

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

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Meeting Date: February 9, 2016	<input checked="" type="checkbox"/>	Consent	<input type="checkbox"/>	Regular
	<input type="checkbox"/>	Workshop	<input type="checkbox"/>	Public Hearing

Department:

Submitted By: Department of Airports

Submitted For:

I. EXECUTIVE BRIEF

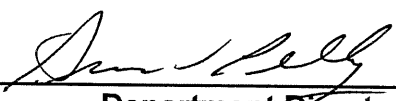
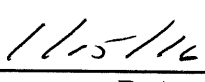


Motion and Title: Staff recommends motion to approve: First Amendment to Non-Signatory Airline Agreement with Air Canada, a Canadian Corporation, providing for minor revisions to the standard form agreement.

Summary: This Amendment provides for minor revisions to the Non-Signatory Airline Agreement requested by Air Canada, including clarifications to provisions related to the condition of the airline premises, removal of personal property, and reassignment of the airline's preferential use premises by the County. **Countywide (AH)**

Background and Justification: On December 9, 2015, Air Canada entered into a new standard form Non-Signatory Airline Agreement, approved by the BCC pursuant to R-2014-1575. Air Canada has requested minor revisions to the Non-Signatory Airline Agreement. The Department of Airports has no objections to the requested changes.

Attachments First Amendment to Non-Signatory Airline Agreement (3)

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Recommended By:		
	Department Director	Date
Approved By:		
	County Administrator	Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal 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)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	* <u><u>-0-</u></u>	* <u><u>-0-</u></u>	* <u><u>-0-</u></u>	* <u><u>-0-</u></u>	* <u><u>-0-</u></u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes _____ No _____
 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: *C.M. Simine*

III. REVIEW COMMENTS

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

 [Signature]
 1/19/16 OFMB *[Signature]*

 [Signature]
 Contract Dev. and Control
[Signature] 1-26-16

B. Legal Sufficiency:

 Anne Delmont
 Assistant County Attorney 1/27/16

C. Other Department Review:

 Department Director

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

Samantha W. Foxen
Counsel – Commercial
Direct Line / ligne directe : (514) 422-5823
Facsimile / télécopieur (514) 422-5731
E-mail / courriel Samantha.Foxen@aircanada.ca

Law Branch
Affaires juridiques
Air Canada Centre ZIP 1276
P.O. Box 7000, Station Airport
Dorval, Québec
H4Y 1J2

By email and commercial courier

November 18, 2015

Laura Beebe
Deputy Director, Airports Business Affairs
Palm Beach County Department of Airports
846 Palm Beach International Airport
West Palm Beach, FL 33406

RECEIVED
2015 NOV 19 AM 10:45
DEPT. OF AIRPORTS
BLDG. 846, PBIA

Subject: Air Canada's Conduct of Commercial Flight Operations in the State of Florida

Dear Ms. Beebe,

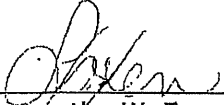
As you know, Air Canada is a foreign airline certified by the US Department of Transportation to provide air services between Canada and the United States and party to an Airline Operating and Lease Agreement, soon to be replaced by a Non-Signatory Airline Agreement, with Palm Beach County. You have requested that Air Canada register to transact business in the State of Florida.

However: (i) Air Canada does not have any employees at the Palm Beach County International Airport; (ii) the maintenance of our aircraft is done outside of Florida; (iii) the local passenger and aircraft handling to support our operations in Florida, including the staffing of our check-in counters, is performed by a third party ground-handler, Airport Terminal Services, Inc. (ATS); and (iv) our leased space is occupied exclusively by said ground handler. Air Canada does not sell tickets out of said check-in counters.

In addition and moreover, as a foreign carrier operating between points in the US and points in Canada, Air Canada's business in the US is strictly in interstate and foreign commerce. We refer you to the Florida Business Corporation Act § 607.1501(2) (i) Fla. Stat. (2015) which states that "transacting business in interstate commerce" does not constitute transacting business in Florida. Consequently, there is no requirement for Air Canada to register to do business in the State of Florida. A copy of § 607.1501(2) (i) Fla. Stat. (2015) is attached hereto for your ease of reference.

