

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: **November 22, 2016**

☒ 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 receive and file: Addendum To Airline Agreement with Spirit Airlines, Inc., commencing September 15, 2016, and terminating on the date the Non-Signatory Airline Agreement with Spirit Airlines, Inc. (R-2016-0157), either expires or is canceled, providing for changes in leased facilities on a short-term basis due to seasonal demands at the Palm Beach International Airport.

Summary: Delegation of authority for execution of the standard County agreement above was approved by the BCC in R-2016-0976. Countywide (AH)

Background and Justification: N/A

Attachments: One (1) Addendum To Airline Agreement

JB
Recommended By: David Kelly 10/25/12
Department Director Date

Approved By:

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</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 X No _____
Budget Account No: Fund 4100 Department 120 Unit 8320/8430 Rsource various
Reporting Category _____

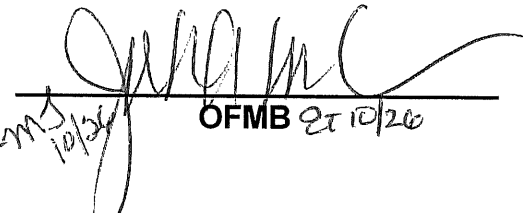
B. Recommended Sources of Funds/Summary of Fiscal Impact:

*The Addendum To Airline Agreement will provide flexibility and increase efficiency in processing seasonal air carriers; therefore, there is no fiscal impact of this action. Seasonal carriers pay approximately \$900,000 per year in fees. Revenues are not guaranteed, however, and may vary from year-to-year.

C. Departmental Fiscal Review:

III. REVIEW COMMENTS

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


OFMB 2/10/26


Contract Dev. and Control 10/31/16

B. Legal Sufficiency:


Assistant County Attorney 11/1/16

C. Other Department Review:

Department Director

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

ADDENDUM TO AIRLINE AGREEMENT

THIS ADDENDUM TO AIRLINE AGREEMENT (this "Addendum") is made and entered into this OCT 19 2016 day of OCT 19 2016, 2016, by and between Palm Beach County, a political subdivision of the State of Florida, ("County") and Spirit Airlines, Inc., a Delaware corporation, having its office and principal place of business at 2800 Executive Way, Miramar, Florida 33025 ("Airline").

WITNESSETH:

WHEREAS, County, by and through its Department of Airports (the "Department"), is the owner and operator of the Palm Beach International Airport (the "Airport"); and

WHEREAS, the parties entered into that certain Non-Signatory Airline Agreement dated December 4, 2015 (R2016-0157) (the "Airline Agreement"), which is hereby incorporated herein by reference; and

WHEREAS, Airline requires use of Airport facilities from time-to-time on a short-term, seasonal basis in connection with its aircraft operations at the Airport under the Airline Agreement.

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 acknowledge, the parties hereto covenant and agree to the following terms and conditions:

ARTICLE 1 BASIC PROVISIONS

1.01 Recitals. The foregoing recitals are true and correct and incorporated herein. Terms not defined herein shall have the meanings set forth in the Airline Agreement.

1.02 Designated License Area. In the event Airline requires additional space such as ticket counter or office space on a short term basis for its seasonal aircraft operations at the Airport, Airline may notify County in writing of the: (a) type and amount of space required for its operations; (b) the anticipated date Airline will commence use of the space; and (c) the anticipated date Airline will return the space. Airline should notify County no less than ninety (90) days prior to its proposed commencement of operations of its space requirements. In the event appropriate space is available, County will notify Airline in writing of the available space and provide the attached Exhibit "A" ("Facilities Use Permit") to Airline for approval. In the event Airline approves of the space(s) designated for Airline's use under the Facilities Use Permit ("License Area"), Airline shall cause an authorized representative of Airline to sign and return the Facilities Use Permit to the County.

1.03 Return of License Area. Upon expiration or earlier termination of Airline's license to use the License Area under a Facilities Use Permit, Airline, at its sole cost and expense, shall surrender the License Area to the County in at least the same condition as the License Area was in as of the Commencement Date of the Facilities Use Permit. Airline shall remove all personal property and signage from the License Area at Airline's sole cost and expense, unless otherwise approved in writing by the Department. Any personal property of Airline 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. In the event Airline fails to timely restore the License Area as provided above, County may restore the License Area at Airline's sole cost and expense. Airline shall reimburse County for County's actual costs plus a twenty five percent (25%) administrative overhead within thirty (30) days of the date of County's invoice. Airline's reimbursement obligations under this Section shall survive the expiration or earlier termination of the Facilities Use Permit, the Airline Agreement and/or this Addendum until County has received full reimbursement.

ARTICLE 2

TERM

The term of this Addendum shall commence on September 15, 2016 (the “Commencement Date”) and automatically terminate on the date the Airline Agreement expires or is terminated (the “Term”), unless terminated earlier as provided for herein.

ARTICLE 3

FEES AND CHARGES

Airline shall pay County all fees and charges applicable to the License Area identified in the Facilities Use Permit in accordance with the then current Rate and Fee Schedule (as defined in the Airline Agreement), subject to any waiver of fees and charges pursuant to an Airline Service Incentive Program Participation Agreement entered into by the parties.

ARTICLE 4

LICENSE AREA

Airline acknowledges and agrees that Airline’s use of the License Areas shall be governed by the terms and conditions of the Airline Agreement, this Addendum and the Facilities Use Permit.

