

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

Meeting Date: December 20, 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 WestJet, an Alberta Partnership, commencing September 15, 2016, and terminating on the date the Non-Signatory Airline Agreement with WestJet (R-2016-0158), 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

Recommended By:  11/19/16  
 Department Director Date

Approved By: for JCBaker 12/6/16  
County Administrator Date

## 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>\$-0-</u>	<u>\$-0-</u>	<u>\$-0-</u>	<u>\$-0-</u>	<u>\$-0-</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: CM Sumner

## III. REVIEW COMMENTS

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

Rosa Pina 11/16/16  
OFMB ET 11/16

Dr. S. Jacobson 12/21/16  
Contract Dev. and Control  
12/21/16

### B. Legal Sufficiency:

Anne Delgado 12-6-16  
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)

## **ADDENDUM TO AIRLINE AGREEMENT**

**THIS ADDENDUM TO AIRLINE AGREEMENT** (this “Addendum”) is made and entered into this \_\_\_\_ day of ~~NOV 01 2016~~20\_\_\_\_, by and between Palm Beach County, a political subdivision of the State of Florida, (“County”) and WestJet, an Alberta Partnership, having its office and principal place of business at 22 Aerial Place NE, Calgary, Alberta T2E 3J1 Canada (“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 9, 2015 (R2016-0158) (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:

Jeffrey S. Bolton  
Signature  
Jeffrey S. Bolton  
Typed or Printed Name  
Debra Reese  
Signature  
Debra Reese  
Typed or Printed Name

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

By: Don Kelly  
Director of Airports

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

By: Anne Delgant  
County Attorney

WITNESSES:

R. Miller  
Signature  
Rick Miller  
Typed or Printed Name  
  
Signature  
Typed or Printed Name

AIRLINE: WestJet, an Alberta  
Partnership

By: Barbara Munroe  
Signature  
Sr. VP, General Counsel and Corporate Services  
Typed or Printed Name  
Title: Sr. VP, General Counsel and Corporate 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 9, 2015 (R2016-0158) (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 WestJet, an Alberta Partnership (“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 “I”			
	See Attachment “I”			
	See Attachment “I”			
	See Attachment “I”			

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.

Wednesday, November 02, 2016

Simple View

Certificate Images

Contracts

Insured:	WestJet, an Alberta Partnership	Insured ID:	PBI-WJ-15-01
Status:	Compliant (with overrides)		
ITS Account Number:	PLC1873		
Project(s):	Palm Beach County - Airport Properties		
Insurance Policy	Required	Provided	Override
<u>General Liability</u>			
Expiration: 12/1/2016			
General Aggregate:	\$100,000,000	\$100,000,000	
Products - Completed Operations Aggregate:	\$100,000,000	\$100,000,000	
Personal And Advertising Injury:	\$25,000,000	\$25,000,000	
Each Occurrence:	\$100,000,000	\$100,000,000	
Fire Damage:	\$0	\$0	
Medical Expense:	\$0	\$0	
<u>Automobile Liability</u>			
	All Owned Autos	not provided	X
	Hired Autos	not provided	X
	Non-Owned Autos	not provided	X
Combined Single Limit:	\$1,000,000	\$0	X
<u>Workers Compensation/Employers Liability</u>			
	WC Stat. Limits	not provided	X
Each Accident:	\$1,000,000	\$0	X
Disease - Policy Limit:	\$1,000,000	\$0	X
Disease - Each Employee:	\$1,000,000	\$0	X
<u>Aircraft Liability Insurance</u>			
Expiration: 12/1/2016			
Each Occurrence:	\$100,000,000	\$100,000,000	
Aggregate Limit:	\$100,000,000	\$100,000,000	
Missing Policy Information			Override
The original Certificate of Insurance received did not include policies for the following coverages:			
• Automobile Liability			X
• Workers Compensation/Employers Liability			X
Notifications			



**There were no deficiency letters issued.**

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

Certificate Submittal


**EXHIBIT 3 (B)**

**AFFIDAVIT OF GENERAL PARTNER**  
**(If General Partnership)**

PROVINCE OF ALBERTA, CANADA )  
 ) SS:  
CITY OF CALGARY )

Before me, the undersigned authority, personally appeared, the undersigned, who by me being first duly sworn, deposes and says that;

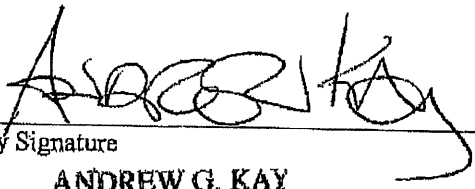
1. The undersigned is a general partner of WestJet, a general partnership organized and existing under the laws of the Province of Alberta, Canada ("Partnership") pursuant to agreement, dated the 15<sup>th</sup> day of November, 2001, a true and correct copy of which is attached hereto as Exhibit "A".
2. The Partnership is in good standing and is authorized to transact business in the State of Florida as the date hereof.
3. The Partnership agreement is still in full force and effect and has not been modified or amended.
4. All the partners of the Partnership and their interests in the partnership are as set forth on Exhibit "B".
5. The undersigned, as a general partner of WestJet, has the right and authority to enter into that certain Agreement between Palm Beach County, a political subdivision of the State of Florida and the Corporation, a copy of which is attached hereto as Exhibit "C", and such other instruments as may be necessary and appropriate for the Partnership to fulfill its obligations under the Agreement.
6. Upon the execution and delivery of such Agreement and documents by the person identified in item 5 herein above, all the aforesaid shall be valid agreements of and be binding upon the Partnership.
7. The transaction contemplated in the Agreement will not violate any of the terms and conditions of the Partnership agreement or of any other agreement of whatever kind between the Partnership and any third person.
8. 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.

  
(Signature)

Barbara Munroe \_\_\_\_\_

Senior Vice President, General Counsel and Corporate Services

SWORN TO AND SUBSCRIBED before me this 9 day of December, 2015, by  
Barbara Munroe, who is personally known to me OR ~~produced~~  
~~as identification~~ and who did \_\_\_\_\_ take an oath.

  
Notary Signature

ANDREW G. KAY  
BARRISTER & SOLICITOR

\_\_\_\_\_  
Print Notary Name

NOTARY PUBLIC  
Province of Alberta, Canada

My Commission Expires: N/A