

AGENDA ITEM SUMMARY

Department:

Submitted For:

Approved By: pt VCBaker 9/15/16
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	=====	=====	=====	=====	=====
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes X No _____

Budget Account No: Fund 4100 Department 120 Unit 8320/8430 RSource Various
Reporting Category _____

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

The Signatory Airline Agreement (R-2014-1033) establishes the basis for all airline rates and charges for the operation of commercial air service at PBIA. The PBIA Operating Permit allows airlines or charter operators that service PBIA on a short term basis for specific flight operations to utilize the terminal and incorporates the rates and charges established under the Signatory Airline Agreement. Revenues from terminal rents, landing fees, and baggage system charges will average \$14 to \$16 million annually over the five-year period. Rates are established to recover the cost of airport operations, maintenance, and debt service for the terminal, terminal systems, and airfield.

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

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

[Signature] 8/31/16
OFMB ET 8/31

[Signature] 9/9/16
Contract Dev. and Control
9/9/16

B. Legal Sufficiency:

[Signature] 9/12/16
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)

PALM BEACH INTERNATIONAL AIRPORT
OPERATING PERMIT

1. Air Transportation Company ("Permittee"): Permittee: <u>TEM Enterprises d/b/a XTRA Airways</u> Address: <u>121 Alhambra Plaza, Suite 1700</u> <u>Coral Gables, Florida 33134</u> Phone: <u>305-764-3200 x2215</u> Fax: <u>305-529-6666</u>	2. Contact Person: Name: <u>Jim Sheehan</u> Title: <u>Mgr of Services</u> Address: <u>121 Alhambra Plaza, Suite 1700</u> <u>Coral Gables, Florida 33134</u> Phone: <u>305-764-3200 x2215</u> Mobile: <u>954-610-5148</u> Fax: _____ E-mail: <u>jsheehan@xtraairways.com</u>
3. Ground Handler Contact Information: Ground Handler: <u>FSS</u> Contact: <u>Dan Schrier</u> Phone: <u>561-284-9717</u> E-mail: <u>dschrier@fsspeople.com</u>	
4. Description of Permitted Flight Operations: A description of the flight operations permitted hereunder is set forth in Attachment "A". For the purposes of this Operating Permit, a flight operation shall consist of one aircraft landing and takeoff. Permittee shall notify the Palm Beach County Department of Airports ("Department of Airports") no less than 48 hours in advance of any voluntary changes to the permitted flight operations.	
5. Insurance Requirements: Permittee shall maintain the following types and amounts of insurance coverage: <u>Aircraft Liability</u> - \$50,000,000 Combined Single Limit, including Passenger, Bodily Injury (including death) & Property Damage Liability. <u>Business Automobile Liability</u> - covering Owned, Hired & Non-Owned Vehicles. If Permittee will not be utilizing vehicles owned by Permittee, this policy should include Hired and Non-Owned Vehicles only. <u>No Vehicle AOA Access Required</u> - \$1,000,000 Combined Single Limit Each Occurrence for Bodily Injury (including death) and Property Damage Liability. <u>Vehicle AOA Access Required</u> - \$5,000,000 Combined Single Limit Each Occurrence for Bodily Injury (including death) and Property Damage Liability. <u>Airline Liability/Commercial General Liability</u> <u>Aircraft with 50 seats or less</u> - \$50,000,000 Combined Single Limit Each Occurrence, subject to sub-limits and annual aggregates, where applicable, for Personal Injury \$25,000,000 sub-limit for Personal Injury to non-passengers), Bodily Injury (including death) and Property Damage and shall include, but not be limited to, Premises and Operations, Personal Injury, Products and Completed Operations, Contractual Liability. <u>Aircraft with 50 seats or more</u> - \$100,000,000 Combined Single Limit Each Occurrence, subject to sub-limits and annual aggregates, where applicable, for Personal Injury \$25,000,000 sub-limit for Personal Injury to non-passengers), Bodily Injury (including death) and Property Damage and shall include, but not be limited to, Premises and Operations, Personal Injury, Products and Completed Operations, Contractual Liability. <u>Worker's Compensation</u> - applying to all employees for Statutory Limits in compliance with Chapter 440, Florida Statutes and applicable federal laws. <u>Umbrella Liability Insurance or Excess Liability Insurance</u> - may be used to reach the limits of liability required for the Airline Liability Policy, Aircraft Liability Policy and Business Automobile Policy.	