/2.

Thank you for your time and attention to this matter. Please do not hesitate to contact me if you have any questions or concerns.



Samantha W. Foxen
Counsel - Commercial
SWF/am

Encl.

cc. Daniel Magny, Senior Counsel & Managing Attorney, International, Alliance & Regulatory Affairs
Lorraine Murray, Real Estate Programs Manager

BUSINESS
ORGANIZATIONS

Chapter 607
FLORIDA BUSINESS CORPORATION
ACT

607.1501 Authority of foreign corporation to transact business required.—

- (1) A foreign corporation may not transact business in this state until it obtains a certificate of authority from the Department of State.
- (2) The following activities, among others, do not constitute transacting business within the meaning of subsection (1):
 - (a) Maintaining, defending, or settling any proceeding.
 - (b) Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs.
 - (c) Maintaining bank accounts.
 - (d) Maintaining officers or agencies for the transfer, exchange, and registration of the corporation's own securities or maintaining trustees or depositaries with respect to those securities.
 - (e) Selling through independent contractors.
 - (f) Soliciting or obtaining orders, whether by mail or through employees, agents, or otherwise, if the orders require acceptance outside this state before they become contracts.
 - (g) Creating or acquiring indebtedness, mortgages, and security interests in real or personal property.
 - (h) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts.
 - (i) Transacting business in interstate commerce.

AIR CANADA



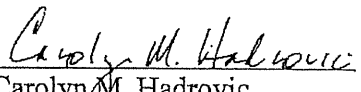
CERTIFICATE

I, Carolyn M. Hadrovic, Corporate Secretary of Air Canada (the "Corporation"), hereby certify that pursuant to a resolution adopted by the Board of Directors of the Corporation under By-Law No. 1 and to the delegated authorities thereunder, Amos Kazzaz, Senior Vice President, Financial Planning & Analysis is authorized to execute on behalf of the Corporation the Non-Signatory Airline Agreement between the Corporation and Palm Beach County.

I further certify that this authority was effective as of October 1, 2015 and has not been revoked and is in full force.

Dated at Montreal, Quebec, this 23rd day of November, 2015.

AIR CANADA


Carolyn M. Hadrovic
Corporate Secretary

Steve Schlamp

From: Scott Marting [SMarting@pbcgov.org]
Sent: Tuesday, January 12, 2016 8:11 AM
To: Steve Schlamp
Subject: RE: Air Canada COI

Steve – I will tentatively approve this so the agenda item should not be held up. My guess is that ITS is working on it, so if any other issues arise, please let me know and we can figure it out.

Thanks!

Scott Marting, ARM, CSP
Insurance and Claims Manager
Property and Liability Division
Palm Beach County Risk Management
100 Australian Avenue, Suite 200
West Palm Beach, FL 33406
smarting@pbcgov.org
Office: 561-233-5432
Fax: 561-233-5420



This communication is part of the claims files maintained by the risk management program administered by Palm Beach County, a subdivision of the state, and is confidential and exempt from the provisions of section 119.07(1), F.S., and section 24(a), Art I of the Florida Constitution, as provided by section 768.28(16), F.S. This communication also may be attorney-client privileged or work-product privileged. It may reflect a mental impression, conclusion, litigation strategy, or legal theory of a public agency attorney or a public agency, that was prepared exclusively for civil litigation or in anticipation of imminent civil litigation by a public agency attorney and, thus, is exempt from production under the public records laws pursuant to Section 119.071(d)1, F.S. This may also be a communication sent in furtherance of settlement that is inadmissible in a court proceeding. PLEASE CONSULT THE SENDER BEFORE PRODUCING THIS COMMUNICATION PURSUANT TO A REQUEST FOR PRODUCTION OR A PUBLIC RECORDS REQUEST. Please advise the sender and delete this E-mail in the event that has been sent to you in error. Thank you.

