beach County ("County") shall not cond ation that practices discrimination on the sex, age, familial status, marital status lisability, or genetic information, and the requires all entities doing business with ination policies to ensure consistency will do not one provide a written statement of the st | uct business with nor basis of race, color, s, sexual orientation, at County Resolution the County to submit th County Resolution |
| Accordingly, tl (Check applic | able blank) | by affirms the following on behalf of Com | · |
| | Company has a w requirements of C copy to County for | ritten non-discrimination policy, which is ounty Resolution 2014-1421 and has p its records. | s consistent with the provided a complete |
| | Company does r Company's policy 1421, as may be ar | not have a written non-discriminatio conforms to the requirements of Counnended. | n policy; however, ty Resolution 2014- |
| | | | |
| | | Signature | |
| | | Print Name | ysan Rassekh + 3° Polc |
| | | Date | - + 3° 2015 |

Summary of Certificates

This report displays detailed Certificate of Insurance information for a selected Insured. Any items shown in red are deficient.

Tuesday, November 10, 2015 | Images | Contracts

Insured: West Palm Beach Plaza, LLC

Insured ID: WESTPAL-PBC

Status:

Compliant

ITS Account Number:

PLC840

Project(s):

Palm Beach County - Airport Properties

Insurance Policy Required Provided Overrid€ **General Liability Expiration: 7/24/2016** General Aggregate: \$1,000,000 \$4,000,000 **Products - Completed Operations** \$1,000,000 \$2,000,000 Aggregate: \$1,000,000 \$4,000,000 Personal And Advertising Injury: **Each Occurrence:** \$1,000,000 \$2,000,000 Fire Damage: \$0 \$0 **Medical Expense:** \$0 \$0

Notifications

There were no deficiency letters issued.

Do you have an updated Certificate? Click the button below to submit a Certificate.

Certificate Submittal

https://its.insurancetrackingservices.com/clientreports/ProblemsSpecificRpt.asp?Vendor=... 11/10/2015