PALM BEACH INTERNATIONAL AIRPORT
OPERATING PERMIT

<p><u>Additional Insured Endorsement.</u> “Additional Insured” endorsement on liability policies shall read: “Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, and Employees, c/o Insurance Tracking Services, Inc., P.O. Box 20270, Long Beach, CA 90801”, or as otherwise directed by the County.</p> <p><u>Certificate of Insurance.</u> Certificate(s) of Insurance shall be provided to Palm Beach County (“County”) or the County’s designated contractor certificate(s) of insurance, evidencing the coverages and amounts required hereunder prior to Permittee’s first flight operation at the Airport. Renewal certificate(s) shall be delivered to the County or its designated contractor not less than five (5) business days prior to the expiration date of any policy. Each insurance policy must be endorsed to provide that the coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except after ten (10) days written notice in the case of non-payment of premiums, or thirty (30) days written notice in all other cases, has been given to the County.</p> <p><u>Waiver of Subrogation.</u> Permittee agrees to a Waiver of Subrogation for each policy required by this Operating Permit. When required by the insurer, or should a policy condition not permit Permittee to enter into any pre-loss agreement to waive subrogation without an endorsement, then Permittee shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should Permittee enter into such an agreement on a pre-loss basis.</p>
<p><u>6. Indemnification:</u></p> <p>Permittee agrees to protect, defend, reimburse, indemnify and hold the County and its elected officers, employees and agents (“County Party”) and each of them free and harmless at all times from and against any and all liability, losses, expenses, costs, suits, claims, judgments, fines and damages (including reasonable attorney fees at trial and appellate levels) and causes of action of every kind and character (hereinafter collectively referred to as, “Damages”), or in which the County or a County Party is named or joined, arising out of Permittee’s breach of this Operating Permit or the use of the Palm Beach International Airport (“Airport”) by Permittee or Permittee’s officers, employees, agents or any other persons whomsoever acting on behalf of or at the request of Permittee (“Permittee Party”), including, but not limited to, Damages arising by reason of any damage to property or the environment, or bodily injury (including death) incurred or sustained by any party hereto, any agent or employee of any party hereto, and any third party or other person whomsoever, or any governmental agency, arising out of or incident to or in connection with the condition of the Airport, Permittee’s or a Permittee Party’s acts, omissions or operations at the Airport, or the performance, non-performance or purported performance of Permittee or Permittee Party or any breach by Permittee or Permittee Party of the terms of this Operating Permit; <u>provided, however</u>, Permittee shall not be responsible for Damages determined by a court of competent jurisdiction to be solely attributable to the negligence or willful misconduct of the County. Nothing herein shall be deemed to abrogate Permittee’s common law or statutory rights to contribution from the County for liability legally established as attributable to the County’s negligence. Each party shall give to the other reasonable notice of any such claims or actions. Permittee recognizes the broad nature of this indemnification and hold-harmless clause, and acknowledges that the County would not enter into this Operating Permit without the inclusion of such clause, and voluntarily make this covenant and expressly acknowledges the receipt of Ten Dollars (\$10.00) and such other good and valuable consideration provided by the County in support of this indemnification in accordance with the laws of the State of Florida. The obligations arising under this indemnification agreement shall survive the expiration or earlier termination of this Operating Permit.</p>
<p><u>7. Facilities Usage:</u></p> <p>Permittee shall only use those Airport terminal facilities designated by the Department of Airports for the flight operations permitted hereunder. Permittee shall have the nonexclusive right to use the public Airport facilities for the conduct of the permitted flight operations at the Airport in common with other air transportation companies operating at the Airport, including the Airport’s airfield facilities. The rights provided for herein shall be subject to rules and regulations established by the Department of Airports and subject to payment of all applicable fees and charges.</p>
<p><u>8. Fees & Charges:</u></p> <p>Permittee shall pay to the County the estimated fees and charges for each flight operation in advance, including, but not limited to, landing fees, gate usage charges, and ticket counter charges. Within five days after each flight operation, Permittee shall provide an activity report in a form and substance approved by the County. Permittee shall pay any difference between the estimated costs of each flight operation and the actual costs within 15 days of receipt of an invoice from the County. All amounts shall be payable to “Palm Beach County” and delivered to: Palm Beach County Department of Airports, Finance Division, 846 Palm Beach International Airport, West Palm Beach, FL 33406-1470. Refunds of prepaid fees and charges shall be made in accordance with the policies established by the Department of Airports.</p>
<p><u>9. Laws, Regulations and Requirements:</u></p> <p>Permittee shall comply with all applicable federal, state, local and County laws, statutes, regulations, rules, rulings, orders, ordinances, codes, requirements, policies and directives of any kind or nature, as now or hereafter amended, applicable to Permittee’s activities at the Airport, including, but not limited to, all Airport security requirements and directives, Inspector General review requirements and nondiscrimination policies, including, but not limited to, Palm Beach County Code, Sections 2-421 - 2-440 and County Resolution R-2014-1421, as may be amended. Prior to the effective date of this Operating Permit, Permittee shall submit a copy of its nondiscrimination policy or provide a written statement to County affirming its non-discrimination policy conforms to the requirements of R-2014-1421, as may be amended.</p>

