

**PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS**

**AGENDA ITEM SUMMARY**

Meeting Date: May 5, 2020

[ ] Consent [X] Regular  
[ ] Workshop [ ] Public Hearing

Submitted By: Department of Airports

**I. EXECUTIVE BRIEF**

**Motion and Title:** Staff recommends motion to adopt: a Resolution delegating authority to the County Administrator or designee to negotiate and execute, on behalf of the Board of County Commissioners, certain agreement modifications or amendments to provide temporary relief related to COVID-19 impacts; providing for severability; and providing for an effective date.

**Summary:** This Resolution authorizes the County Administrator or designee to negotiate and execute certain amendments or modifications to agreements to provide temporary relief consistent with Federal Aviation Administration (FAA) guidance. This Resolution authorizes the negotiation of short-term deferral of fixed rental payments, fees or other charges for a period not to exceed the lesser of three monthly payments of such fees or the current amount of payment security held by the County and to provide for repayment subject to a payment plan upon completion of the agreed-upon deferral period for a period not to exceed six months, the expiration date of the payment security or agreement expiration, whichever occurs first. The Resolution also authorizes modification of agreements with minimum annual guarantees to provide for monthly reconciliation of amounts due to allow for consideration of excess payments made prior to March 1, 2020. Several concession agreements also provide for abatement of minimum annual guarantees due to a reduction of airline traffic levels based on a comparison against an agreed upon base year. This Resolution authorizes the modification of agreements with provisions that provide for an annual comparison to be converted to a monthly comparison. This Resolution also authorizes the County Administrator or designee, to negotiate payment plans for repayment of past due amounts provided that the contracting party is otherwise in good standing and acts in good faith to pay all outstanding amounts. Requests for relief beyond the scope of this Resolution will be brought to the Board for approval on a case-by-case basis. The Director of the Department of Airports will be considered a designee for purposes of this Resolution. **Countywide (AH)**

**Background and Policy Issues:** The Department of Airports has received numerous requests for rental and payment relief due to impacts associated with the COVID-19 pandemic. Several concession agreements provide for automatic abatement of minimum annual guarantees based upon declines in airline traffic based upon a contractually agreed upon threshold. These thresholds have been reached and are likely to continue in the near term based on declining air traffic levels. The Department's primary revenues streams, including variable airline fees and charges, parking and concessions, are likely to be significantly diminished as a result of the current situation. Decreased revenues will directly impact future airline rates and charges. In order to balance the need to ensure that the County's airport system remains self-sustaining, costs are not shifted among the various contracting parties and aeronautical rates remain reasonable, the Department is recommending relief be limited to short-term deferrals. Based on recent FAA guidance, deferral of payments, if adequately justified, are consistent grant assurance obligations.

**Attachments:**

Resolution (1)

Recommended By: Saura Bube Department Director Date: 4-21-20  
Approved By: [Signature] County Administrator Date: 4/22/2020

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
Operating Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	=====	=====	=====	=====	=====
# ADDITIONAL FTE	_____	_____	_____	_____	_____
POSITIONS (Cumulative)	_____	_____	_____	_____	_____

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

Budget Account No: Fund \_\_\_\_\_ Department \_\_\_\_\_ Unit \_\_\_\_\_ Rsource \_\_\_\_\_  
 Reporting Category \_\_\_\_\_

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

There is no fiscal impact associated with approval of this Resolution. This Resolution provides for a basis to negotiate limited changes to existing agreements to provide for payment deferrals, but will not forgive or waive payment obligations. The fiscal impact of the negotiated amendments related to the timing of payments will vary by agreement and will be noted in the agenda items processed to receive and file amendments or modifications entered into pursuant to this Resolution.

C. Departmental Fiscal Review: William Duncan

**III. REVIEW COMMENTS**

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

Lisa R 4/22/2020  
 OFMB (LW) 4/22

A. J. Javel  
 Contract Dev. and Control 4-22-2020 TW

**B. Legal Sufficiency:**

Anne Delgant 4-23-2020  
 Assistant County Attorney

**C. Other Department Review:**

\_\_\_\_\_  
 Department Director

REVISED 11/17

(THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT)

**RESOLUTION NO. 2020-\_\_\_\_\_**

**RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, DELEGATING AUTHORITY TO THE COUNTY ADMINISTRATOR OR DESIGNEE TO NEGOTIATE AND EXECUTE, ON BEHALF OF THE BOARD OF COUNTY COMMISSIONERS CERTAIN AGREEMENT MODIFICATIONS OR AMENDMENTS TO PROVIDE TEMPORARY RELIEF RELATED TO COVID-19 IMPACTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Palm Beach County, by and through its Department of Airports (“Department”), owns and operates the Palm Beach International Airport, North County General Aviation Airport, Palm Beach County Park Airport and Palm Beach County Glades Airport (“Airports”); and

**WHEREAS**, as a result of the COVID-19 pandemic, the Department has received numerous requests for deferment of rental and other similar relief from airlines, concessionaires, permittees and tenants (“Contracting Parties”) of the Airports; and

**WHEREAS**, the Federal Aviation Administration (“FAA”) provided guidance to airport sponsors regarding relief requests related to COVID-19 impacts; and

