

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

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Meeting Date: January 15, 2019	<input checked="" type="checkbox"/> [X]	Consent	<input type="checkbox"/> []	Regular
	<input type="checkbox"/> []	Workshop	<input type="checkbox"/> []	Public Hearing

Submitted By: Department of Airports

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I. EXECUTIVE BRIEF

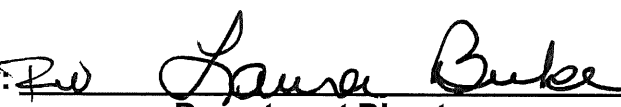

Motion and Title: Staff recommends motion to approve: Third Amendment (Amendment) to Airport Ground Transportation Concession Agreement (Agreement) (R-2015-0776) with SE Florida Transportation, LLC (SEFT), a Florida limited liability company, providing for reduction in concession fees to the greater of a minimum annual guarantee (MAG) of \$210,000 or a per capita charge of \$0.065 per deplaned/arriving passenger.

Summary: SEFT provides on-demand taxi, sedan and shared-ride services to passengers at the Palm Beach International Airport (PBIA). The number of deplaned passengers at PBIA has increased, but the number of ground transportation trips continues to decline due in large part to the increased use of transportation network company (TNC) services. Due to the declining number of non-TNC trips at PBIA, drivers for both SEFT, and its Airport Concession Disadvantaged Business Enterprise partner, Imperial Transportation, P.B.C., Inc. (Imperial), have requested reductions in the weekly fees the drivers pay to the companies for use of vehicles, dispatch services, equipment and other related costs. The Amendment provides for a reduction in the per capita charge from \$0.08 to \$0.065. The MAG is reduced to \$210,000 from \$240,000; however, it is anticipated that the per capita charge will exceed the MAG. Based on an estimated 3.3 million deplanements, the reduction in per capita charge is anticipated to be approximately \$50,000 per year to the County, which SEFT and Imperial have agreed to pass-thru directly to the drivers in the form of reduced fees. SEFT has also agreed to a permanent reduction in driver fees from July through September of each year at a cost to SEFT of approximately \$60,000 per year in order to further mitigate the reduced number of ground transportation trips during the slower summer months. Drivers for SEFT will receive an average reduction of approximately \$1,300 per year, and drivers for Imperial will receive an average reduction of \$520 per year. Actual reductions will vary based on the mode of transportation provided and the number of weeks services are provided by individual drivers. Increased TNC trip volume is anticipated to mitigate revenue declines caused by this Amendment. Countywide (AH)

Background and Justification: The Agreement resulted from Request for Proposals No. PB 15-10, issued in 2015 for on-demand ground transportation services at PBIA. At that time, it was unclear what effect TNCs would have on ground transportation at PBIA; therefore, the Agreement provided for an abatement of the per capita charge in the event of a decline in passenger trips as the result of the operation of TNCs. TNC trip volume has significantly increased since 2015. The reduction to SEFT's per capita charge will result in payment by SEFT roughly equivalent to the per trip fee of \$2.50 paid by TNC's (R-2016-0758). The number of non-TNC ground transportation trips has steadily decreased resulting in higher effective per trip fees while the companies' fixed costs have continued to increase; therefore, staff is recommending approval of the requested adjustment.

Attachments:
1. Amendment (3)

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Recommended By:		12/17/18
	Department Director	Date
Approved By:		12/28/18
	County Administrator	Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>
Capital Expenditures					
Operating Costs					
Operating Revenues	<u>\$37,500</u>	<u>\$50,000</u>	<u>NA</u>	<u>NA</u>	<u>NA</u>
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT	<u>\$37,500</u>	<u>\$50,000</u>	<u>NA</u>	<u>NA</u>	<u>NA</u>
# ADDITIONAL FTE POSITIONS (Cumulative)					

Is Item Included in Current Budget? Yes X No
Does this item include the use of federal funds? Yes No X

Budget Account No: Fund 4100 Department 120 Unit 8340 Rsource 4468
Reporting Category _____

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

Approval of this item will reduce SEFT's MAG from \$240,000 to \$210,000 and reduce the per capita charge from \$0.08 per deplaned passenger to \$0.065 per deplaned passenger. The Department projects the per capita charge will be the relevant rate as it is greater than the MAG with an annual reduction in revenues to the Department of \$50,000. Changes in passenger volume will impact this projection.

C. Departmental Fiscal Review: CM Summer

III. REVIEW COMMENTS

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

Debra K. Rowe 12/26/18
12/26 OFMB 9/12/21

John S. Jacobus
Contract Dev. and Control 12/27/18

B. Legal Sufficiency:

Anne Delgado 12-28-18
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)**

Summary of Certificates

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

Friday, December 14, 2018

Simple View

Certificate Images

Documents

Insured: SE Florida Transportation, LLC

Insured ID: R2015-0776-PBC

Status: Compliant

ITS Account Number: PLC1508

Project(s): Palm Beach County - Airport Properties - (Active)

Insurance Policy	Required	Provided	Override
<u>General Liability</u>			
Expiration: 7/1/2019			
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: 7/1/2019			
	All Owned Autos	Any Auto not provided	X
	Hired Autos	Hired Autos	X
	Non-Owned Autos	Non-Owned Autos	X
Combined Single Limit:	\$300,000	\$500,000	
<u>Workers Compensation/Employers Liability</u>			
Expiration: 7/1/2019			
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 [\(Show All\)](#)

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 _____ (title: e.g. Manager, Member, etc. 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 [select (a) or (b)] (a) manager managed or (b) member 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 **Third Amendment to Airport Ground Transportation Concession 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 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,

Terence Bates
_____, Individually and as
[select one: Manager or Member]

SWORN TO AND SUBSCRIBED before me on this 14th day of December, 2018, by
Terence Bates, 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 MARYLAND license, as
identification and who did take an oath.