PALM BEACH INTERNATIONAL AIRPORT
OPERATING PERMIT

10. Revocation of Permit:

This Operating Permit may be terminated by the County with or without cause upon prior notice to Permittee. Failure of Permittee to comply with the terms and conditions of this Operating Permit shall be considered a violation of this Operating Permit. In the event this Operating Permit is terminated due to a violation of this Operating Permit by Permittee, the County shall be entitled to retain all fees and charges paid in advance in addition to any other remedies provided by law. Venue for any action arising from this Permit shall be in Palm Beach County, Florida.

11. Signature:

This Operating Permit shall become effective when signed by the parties hereto. No provision of this Operating Permit is intended to, or shall be construed to, create any third party beneficiaries. The parties hereto have duly executed this Operating Permit as of the day and year written below.

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: Anne Helgent
County Attorney

PALM BEACH COUNTY,
a political subdivision of the State of Florida,
by its Department of Airports

By: Jim Kelly
Director

Date: AUG 22 2016

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

Witness D. McHenry
Detra McCleary
Typed or printed name

Witness Christina Rivera
Typed or printed name

(Seal)

PERMITTEE

By: Jim Sheehan
Typed or printed name

Title: Mgr. of Service

Date: July 1, 2016

ATTACHMENT "A"
DESCRIPTION OF FLIGHT OPERATIONS

Flight Operation #1:			
Arrive PBI Date: _____ Time: _____ Origin: _____ Destination: _____			
Depart PBI Date: <u>7/5/2016</u> Time: <u>0900</u> Origin: <u>MEM</u> Destination: <u>ACY</u>			
Terminal Usage:			
Per Use Ticket Counter: <u>X</u> Estimated time of usage: <u>3 hours</u>			
Aircraft Information:			
Name of Aircraft Operator: <u>XTRA Airways</u>			
Aircraft Description: <u>737-400 Tail - 688XA</u>			
Maximum Gross Landing Weight: <u>124,000</u>			
Estimated Number of Passengers: <u>150</u>			
Flight Operation #2:			
Arrive PBI Date: <u>7/8/2016</u> Time: <u>1755</u> Origin: <u>ACY</u> Destination: <u>PBI</u>			
Depart PBI Date: _____ Time: _____ Origin: _____ Destination: _____			
Terminal Usage:			
Per Use Ticket Counter: <u>no</u> Estimated time of usage: _____			
Aircraft Information:			
Name of Aircraft Operator: <u>XTRA Airways</u>			
Aircraft Description: <u>737-400 Tail - 688XA</u>			
Maximum Gross Landing Weight: <u>124,000</u>			
Estimated Number of Passengers: <u>150</u>			
Flight Operation #3:			
Arrive PBI Date: _____ Time: _____ Origin: _____ Destination: _____			
Depart PBI Date: <u>7/9/2016</u> Time: <u>0900</u> Origin: <u>PBI</u> Destination: <u>CAE</u>			
Terminal Usage:			
Per Use Ticket Counter: <u>NO</u> Estimated time of usage: _____			
Aircraft Information:			
Name of Aircraft Operator: <u>XTRA Airways</u>			
Aircraft Description: <u>737-400 Tail - 688XA</u>			
Maximum Gross Landing Weight: <u>124,000</u>			
Estimated Number of Passengers: <u>0</u>			