ARTICLE 5

REVOCATION OF ADDENDUM/DEFAULT

5.01 License. Notwithstanding any provision of this Addendum to the contrary, the parties acknowledge and agree the rights granted to Airline under the Facilities Use Permit shall be a non-exclusive license to use the License Area.

5.02 Termination for Convenience. Either party may terminate this Addendum or a Facilities Use Permit for convenience upon fifteen (15) days prior written notice to the other party, whereupon the parties shall be relieved of all further obligations hereunder with the exception of those obligations accruing prior to the date of such termination and those obligations which expressly survive termination of this Addendum.

5.03 Default. Failure to perform or observe any of the agreements, covenants or conditions contained in the Airline Agreement, this Addendum or any Facilities Use Permit issued pursuant to this Addendum to be performed or observed by such party upon thirty (30) days prior written notice shall constitute a material default of this Addendum and the Airline Agreement.

ARTICLE 6

EFFECTIVE DATE

This Addendum shall become effective when executed by the parties hereto.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, County and Airline have executed this Addendum, or have caused the same to be executed as of the day and year first above written.

WITNESSES:

Signature Jeffrey S. Bolton
Typed or Printed Name Jeffrey S. Bolton
Signature Martha LaVergne
Typed or Printed Name Martha LaVergne

PALM BEACH COUNTY, FLORIDA,
A POLITICAL SUBDIVISION OF THE
STATE OF FLORIDA

By: James Kelly
Director, Department of Airports

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: Anne Regent
County Attorney

WITNESSES:

Signature Jim DeLuca
Typed or Printed Name Jim DeLuca
Signature Antonio Tam
Typed or Printed Name Antonio Tam

AIRLINE: Spirit Airlines, Inc.

By: J. E. H.
Signature SALE RELEASE
Typed or Printed Name SALE RELEASE
Title: VP AIRPORT SERVICES

(Seal)

**EXHIBIT “A”
FACILITIES USE PERMIT**



FACILITIES USE PERMIT

AIRLINE: _____

ADDRESS: _____

TELEPHONE/E-MAIL: _____

**NAME AND TITLE OF
AUTHORIZED REPRESENTATIVE:** _____

In accordance with that certain Non-Signatory Airline Agreement dated December 4, 2015 (R2016-0157) (the “Airline Agreement”) and Addendum to Airline Agreement dated _____, 20__ (R-_____) (“Addendum”), by and between Palm Beach County, a political subdivision of the State of Florida (“County”), and Spirit Airlines, Inc. (“Airline”), Airline shall have a short-term license to utilize the following space(s) (“License Area”), which license shall commence and terminate on the dates/times listed below, unless otherwise agreed to in writing by the Department of Airports:

Space Type	Location	Square Footage	Commencement Date/Time	Termination Date/Time
	See Attachment “1”			
	See Attachment “1”			
	See Attachment “1”			
	See Attachment “1”			

By signing below, I hereby certify that I have the authority to represent and obligate Airline and that Airline shall comply with all terms and conditions of the Airline Agreement, the Addendum and this Facilities Use Permit applicable to the use of the License Area.

AIRLINE:

Signature of Authorized Representative of Airline

Title

Date

APPROVED BY:

Director, Department of Airports

Date

TRANSMITTED TO AIRPORT FINANCE DIVISION BY:

Name

Date

Summary of Certificates

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

Monday, October 24, 2016

Simple View

Certificate Images

Contracts

Insured: Spirit Airlines, Inc.

Insured ID: PBI-SP-15-01

Status: Compliant

ITS Account Number: PLC1848

Project(s): Palm Beach County - Airport Properties

Insurance Policy	Required	Provided	Override
<u>General Liability</u>			
Expiration: 7/1/2017			
General Aggregate:	\$100,000,000	\$200,000,000	
Products - Completed Operations Aggregate:	\$100,000,000	\$200,000,000	
Personal And Advertising Injury:	\$25,000,000	\$200,000,000	
Each Occurrence:	\$100,000,000	\$200,000,000	
Fire Damage:	\$0	\$0	
Medical Expense:	\$0	\$0	
<u>Automobile Liability</u>			
Expiration: 11/30/2016			
	All Owned Autos	Any Auto	
	Hired Autos	not provided	X
	Non-Owned Autos	not provided	X
		not provided	X
Combined Single Limit:	\$1,000,000	\$1,000,000	
<u>Workers Compensation/Employers Liability</u>			
Expiration: 11/30/2016			
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	
<u>Aircraft Liability Insurance</u>			
Expiration: 7/1/2017			
Each Occurrence:	\$100,000,000	\$200,000,000	
Aggregate Limit:	\$100,000,000	\$200,000,000	

Notifications

There were no deficiency letters issued.

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

Certificate Submittal

SPIRIT AIRLINES, INC

CERTIFICATE OF AUTHORITY

The undersigned duly appointed Assistant Secretary of Spirit Airlines, Inc., a Delaware Corporation (the "Company"), does hereby certify that:

1. The person named below is a duly appointed and acting officer of the Company and the signature set out opposite such individual's name is his true and correct signature:

Name:	Title:	Signature:
Jake Filene	Vice President-Airport Services	

2. The officer named above is authorized to execute documents on behalf of the Company and to bind the Company to obligations under the Addendum To Airline Agreement between Palm Beach County and the Company, a copy of which is attached hereto, to the extent provided in the Company's certificate of Incorporation, By-laws and authorizing schedules and/or resolutions.

IN WITNESS WHEREOF, the undersigned has set his hand this 27th day of September, 2016



Daniel T. Camejo
Assistant Secretary