

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	* 0	_____	_____	_____	_____
# 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. Although this Amendment provides for the potential reimbursement of the cost of improvements through rental credits, no projects are currently anticipated.

C. Departmental Fiscal Review: CM Summers

III. REVIEW COMMENTS

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

OP LAL L 2/8/16
 OFMB 2/8/16

D. J. [Signature] 2/11/16
 Contract Dev. and Control
 2/11/16

B. Legal Sufficiency:

[Signature] 2/12/16
 Assistant County Attorney

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 FIXED BASE OPERATOR LEASE AGREEMENT
BETWEEN PALM BEACH COUNTY AND PIEDMONT HAWTHORNE AVIATION,
LLC D/B/A LANDMARK AVIATION**

This **Second Amendment to Fixed Based Operator Lease Agreement** (this "Amendment") is made and entered into this _____, 20__ by and between Palm Beach County, a political subdivision of the State of Florida ("County"), and **Piedmont Hawthorne Aviation, LLC, d/b/a Landmark Aviation**, a Delaware limited liability company, having its office and principal place of business at 1500 CityWest Boulevard, Suite 600, Houston, Texas 77042 ("Tenant").

WITNESSETH:

WHEREAS, County, by and through its Department of Airports, owns and operates the North Palm Beach County General Aviation Airport and Palm Beach County Glades Airport, both of which are located in Palm Beach County, Florida; and

WHEREAS, County issued a Request for Proposals for Fixed Base Operator Lease Agreement at the North Palm Beach County General Aviation and Palm Beach County Glades Airports, RFP No. NCGL 10-5 for the provision of fixed base operator services at both airports; and

WHEREAS, the parties entered into that certain Fixed Base Operator Lease Agreement dated July 20, 2010 (R-2010-1109), as amended (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. Exhibit "E" to the Lease is hereby replaced with Exhibit "E" to this Amendment.
3. Article 2, Definitions, is hereby amended to add the following:
 - 2.63 "**Short Term Use**" has the meaning set forth in Section 5.03(G).
4. Section 4.06(A) of the Lease is hereby deleted in its entirety.
5. Section 5.03 of the Lease is hereby amended to add the following:
 - (G) In the event Tenant intends to provide for the lease, license, use or occupancy of buildings or improvements located within the Premises, or any portion thereof, for a period less than a calendar month ("**Short Term Use**"), including, without limitation, the use of individual storage hangars for short-term community storage, Tenant shall provide County with its proposed Rental Rates for Short Term Use for review and approval by County, which approval shall not be unreasonably withheld, conditioned or delayed; provided, however, the Rental Rates for any Short Term Use shall be no less than the approved monthly Rental Rate calculated on a per diem basis. Tenant may charge a fair, reasonable and nondiscriminatory premium for Short Term Use, consistent with the rates and charges imposed by comparable general aviation airports located in the State of Florida.

6. Section 6.06, Inspector General, of the Lease is hereby deleted in its entirety and replaced with the following:

6.06 Inspector General. Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the Concessionaire, 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 interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

7. Section 10.01, Tenant's Maintenance Obligations, is hereby amended to add the following:

- (O) Except as otherwise provided for herein, County agrees that Tenant shall be entitled to reimbursement in the form of rental credit for the reasonable, actual and necessary costs incurred by Tenant for improvements to the Premises requested in writing by the Department. Nothing in this Section shall be construed as modifying the parties' respective maintenance obligations under the Lease or as obligating County to reimburse Tenant for any of the Required Improvements.
 - (1) Tenant shall solicit no less than three (3) competitive quotes for any expenditure of more than Fifty Thousand Dollars (\$50,000). Unless otherwise approved in writing by the Department, Tenant shall obtain the goods and/or services from the contractor or vendor having submitted the lowest quote.
 - (2) Requests for reimbursement shall be accompanied by copies of quotes Tenant has solicited in accordance with this Section, if applicable, and documentation reasonably satisfactory to County, evidencing the costs incurred by Tenant, which shall include original invoices and receipts issued by the contractor, vendor or supplier. Reimbursement requests shall be certified by an authorized officer of Tenant that all expenses claimed have been paid by Tenant.
 - (3) County shall have the right to conduct inspections of the facilities and improvements to ensure that work has been completed as detailed in Tenant's reimbursement request.
 - (4) County shall approve or deny a request for reimbursement submitted in accordance with the requirements of this Section within sixty (60) days of receipt of a written request for reimbursement and supporting documentation. County shall not unreasonably withhold or delay approval of a request for reimbursement of costs incurred by Tenant pursuant to this Section; provided, however, Tenant acknowledges and agrees that it shall not be unreasonable for County to withhold approval or deny a request for reimbursement if Tenant has failed to submit the request in accordance with the requirements of this Section or for improvements not requested by County in writing to Tenant.
 - (5) Tenant acknowledges and agrees that reimbursement shall be

solely in the form of rental credits against future amounts payable hereunder by Tenant and shall not be in the form of cash reimbursement.