From: Steve Schlamp [<mailto:schlamp@pbia.org>]
Sent: Monday, January 11, 2016 5:45 PM
To: Scott Marting
Subject: Air Canada COI

Hi again – similar to the WestJet issue, the COI for Air Canada expired 12/15/15 but they sent ITS an updated COI last week but ITS hasn't been updated. Attached is the new COI that exp 12/15/16. If ok, and the override requests continue, please reply that Air Canada is in compliance as we wish to submit this to the Board for the 2/9/16 agenda. Thank you.

Steve

**FIRST AMENDMENT TO NON-SIGNATORY AIRLINE AGREEMENT
BETWEEN PALM BEACH COUNTY AND AIR CANADA**

THIS FIRST AMENDMENT TO THE NON-SIGNATORY AIRLINE AGREEMENT (this "Amendment") is made and entered into this _____, 2016, by and between Palm Beach County, a political subdivision of the State of Florida ("County"), and Air Canada, a Canadian Corporation, having its offices and principal place of business at 7373 Cote Vertu West, Ville Saint Laurent, Quebec, Canada ("Airline").

WITNESSETH:

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

WHEREAS, pursuant to the Non-Signatory Airline Agreement between County and Airline dated DEC 09 2015, 2015 (the "Agreement"), Airline leases various Airport Terminal facilities and equipment in connection with its operations as a commercial air carrier; and

WHEREAS, the parties desire to amend the Agreement as provided for herein.

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. Section 3.04, Condition of Airline Premises and Airport, of the Agreement is hereby deleted in its entirety and replaced with the following:

3.04 Condition of Airline Premises and Airport. With the exception of those facilities and fixtures that County is required to maintain and repair hereunder, Airline expressly acknowledges that it has inspected the Airline Premises, including, but not limited to, all finishes, furniture, fixtures and equipment therein, and accepts the same "As Is" in the condition existing as of the Effective Date. Airline further acknowledges that County has made no representations or warranties of any nature whatsoever regarding the Airport or the Airline Premises including, but not limited to, the physical and/or environmental condition of the Airline Premises, or any improvements located thereon, or the value of the Airline Premises or improvements thereto, their zoning, or the suitability of the Airline Premises, or any improvements thereto, or, other than the license granted herein, Airline's legal ability to use the Airline Premises or Airport for Airline's intended use.

3. Section 12.06, Removal of Personal Property, of the Agreement is hereby amended to delete subsection B in its entirety and replace it with the following:

B. Any personal property of Airline, with the exception of Airline's aircraft, aircraft parts or aircraft engines, not removed in accordance with this Section, at the option of County, may be removed and placed in storage by County at the sole cost of Airline, or may become the property of County, all at no cost to County. In the event County does not elect to take ownership of the property, it may dispose of same by either public or private sale and retain the proceeds thereof. Any costs of removal and disposition not covered by such proceeds shall be borne by Airline.

4. Section 14.06, Reassignment of Preferential Use Premises, and Section 14.07, Relocation Expenses, of the Agreement are hereby deleted in their entirety and replaced with the following:

14.06 Reassignment of Preferential Use Premises. County reserves the right to reassign one or more of Airline's gates located within Airline's Preferential Use Premises to another Air Transportation Company if: (1) Airline's scheduled average for any individual gate utilization falls below three (3) flights per gate per weekday (including flights of approved sublicensees, Air Transportation Companies that are ground handled by Airline, and other Air Transportation Companies accommodated by Airline); (2) County determines that there is a reasonable need for the Preferential Use of such gate(s) by another Signatory Airline; (3) the other Signatory Airline meets the required three (3) flights per gate per weekday minimum; (4) County has no available gate to assign to the other Air Transportation Company; and (5) there are no unassigned gates or other gates used by other Air Transportation Companies with lower average weekday utilization. Prior to such reassignment becoming effective, Airline shall have a ninety (90) day period to adjust its schedule to three (3) or more flights per gate per week day to avoid reassignment. In the event of reassignment, Airline will be entitled to reimbursement, in the form of Rental Credits, for the replacement cost of improvements installed or constructed by Airline in Airline's existing Preferential Use Premises, if any, and reasonable relocation costs. The costs associated with extraordinary tenant improvements will not be reimbursed by County, unless approved in advance in writing by County, which approval may be granted or withheld in County's sole and absolute discretion. When determining specific Preferential Use Premises to be reassigned, County shall coordinate with Airline to ensure that: the space Airline retains will be sufficient to support Airline's operations at the Airport; and Airline's fees and charges are adjusted equitably in direct proportion to the amount of the retained space.

14.07 Relocation Expenses. In an effort to optimize passenger flow and use of the Airport and/or to minimize the need for construction of improvements, County may request Airline to relocate its operations to alternate areas within the Terminal. Subject to the terms and conditions of this Agreement, and subject to Airline's consent to proposed relocation, Airline shall be eligible for reimbursement of its reasonable and necessary relocation costs, as approved by County, through Rental Credits. Relocation costs may include moving expenses, construction, signage, rewiring, and other costs incidental to the relocation. Prior to relocation, Airline shall submit a proposal outlining the necessary costs for the relocation, including any plans or specifications for construction, if any. Airline shall use Commercially Reasonable efforts to minimize costs. County shall retain the right to require competitive quotes for work submitted in the relocation proposal. Airline's request for reimbursement shall include documentation reasonably satisfactory to County evidencing the costs incurred by Airline to complete the relocation, including the documentation listed in Section 8.03(C)(3). Airline's fees and charges shall be adjusted equitably in direct proportion to the amount of the relocated space.

5. Section 20.08, Security, of the Agreement is hereby deleted in its entirety and replaced with the following:

20.08 Security. Airline acknowledges and accepts that while Airline is in possession of its Preferential Use Premises it has full responsibility for the security and protection of Airline's Preferential Use Premises and any and all inventory, equipment, and facilities now existing or hereafter placed on or installed in or upon the Airline Premises and for the prevention of unauthorized access to the Airline Premises and expressly agrees to comply with all rules and regulations of County, PBSO, the Department of Homeland Security and all other governmental entities that now or may hereafter have jurisdiction over security of the Airport. Airline fully understands that the police security protection provided by County at the Airport is limited to that provided to any other business situated in Palm Beach County by PBSO, and expressly acknowledges that any special security measures deemed necessary or desirable for additional protection of the Airline Premises and improvements constructed thereon shall be the sole responsibility of Airline and shall involve no cost to County. Airline further expressly acknowledges and accepts responsibility to maintain the security of the Airfield from or through the Airline Premises

to the aircraft operations area and hereby agrees to fully comply with all federal, state and local laws regulating security at the Airport and with all rules and regulations of the Department and County concerning security procedures at the Airport, as now or hereafter amended, including, but not limited to, 49 CFR 1542 and the Airport Security Program. If Airline, its officers, employees, agents, or those under Airline's control shall fail or refuse to comply with the aforementioned security requirements and such non-compliance results in a monetary penalty being assessed against County, Airline shall be responsible for the costs thereof and shall reimburse County in the full amount of any such monetary penalty.

6. 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.

7. This Amendment shall become effective when signed by both the parties hereto 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 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: *Sam Kelly*
Director, Department of Airports

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

AIRLINE:
By: *Amos Kazzaz*
Amos Kazzaz
Senior Vice President
Financial Planning & Analysis
Title: _____

NEEL SONEDI
Signature

NEEL SONEDI

Print Name
Lorraine Murray
Signature

LORRAINE MURRAY
Print Name

(Seal)

JP
SF
11/17/15
AC Legal

Carol M. Halverson
Corporate Secretary