Rosmery Alfaro

Notary Signature
Rosmery Alfaro

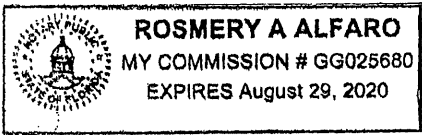
Print Notary Name

NOTARY PUBLIC

State of FLORIDA at large

My Commission Expires:

8 | 29 | 2020



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

This Third Amendment to Airport Ground Transportation Concession Agreement (this "Third 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.

W I T N E S S E T H:

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), as amended ("Agreement"); and

WHEREAS, the number of passenger pickups by Concessionaire is anticipated to continue to decline, notwithstanding an increase in deplanements at the Airport, due to increased usage of ridesharing services by Airport customers; and

WHEREAS, the parties desire to further 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. **Per Capita Charge for the Renewal Term.** Section 5.02, Per Capita Charge, Minimum Monthly Guarantee, of the Agreement is hereby modified to delete Section 5.02 in its entirety and replace with the following Section 5.02, Annual Concession Fees, Per Capita Charge, Minimum Annual Guarantee:

5.02 Annual Concession Fees, Per Capita Charge, Minimum Annual Guarantee.

- (A) The amount of annual Concession Fees to be paid to County by Concessionaire each Contract Year of the Renewal Term shall be the greater amount of: (i) the Minimum Annual Guarantee; or (ii) the product of the

Per Capita Charge multiplied by the total number of Deplaned Passengers during the current Contract Year. Concession Fees shall be payable monthly, subject to periodic reconciliation, as provided herein.

- (B) The initial Per Capita Charge for the Renewal Term shall be \$0.08 from October 1, 2018 through December 31, 2018. Effective January 1, 2019, the Per Capita Charge shall be reduced to \$0.065.
- (C) The Monthly Per Capita Payment shall be determined by multiplying the then current Per Capita Charge by the total number of Deplaned Passengers each month.
- (D) Commencing October 1, 2018, Concessionaire shall pay to County a Minimum Annual Guarantee for each Contract Year of the Renewal Term, in the amount of Two Hundred Ten Thousand Dollars (\$210,000) ("Minimum Annual Guarantee"), which shall be payable in equal monthly installments, as provided herein ("Minimum Monthly Guarantee"). The Department may, in its sole and absolute discretion, increase the Minimum Annual Guarantee to an amount equal to eighty percent (80%) of the amount of Concession Fees due the Contract Year ending September 30, 2019. The Department shall notify Concessionaire in writing of any increase to the Minimum Annual Guarantee, which shall become effective as of the date specified in Department's notice, but not earlier than October 1, 2019, and this Agreement shall be considered automatically amended, without formal amendment hereto.
- (E) Except as otherwise provided for in Article 5.03, Concessionaire shall pay the Minimum Annual Guarantee to the County in equal monthly installments of one-twelfth (1/12) the Minimum Annual Guarantee, which shall be payable on the first day of each month in advance, without demand, deduction, holdback or setoff. In the event the Monthly Per Capita Payment is greater than the Minimum Monthly Guarantee for the same month, the Department shall invoice Concessionaire for the difference between the Monthly Per Capita Payment and the Minimum Monthly Guarantee, which amount shall be payable by Concessionaire to County within ten (10) days of the date of the Department's invoice.
- (F) Concession Fees shall be reconciled in accordance with this section, within ninety (90) days following the end of each Contract Year. Nothing herein shall prevent County from completing interim, periodic reconciliations, at such intervals as the Department determines, in its sole and absolute discretion. If the amount of Concession Fees due and owing for such period of review is greater than the amount paid by Concessionaire to County during such period, Concessionaire shall pay the difference to County within ten (10) days of the date of Department's invoice. If the amount of Concession Fees actually paid by Concessionaire to County for such period of review exceeds the Concession Fees due and owing for such period of

review, the Department shall credit the overpayment in the following order: (i) against any past due amounts owed to County by Concessionaire, including interest and late fees; (ii) against currently outstanding, but not yet due, Concession Fees owed to County by Concessionaire; (iii) against future Concession Fees which will become due during the succeeding Contract Year; and (iv) against any other sums payable by Concessionaire to County. Notwithstanding the foregoing, in the event of an overpayment by Concessionaire during the last Contract Year, the Department shall credit the overpayment against any remaining amounts owed to County, including interest and late fees, and refund to Concessionaire any overpayment amount in excess of the credit.