8. Section 10.05, Operation and Maintenance of Fuel Farms, is hereby amended to add the following:

- (I) As provided for in Exhibit "E", Tenant shall, at its sole cost and expense, install a self-serve fuel rack for Avgas customers desiring to fuel their own aircraft at the North County Airport in a location approved by County. The self-serve fuel tank shall be above ground and shall be able to hold no less than two thousand (2,000) gallons of fuel. The parties agree that provisions of Section 10.04(D) related to maintenance of the County-owned Fuel Farms shall not apply to the self-service fuel rack to be installed by Tenant pursuant to this Section. Notwithstanding any provision of this Lease to the contrary, Tenant shall be fully responsible for the ownership, permitting, maintenance and liability of all components of the self-service fuel rack at all times during the Term and any extension thereof. Upon expiration or earlier termination of this Lease, County may, at County's sole option, require: (i) Tenant to assign all right, title and interest to the self-service fuel rack and all related appurtenances to County or, at County's option, to a successor lessee or assignee, and thereafter the self-service fuel rack shall become the absolute property of County, or successor lessee or assignee, who shall have every right, title and interest therein; or (ii) remove the self-service fuel rack and all related appurtenances at no cost to County. Upon the request of County, Tenant shall provide County with a bill of sale or other evidence of the transfer of ownership of the improvements together with evidence satisfactory to County, or the successor lessee or assignee, that the improvements are free from liens, mortgages and other encumbrances. In the event County requires assignment of rights, title and interest in the self-service fuel rack to a third party, Tenant hereby reserves the right to require reasonable indemnification from such third party as to any and all faults, without recourse and without any representation or warranty, expressed or implied, as to merchantability, condition or fitness or compliance with governmental requirements.

9. Article 25, Non-Discrimination, of the Lease is hereby deleted in its entirety and replaced with the following:

25.01 Non-Discrimination in County Contracts. 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.

(B) 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.

(C) 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.

25.03 Americans with Disabilities Act. Tenant shall comply with all applicable requirements of the Americans with Disabilities Act, as now or hereafter amended and any successor laws or regulations concerning the same subject matter.

10. Article 27, Miscellaneous, is hereby amended to add the following:

27.30 No Third Party Beneficiaries. No provision of this Lease is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Lease, including but not limited to any citizen or employees of County and/or Tenant.

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 the 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:

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

SHARON R. BOCK
Clerk and Comptroller

By: _____
Deputy Clerk

By: _____
Mary Lou Berger, Mayor

(SEAL)

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND CONDITIONS

By: _____
Assistant County Attorney

By: [Signature]
Director, Department of Airports

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

TENANT:
Piedmont Hawthorne Aviation, LLC,
d/b/a Landmark Aviation

[Signature]
Signature
Sofia C. Gyomlai
Print Name

By: [Signature]
Signature

[Signature]
Signature
DAVID FRANKS
Print Name

ERIC M. LEVENHAGEN
Print Name
ASST. SECY / ASST. GEN COUNSEL
Title

(SEAL)

EXHIBIT "E"

REQUIRED IMPROVEMENTS

NORTH COUNTY AIRPORT	
Description	Completion Schedule
Terminal Building (11600), which shall include: - painting of exterior of building, including trim - refurbishment/renovation of lobby, restrooms, pilot shower room and pilot lounge, including installation of new furniture in lobby and pilot lounge	Within 24 months from the Commencement Date
Installation of electrical generator to serve Fuel Farm and Terminal Building (11600)	On or before Commencement Date
Sandblast, prime and paint 10 existing shadeports	Within 24 months from the Commencement Date
Repaint structural steel and bi-fold hinges on Building No. 11250	Within 54 months from the Commencement Date
Install a self-serve fuel rack for Avgas. The self-serve fuel tank shall be above ground and shall be able to hold no less than two thousand (2,000) gallons of fuel.	Within 72 months from the Commencement Date
PAHOKEE AIRPORT	
Description	Completion Schedule
Terminal Building, Building No. 3800 -installation of new furniture	Within 30 days from the Commencement Date
Installation of electrical generator to serve Fuel Farm	Within 10 days from the Commencement Date
Signage	Within 30 days from the Commencement Date

