

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: September 13, 2016 [X] Consent [] Regular
[] Workshop [] Public Hearing

Department:
Submitted By: Department of Airports
Submitted For: Department of Airports

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: a First Amendment to Airport Ground Transportation Concession Agreement (Agreement) (R-2015-0776) with SE Florida Transportation, LLC, a Florida limited liability company, providing for reduction of per capita charge to \$0.09 per arriving (deplaned) passenger and authorizing the Department of Airports (Department) to approve vehicles older than five years or with more than 350,000 miles for use at Palm Beach International Airport (PBI) effective October 1, 2016.

Summary: SE Florida Transportation provides on-demand taxi, sedan and shared-ride services to arriving passengers at PBI pursuant to the Agreement. SE Florida Transportation pays monthly concession fees equal to the greater of a monthly minimum guarantee or a per capita charge of \$0.144 per deplaned passenger. The monthly minimum guarantee is currently \$15,000 per month and is adjusted on an annual basis. Although PBI has had an increase in passenger traffic, SE Florida Transportation has been experiencing a decline in the number of passenger trips and revenues due the operation of transportation network companies at PBI. SE Florida Transportation has requested a reduction in the per capita charge to \$0.09 per deplaned passenger. In addition, the Agreement currently requires vehicles to be no more than five years old and have no more than 350,000 miles. Approval of this Amendment will allow the Department to approve the use of vehicles that do not meet these requirements on a case by case basis. Countywide (AH)

Background and Justification: Request for Proposals (RFP) No. PB 15-10 for on-demand ground transportation services was issued on April 15, 2015. At the time the RFP was issued, it was unclear what effect the operation of transportation network companies would have on ground transportation at PBI; therefore, the Agreement provided for abatement of the per capita charge in the event of a decline in passenger trips as the result of the operation of transportation network companies. The reduced per capita charge will result in concession fees that are roughly equivalent to the per trip fee of \$2.50 established for transportation network companies pursuant to Resolution No. 2016-0758. SE Florida Transportation has also requested flexibility to allow the Department to approve use vehicles that do not satisfy the age or mileage requirements on a short term basis primarily during fleet transition. All vehicles will continue to be required to satisfy the vehicle inspection requirements of the Vehicle for Hire Ordinance that is managed by Consumer Affairs.

Attachments:
Amendment (3)

Recommended By: [Signature] Department Director Date: 8/12/16
Approved By: [Signature] County Administrator Date: 8/17/16

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 | _____ | <u>\$173,000</u> | <u>\$174,000</u> | _____ | _____ |
| Program Income (County) | _____ | _____ | _____ | _____ | _____ |
| In-Kind Match (County) | _____ | _____ | _____ | _____ | _____ |
| NET FISCAL IMPACT | ===== | <u>\$173,000</u> | <u>\$174,000</u> | ===== | ===== |
| # ADDITIONAL FTE POSITIONS (Cumulative) | _____ | _____ | _____ | _____ | _____ |

Is Item Included in Current Budget? Yes X No _____
 Budget Account No: Fund 4100 Department 120 Unit 8340 Rsource 4468
 Reporting Category _____

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

This Amendment will require SE Florida Transportation to pay concession fees equal to the greater of a minimum monthly guarantee or \$0.09 per deplaned passenger, which is a \$0.054 reduction from the original per capita charge. The estimated impact of the reduced per capita charge, assuming minimal passenger growth, is shown above. Revenue to the Department under the proposed terms of this contract is estimated to be approximately \$289,000 per year. Actual results will vary based on passenger volume.

Increased revenues from transportation network companies are estimated to mitigate most, if not all, revenue declines caused by the per capita decrease.

C. Departmental Fiscal Review: cm Sum

III. REVIEW COMMENTS

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

[Signature] 8/9/16
 OFMB 8/8/16
 8/5/16

[Signature] 8/11/16
 Contract Dev and Control

B. Legal Sufficiency:

Anne Helgard 8/12/16
 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)

**FIRST AMENDMENT TO
AIRPORT GROUND TRANSPORTATION CONCESSION AGREEMENT**

This First Amendment to Airport Ground Transportation Concession Agreement (this "Amendment") is made and entered into this __ day of _____, 20__ by and between Palm Beach County ("County"), a political subdivision of the State of Florida, and SE Florida Transportation, LLC, a Florida limited liability company ("Concessionaire"), having its office and principal place of business at 1700 North Florida Mango Road, West Palm Beach, FL 33409.

WITNESSETH:

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

WHEREAS, the parties entered into that certain Airport Ground Transportation Concession Agreement dated June 23, 2015 (R-2015-0776) ("Agreement"); 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 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. **Reduction of Per Capita Charge.** Section 5.02, Per Capita Charge, Minimum Monthly Guarantee, is hereby amended to delete subsections (A) and (B) in their entirety and replace them with the following:

(A) The initial Per Capita Charge for the Initial Term shall be \$0.09.

(B) The Per Capita Charge for the Renewal Term shall not be less than the greater of: (i) \$0.09; or (ii) the Per Capita Charge in effect prior to the expiration of the Initial Term.

3. **Adjustment of Per Capita Charge.** Section 5.13, Abatement of Monthly Per Capita Payment, is hereby deleted in its entirety and replaced with the following:

5.13 Adjustment of Per Capita Charge by County. In the event County increases the per trip fee paid by Transportation Network Companies for the privilege of operating at the Airport, the Department may increase the Per Capita Charge paid by Concessionaire upon thirty (30) days prior written notice to an amount not to exceed the lesser of: (i) \$0.1440, or (ii) an amount that would ensure the Concession Fees paid by Concessionaire, if such Concession Fees were paid on the per trip basis, would be roughly

equivalent to the per trip fee paid by Transportation Network Companies operating at the Airport.