ATTACHMENT "A"
DESCRIPTION OF FLIGHT OPERATIONS

Flight Operation #4:			
Arrive PBI	Date: <u>8/29/16</u>	Time: <u>0900</u>	Origin: <u>CLT</u> Destination: <u>PBI</u>
Depart PBI	Date: _____	Time: _____	Origin: _____ Destination: _____
Terminal Usage:			
Per Use Ticket Counter: <u>None</u> Estimated time of usage: _____			
Aircraft Information:			
Name of Aircraft Operator: <u>XTRA Airways</u>			
Aircraft Description: <u>737-400 Tail N688XA</u>			
Maximum Gross Landing Weight: <u>124,000</u>			
Estimated Number of Passengers: <u>150</u>			
Flight Operation #5:			
Arrive PBI	Date: _____	Time: _____	Origin: _____ Destination: _____
Depart PBI	Date: <u>8/29/16</u>	Time: <u>1010</u>	Origin: <u>PBI</u> Destination: <u>ACY</u>
Terminal Usage:			
Per Use Ticket Counter: <u>Yes</u> Estimated time of usage: <u>3 Hours</u>			
Aircraft Information:			
Name of Aircraft Operator: <u>XTRA Airways</u>			
Aircraft Description: <u>737-400 Tail N688XA</u>			
Maximum Gross Landing Weight: <u>124,000</u>			
Estimated Number of Passengers: <u>150</u>			
Flight Operation #6:			
Arrive PBI	Date: <u>9/1/16</u>	Time: <u>1450</u>	Origin: <u>ACY</u> Destination: <u>PBI</u>
Depart PBI	Date: _____	Time: _____	Origin: _____ Destination: _____
Terminal Usage:			
Per Use Ticket Counter: <u>No</u> Estimated time of usage: _____			
Aircraft Information:			
Name of Aircraft Operator: <u>XTRA Airways</u>			
Aircraft Description: <u>737-400 Tail N688XA</u>			
Maximum Gross Landing Weight: <u>124,000</u>			
Estimated Number of Passengers: <u>150</u>			

ATTACHMENT "A"
DESCRIPTION OF FLIGHT OPERATIONS

Flight Operation # 2 7
Arrive PBI Date: _____ Time: _____ Origin: _____ Destination: _____
Depart PBI Date: <u>9/1/2016</u> Time: <u>1530</u> Origin: <u>PBI</u> Destination: <u>SFB</u>
Terminal Usage:
Per Use Ticket Counter: <u>No</u> Estimated time of usage: _____
Aircraft Information:
Name of Aircraft Operator: <u>XTRA Airways</u>
Aircraft Description: <u>737-400 Tail - 688XA</u>
Maximum Gross Landing Weight: <u>124,000</u>
Estimated Number of Passengers: <u>150</u>
Flight Operation # 2 8
Arrive PBI Date: <u>9/26/2016</u> Time: <u>0930</u> Origin: <u>ILM</u> Destination: <u>PBI</u>
Depart PBI Date: _____ Time: _____ Origin: _____ Destination: _____
Terminal Usage:
Per Use Ticket Counter: <u>no</u> Estimated time of usage: _____
Aircraft Information:
Name of Aircraft Operator: <u>XTRA Airways</u>
Aircraft Description: <u>737-400 Tail - 688XA</u>
Maximum Gross Landing Weight: <u>124,000</u>
Estimated Number of Passengers: <u>150</u>
Flight Operation # 8 9
Arrive PBI Date: _____ Time: _____ Origin: _____ Destination: _____
Depart PBI Date: <u>9/26/2016</u> Time: <u>1015</u> Origin: <u>PBI</u> Destination: <u>ACY</u>
Terminal Usage:
Per Use Ticket Counter: <u>Yes</u> Estimated time of usage: <u>3 Hours</u>
Aircraft Information:
Name of Aircraft Operator: <u>XTRA Airways</u>
Aircraft Description: <u>737-400 Tail - 688XA</u>
Maximum Gross Landing Weight: <u>124,000</u>
Estimated Number of Passengers: <u>0</u>

ATTACHMENT "A"
DESCRIPTION OF FLIGHT OPERATIONS

Flight Operation #4: 10									
Arrive PBI Date:	9/29/16	Time:	1550	Origin:	ACY	Destination:	PBI		
Depart PBI Date:		Time:		Origin:		Destination:			
Terminal Usage:									
Per Use Ticket Counter:		None						Estimated time of usage:	
Aircraft Information:									
Name of Aircraft Operator:								XTRA Airways	
Aircraft Description:								737-400 Tail N688XA	
Maximum Gross Landing Weight:								124,000	
Estimated Number of Passengers:								150	
Flight Operation #5: / /									
Arrive PBI Date:		Time:		Origin:		Destination:			
Depart PBI Date:	9/29/16	Time:	1630	Origin:	PBI	Destination:	CLT		
Terminal Usage:									
Per Use Ticket Counter:		No						Estimated time of usage:	
Aircraft Information:									
Name of Aircraft Operator:								XTRA Airways	
Aircraft Description:								737-400 Tail N688XA	
Maximum Gross Landing Weight:								124,000	
Estimated Number of Passengers:								150	
Flight Operation #6:									
Arrive PBI Date:		Time:		Origin:		Destination:			
Depart PBI Date:		Time:		Origin:		Destination:			
Terminal Usage:									
Per Use Ticket Counter:								Estimated time of usage:	
Aircraft Information:									
Name of Aircraft Operator:									
Aircraft Description:									
Maximum Gross Landing Weight:									
Estimated Number of Passengers:									