AFFIDAVIT OF LIMITED LIABILITY COMPANY

STATE OF TEXAS

COUNTY OF HARRIS

BEFORE ME, the undersigned authority, personally appeared, the undersigned who by me being first duly sworn, deposes and says that:

1. The undersigned is the Assistant Secretary and Assistant General Counsel of Landmark FBO, LLC ("Sole Member"), the sole member of Piedmont Hawthorne Aviation, LLC d/b/a Landmark Aviation, a Delaware limited liability company authorized to do business under the laws of the State of Florida ("Company").

2. The Application for Authorization of the Company has been filed, and is on file with the Florida Department of State. The Authorization is 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 member managed limited liability company.

5. Eric M. Levenhagen, Assistant Secretary and Assistant General Counsel of the Company ("Levenhagen") is authorized 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. Levenhagen has the right and authority, on behalf of the Company, to enter into that certain Second Amendment to Fixed Base Operator Lease Agreement 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, including amendment(s) and termination of such Agreement.

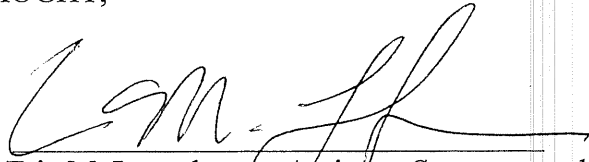
7. Upon execution and delivery of such Agreement and documents by Levenhagen, all of the aforesaid shall be valid agreements of and be binding upon the Company.

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.

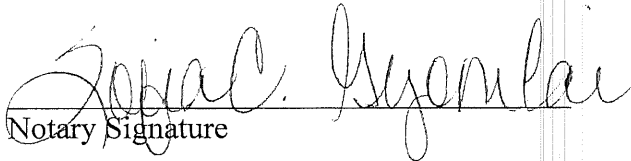
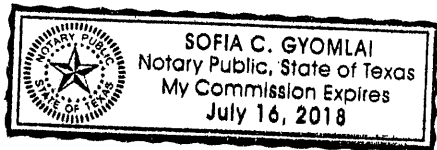
9. The undersigned acknowledges that affiant is familiar with the nature of an oath and the penalties provided by the laws of the State of Florida and that this Affidavit is being given to induce Palm Beach County to enter into the Agreement.

FURTHER AFFIANT SAYETH NAUGHT,



Eric M. Levenhagen, Assistant Secretary and
Assistant General Counsel of Landmark
FBO, LLC, Sole Member of Piedmont
Hawthorne Aviation, LLC

SWORN TO AND SUBSCRIBED before me on this 20th day of November, 2015, by Eric M. Levenhagen, Assistant Secretary and Assistant General Counsel of Landmark FBO, LLC, Sole Member of Piedmont Hawthorne Aviation, LLC on behalf of the Company who is personally known to me and who did take an oath.



Notary Signature

Sofia C. Gyomlai
Print Notary Name

NOTARY PUBLIC
State of Texas

My Commission Expires:

7/16/2018

Steve Schlamp

From: Scott Marting [SMarting@pbcgov.org]
Sent: Tuesday, December 22, 2015 3:16 PM
To: Martha K. LaVerghetta
Cc: Steve Schlamp
Subject: RE: ITS Account Number: PLC770 | Insured: Piedmont Hawthorne Aviation

It appears the issue is with the property COI not specifically addressing wind coverage. They have "all risk" marked in the property section, but then specifically mention what is covered in the description section (where it does not mention wind).

I would let ITS continue its review (it appears they got the updated ones from you about 24 hours ago), but please do not hold up the agenda item. Risk Management agrees to let the item proceed through the review while the insurance is gathered/approved. Please feel free to send this e-mail to contracts should any issues arise.

Thank you,

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: Martha K. LaVerghetta [<mailto:mklaverghetta@pbia.org>]
Sent: Tuesday, December 22, 2015 2:56 PM
To: Scott Marting
Cc: Steve Schlamp
Subject: FW: ITS Account Number: PLC770 | Insured: Piedmont Hawthorne Aviation