3. **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 that boycott Israel List, or is engaged in a boycott of Israel, pursuant to Section 215.4725, Florida Statutes. When contract value is greater than \$1 million, 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 is engaged in business operations in Cuba or Syria. If the 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 \$2 Million Dollars or twice the amount of this Lease shall be imposed, pursuant to Section 287.135, Florida Statutes. The aforementioned certification must also be submitted at the time of any Agreement renewal, if applicable.

4. **Fee Reductions.**

- a. Concessionaire agrees to reduce the rates currently charged by Concessionaire to its drivers for the privilege of providing ground transportation services at the Airport, as detailed in Exhibit "1", attached hereto and made a part hereof. Concessionaire agrees that it shall not raise the aforementioned rates unless otherwise approved by the Department in writing. Concessionaire agrees that the rates listed in Exhibit "1" shall be subject to review by the Department, and subject to adjustment in the event the number of vehicles differs significantly, as determined by the Department in its sole and absolute discretion.

- b. Concessionaire shall reduce the fee charged by Concessionaire to its ACDBE partner, Imperial Transportation P.B.C., Inc. ("Imperial") (the "Subcontractor Fee"), by the amount of \$163.46 per week, provided Imperial agrees to reduce the rates it charges to its drivers as detailed in Exhibit "2", attached hereto and made a part hereof.

5. **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.

6. **Conflict.** In the event of a conflict between any provision of this Third Amendment and the provisions of the Agreement, or any other amendment thereto, the provisions of this Third Amendment shall control.

7. **Paragraph Headings.** The heading of the various sections of this Third 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 Third Amendment or the Agreement.

8. **Effective Date.** This Third Amendment shall become effective when signed by both 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 Third Amendment as of the day and year first above written.

ATTEST:

SHARON R. BOCK

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

By: _____
Clerk and Comptroller

By: _____
Mack Bernard, Mayor

(SEAL)

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS
AND CONDITIONS

By: _____
County Attorney

By: Laura Bock
Director, Department of Airports

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

CONCESSIONAIRE

SE FLORIDA TRANSPORTATION, LLC

[Signature]
Signature

By: Terrence Oter
Signature

Dominick Tocco
Print Name

Terrence Oter
Print Name

Nita O'Shea
Signature

Treasurer
Title

Nita O'Shea
Print Name

(Seal)

**EXHIBIT “1”
WEEKLY RATES
(CONCESSIONAIRE VEHICLES)**

(A)	(B)	(C)	(D)
Type of Vehicle/Operator	Number of Vehicles*	Standard Weekly Rates Effective January 1, 2019	Reduced Weekly Rates 13-Week Summer Period June 29, 2019 – September 21, 2019 July 4, 2020 – September 26, 2020
Taxi – Owner/Operator	30	\$407.00	\$350.00
Taxi – Leased	30	\$602.00	\$540.00
Sedan – Owner/Operator	7	\$505.00	\$450.00
Sedan - Leased	15	\$680.00	\$595.00
Shared-Ride - Leased	5	\$636.00	\$600.00

* The number of vehicles listed in Column (B) above is the number of vehicles in each classification as of January 1, 2019. In the event the number of vehicles in a classification(s) differs, as indicated by a fleet report to be provided by Concessionaire to the Department each quarter, the Department, in its sole and absolute discretion, may direct Concessionaire to reduce the weekly rate(s) in Column (C) above, by a proportionate amount to achieve the agreed-upon “pass-thru” of the reduction in the Per Capita Payment to the remaining pool of drivers.

**EXHIBIT “2”
WEEKLY RATES
(IMPERIAL VEHICLES)**

Imperial Use of Funds

Airport Reduction	Discount	17%	52 Weeks
	\$50,000.00	\$8,500.00	\$163.46

Discounts	Weekly	# of Vehicles	# of Weeks	Total
Season	\$10.00	18	39	\$7,020.00
Summer	\$10.00	13	13	\$1,690.00
				\$8,710.00

Leases	Original	Discount	New #
Taxi (Owner NO insurance)	\$300.00	\$10.00	\$290.00
Sedan/ SUV (Owner NO insurance)	\$210.00	\$10.00	\$200.00
Taxi (Company Owned)	\$500.00	\$10.00	\$490.00

Imperial (DBE Fee)	Original	Discount	New Fee	# of weeks	Savings
Season	\$3,087.00	\$163.46	\$2,923.54	39	\$6,374.94
Summer	\$2,747.00	\$163.46	\$2,583.54	13	\$2,124.98
					\$8,499.92

Additional Discount (Lease Summer)	Original	Discount	New
		\$10 + \$10	Lease
Taxi (Owner NO insurance)	\$300.00	\$20.00	\$280.00
Sedan/ SUV (Owner NO insurance)	\$210.00	\$20.00	\$190.00
Taxi (Company Owned)	\$500.00	\$20.00	\$480.00

By giving an extra \$10 discount to drivers in summer, Imperial would contribute \$1690 to drivers.
 (13 vehicles * \$10.00 extra = \$130.00 weekly * 13 weeks = \$1690.00
 This amount would come from the \$4,420 already agreed upon.