4. **Vehicle Standards.** Section 6.02(F), Vehicle Standards, is hereby amended to delete subsection (3) in its entirety and replace it with the following:

- (3) All vehicles used in the operation of the Concession shall not be more than five (5) years old based on the vehicle year as shown on the vehicle's registration, or exceed three hundred fifty thousand (350,000) miles, unless otherwise approved in writing by the Department. The "retirement date" listed below is the last date such vehicle may provide services under the Concession Agreement based upon the age of the vehicle.

5. **Scrutinized Companies.** Section 21.09, Scrutinized Companies, is hereby deleted in its entirety and replaced with the following:

21.09 Scrutinized Companies. As provided in Section 287.135, Florida Statutes, by entering into this Agreement or performing any work in furtherance hereof, Concessionaire certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies With Activities in Sudan List or Scrutinized Companies With Activities in The Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes, or on the Scrutinized Companies that boycott Israel List, or is engaged in a boycott of Israel, pursuant to Section 215.4725, Florida Statutes, or is engaged in business operations in Cuba or Syria. If County determines, using credible information available to the public, that a false certification has been submitted by Concessionaire, this Agreement may be terminated and a civil penalty equal to the greater of Two Million Dollars (\$2,000,000) or twice the amount of this Agreement shall be imposed, pursuant to Section 287.135, Florida Statutes.

6. **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.

7. **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.

8. **Incorporation by Reference.** Exhibits attached hereto and referenced herein shall be deemed to be incorporated in this Amendment by such reference.

9. **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.

10. **Effective Date.** This Amendment shall be considered effective October 1, 2016. The parties acknowledge and agree that the reduction to the Per Capita Charge shall not be considered retroactive to the Commencement Date.

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

ATTEST:

SHARON R. BOCK

By: _____
Clerk and Comptroller

(SEAL)

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

By: _____
Mary Lou Berger, Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____
County Attorney

APPROVED AS TO TERMS
AND CONDITIONS

By: *[Signature]*
Director, Department of Airports

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

Nita O'Shea
Signature

Nita O'Shea
Print Name

[Signature]
Signature

Dominick Toor
Print Name

CONCESSIONAIRE

SE FLORIDA TRANSPORTATION, LLC

By: *[Signature]*
Signature

Michael Dean
Print Name

Regional General Manager
Title

(Seal)

[Simple View](#)

Summary of Certificates

This report displays detailed Certificate of Insurance information for a selected Insured. Any items shown in red are deficient. Click on the Insured Name to update contact information.

Thursday, July 21, 2016

[Images](#)

[Contracts](#)

Insured: SE Florida Transportation, LLC

Insured ID: R2015-0776-PBC

Status: Compliant

ITS Account Number: PLC1508

Project(s): Palm Beach County - Airport Properties

| Insurance Policy | Required | Provided | Override |
|--|-----------------|-----------------------|----------|
| <u>General Liability</u> | | | |
| Expiration: 7/1/2017 | | | |
| General Aggregate: | \$1,000,000 | \$1,000,000 | |
| Products - Completed Operations Aggregate: | \$1,000,000 | \$1,000,000 | |
| Personal And Advertising Injury: | \$1,000,000 | \$1,000,000 | |
| Each Occurrence: | \$1,000,000 | \$1,000,000 | |
| Fire Damage: | \$100,000 | \$1,000,000 | |
| Medical Expense: | \$5,000 | \$10,000 | |
| <u>Automobile Liability</u> | | | |
| Expiration: 7/1/2017 | | | |
| | All Owned Autos | Any Auto not provided | X |
| | Hired Autos | not provided | X |
| | Non-Owned Autos | not provided | X |
| Combined Single Limit: | \$300,000 | \$500,000 | |
| <u>Workers Compensation/Employers Liability</u> | | | |
| Expiration: 7/1/2017 | | | |
| Each Accident: | \$1,000,000 | \$1,000,000 | |
| Disease - Policy Limit: | \$1,000,000 | \$1,000,000 | |
| Disease - Each Employee: | \$1,000,000 | \$1,000,000 | |

Notifications

There were no deficiency letters issued.

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

[Certificate Submittal](#)

AFFIDAVIT OF LIMITED LIABILITY COMPANY

STATE OF Florida
COUNTY OF Palm Beach

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 Manager of SE Florida Transportation, LLC, a Florida limited liability company, a 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 manager managed 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. The undersigned has the right and authority to enter into that certain First Amendment 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 the undersigned, 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.

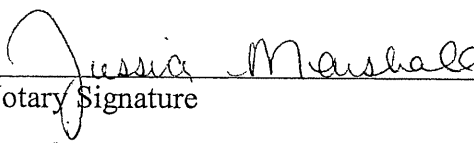
9. The undersigned acknowledges that affiant is familiar with the nature of an oath and the penalties provided by the laws of the State of Florida and that this Affidavit is being given to induce Palm Beach County to enter into the Agreement.

FURTHER AFFIANT SAYETH NAUGHT,


_____, Individually and as
Manager

SWORN TO AND SUBSCRIBED before me on this 16th day of JUNE, 2016, by Michael Dean, Manager/Member of SE Florida Transportation, LLC, a Florida limited liability company, on behalf of the Company who is personally known to me OR who produced _____, as identification and who did take an oath.





Notary Signature
Jessica Marshall

Print Notary Name

NOTARY PUBLIC

State of Florida at large

My Commission Expires:

11/16/2019