**WHEREAS**, the Department desires a delegation of authority to the County Administrator or designee to negotiate certain modifications or amendments to agreements to provide for temporary relief consistent with FAA guidance upon a demonstrated need; and

**WHEREAS**, any temporary relief is not intended to result in a shifting of costs or burdens among Contracting Parties; and

**WHEREAS**, the delegation to the County Administrator or designee to negotiate and execute modifications and amendments consistent with the provisions of this Resolution will eliminate delays caused by requiring such items to be brought before the Board of County Commissioners for approval and would therefore be consistent with the goal of the Board of County Commissioners to streamline the agenda process.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA**, that:

1. The foregoing recitals are true and correct and are incorporated herein.
2. The County Administrator or designee is hereby authorized to negotiate and execute, on behalf of the Board of County Commissioners, modifications or amendments to revenue-producing agreements to provide for:
  - A. Short-term deferral of fixed rental payments, fees or other charges, provided that: (a) the deferred amount shall not exceed the lesser of the equivalent of three (3) monthly payments of rental, fees and other charges or the current amount of the payment security held by the County; and (b) the deferred amount shall be subject to payment upon completion of the agreed-upon deferral period, which may be in the form of a negotiated payment plan subject to payment over a period not to exceed six (6) months, the expiration date of the current

payment security or the expiration of the agreement, whichever occurs first. Agreements with existing provisions for relief based on declines in airline activity levels shall not be eligible for additional relief under this paragraph.

- B. Monthly true-up or reconciliation of minimum annual guarantees consistent with the provisions provided for in Rental Car Lease and Concession Agreements entered into pursuant to Invitation for Bid PB 18-10 to allow for consideration of excess payments made prior to March 1, 2020.
- C. Modification of existing provisions that provide for abatement of minimum annual guarantees based on a comparison of annual airline traffic levels against an agreed-upon base fiscal year to be converted to monthly traffic comparisons against the same base fiscal year to allow abatements to be taken on a monthly rather than annual basis.
- D. Repayment of past due amounts in the form of a negotiated payment plan over a period not to exceed six (6) months provided that the Contracting Party is otherwise in good standing and acts in good faith to pay outstanding past due amounts.
- E. Termination or default of any modified or amended agreement entered into pursuant to this Resolution upon prior written notice to the defaulting party for failure to comply with negotiated relief provisions, and acceleration of all unpaid or deferred amounts upon termination.

3. Modifications and amendments negotiated pursuant to this delegation of authority shall be consistent with FAA guidance, including, but not limited, the requirement that interest be charged based on Treasury note interest rates on certain deferred payments. Any relief negotiated pursuant to this Resolution shall only apply to amounts due and payable to County after March 1, 2020, and may be conditioned on: (a) a general release of any claims associated with COVID-19 impacts such as force majeure; and (b) representations to County that other sources of relief, such as governmental assistance, governmental loans or insurance recovery, are not available to the Contracting Party and that any material misrepresentation shall be grounds for termination of the applicable agreement. Nothing herein shall be construed as authorizing the County Administrator or designee to waive or otherwise forgive amounts due to County other than late fees or other penalties that would otherwise accrue on delinquent payments under the terms of the applicable agreement.

4. Contracting Parties requesting relief must: (a) have been current with all payment obligations prior to March 1, 2020; (b) not be in default of any obligations unrelated to the payment of money; and (c) demonstrate significant impacts to their operations resulting directly from the COVID-19, such as mandated business closure due to governmental order or other action. Nothing herein shall be construed as requiring the County Administrator or designee to grant relief to any Contracting Party.

5. It is the intention of the Board of County Commissioners that this delegation shall be limited to the parameters set forth herein. In the event there is a material deviation from the delegation set forth in this Resolution, which would constitute discretion of the County Administrator or designee relative thereto, then the approval of the Board of County Commissioners shall be required. Nonmaterial changes to update County or federal nondiscrimination provisions or to include updated County standard terms and conditions shall not be considered a material change or a material deviation for purposes of this Resolution. The County Administrator's designee for purposes of this Resolution shall include the Director of the Department of Airports.

6. If any section, sentence, clause, phrase, or word of this Resolution is held invalid or unconstitutional by a Court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Resolution.

7. This Resolution shall become effective immediately upon adoption.

The foregoing Resolution was offered by Commissioner \_\_\_\_\_, who moved its adoption. The motion was seconded by Commissioner \_\_\_\_\_, and upon being put to a vote, the vote was as follows:

- COMMISSIONER DAVE KERNER, MAYOR -
- COMMISSIONER ROBERT S. WEINROTH, VICE MAYOR -
- COMMISSIONER HAL R. VALECHE -
- COMMISSIONER GREGG WEISS -
- COMMISSIONER MARY LOU BERGER -
- COMMISSIONER MELISSA MCKINLAY -
- COMMISSIONER MACK BERNARD -

Then the Mayor thereupon declared this Resolution duly passed and adopted this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**PALM BEACH COUNTY, FLORIDA, BY ITS BOARD OF COUNTY COMMISSIONERS**

Sharon R. Bock, Clerk & Comptroller

By: \_\_\_\_\_  
Deputy Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY**

By: Anne DeFanti  
County Attorney