Steve Schlamp

From: Scott Marting [SMarting@pbcgov.org]
Sent: Thursday, August 25, 2016 11:19 AM
To: Steve Schlamp
Subject: RE: TEM Ent dba Xtra Airways

Hi Steve –

I just left you a voice mail the COI looks acceptable. Please note that even though I agreed to #2 and #3, they do carry WC and it is listed on the COI.

Thanks,

Scott Marting - ARM, CSP
Director, Risk Management
Palm Beach County Board of County Commissioners
100 Australian Avenue, Suite 200
West Palm Beach, FL 33406
561-233-5400

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: Thursday, August 25, 2016 10:51 AM
To: Scott Marting
Subject: TEM Ent dba Xtra Airways
Importance: High

Hi Scott – we have an Operating Permit form for airlines/charters that fly into PBI only occasionally. The attached, from TEM Enterprises dba Xtra Airways (Xtra), is the first entity that has used the Operating Permit. Xtra's Operating Permit and COI was just sent to ITS so it's not yet in the system, but we'd like to send the Operating Permit to the Board for R&F on the 9/27 agenda and we're at the 11th hour so need your help with a few things; they are:

- (1) In the attached Operating Permit are the insurance requirements. Also attached is Xtra's COI. Except for providing coverage for auto liab and workers comp (see below in #2 and #3), the COI appears compliant. Is it acceptable to you?
- (2) For auto liab coverage, as Xtra will not have any vehicles at PBI (Xtra is being handled by a permitted ground handling entity), please waive the auto liab requirement and inform ITS of this too so they can override this requirement.
- (3) For the workers comp coverage, as Xtra will not have any employees at PBI (Xtra is being handled by a permitted ground handling entity), please waive the workers comp coverage requirement and inform ITS of this too so they can override this requirement.

Presuming the attached and above meets with your approval, could you e-mail me back saying so? If so, we can then attach your e-mail to the agenda package so downtown knows Xtra is compliant regarding insurance. As always, thanks for your assistance.

Steve

Steven K. Schlamp
Assistant Airports Properties Manager
Palm Beach County Department of Airports
846 Palm Beach International Airport
West Palm Beach, FL 33406

(561) 471-7456 Fax: (561) 471-7427
E-Mail: schlamp@pbia.org

POWER OF ATTORNEY

TEM Enterprises, a corporation organized and existing in good standing under the laws of the State of Nevada (the "Company") hereby appoints each of Michael Hackert and James Sheehan and any other person nominated in writing as an additional attorney, each acting alone (each, an "Attorney"), to act jointly and severally, on the Company's behalf as its true and lawful attorney to enter into Palm Beach International Operating Permits between Palm beach County, a political subdivision of the State of Florida, and take all necessary action in such form as such Attorney may in his absolute and unfettered discretion consider necessary or advisable in order to give effect to such Palm Beach International Airport Operating Permits.

The Company hereby declares that all and every one of the agreements, deeds, acts, and things which shall be, or have been, executed or done by each Attorney for the aforesaid purposes shall be as good, valid, and effectual to all intents and purposes whatsoever as if the same had been executed or done by the Company.

The Company hereby undertakes from time to time and at all times to indemnify each Attorney against all costs, claims, expenses, and liabilities howsoever incurred by each Attorney in connection herewith and further undertakes to ratify and confirm whatsoever each Attorney shall lawfully do or cause to be done in or by virtue of this Power of Attorney.

The Company hereby declares that this Power of Attorney shall remain in full force and effect for a period of one year from the date hereof and until such time it shall be irrevocable.

This Power of Attorney shall in all respects be interpreted in accordance with, and governed by, the laws of the State of Florida.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK]

IN WITNESS WHEREOF this Power of Attorney has been executed on this 11th day of August 2016.

TEM Enterprises

By: 

Name: Paul J. Cummiskey

Title: Secretary

Witness:



Name: Carla Padron

Title: Para Legal

Witness:



Name: Sara Garcia

Title: Counsel

The foregoing instrument was executed before me this 11th day of August 2016 by Paul J. Cummiskey, personally known to me.



Christina Rivera, Notary Public

Miami-Dade County, Florida

