



**II. FISCAL IMPACT ANALYSIS**

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

Fiscal Years	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>	<u>2027</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
Operating Revenues	<u>\$-0-</u>	<u>\$-0-</u>	<u>\$-0-</u>	<u>\$-0-</u>	<u>\$-0-</u>
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	<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 \_\_\_\_\_ No x  
 Does this item include the use of federal funds? Yes \_\_\_\_\_ No X  
 Budget Account No: Fund 4100 Department 120 Unit 8340 RSource various  
 Reporting Category \_\_\_\_\_

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

No fiscal impact.

**C. Departmental Fiscal Review:**

Debbie Duncanson  
 (20) 7/17

**III. REVIEW COMMENTS**

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

Luca M. 7/20/23  
 OFMB QA 7/20

EDW  
 7-20-23

Ar. J. Javelin 7/24/23  
 Contract Dev. and Control  
 7/24/23

**B. Legal Sufficiency:**

Anne Delgado 8/3/23  
 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)

RESOLUTION NO. 2023-\_\_\_\_\_

**RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, ADOPTING A STANDARD FORM FIRST AMENDMENT TO AGREEMENT FOR RENTAL CAR LEASE AND CONCESSION (FIRST AMENDMENT); AUTHORIZING THE COUNTY ADMINISTRATOR OR DESIGNEE TO EXECUTE STANDARD FORM FIRST AMENDMENTS ON BEHALF OF THE BOARD OF COUNTY COMMISSIONERS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

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

**WHEREAS**, on August 23, 2022 and September 13, 2022, the Board of County Commissioners approved Agreements for Rental Car Lease and Concession (R2022-0829; R2022-0831 through R2022-0835; R2022-0936 through R2022-0937) (hereinafter collectively the “Agreements”), which each provided for operation of a rental car concession at the Airport; and

**WHEREAS**, prior to approval of the Agreements, the Palm Beach County Office of Inspector General (“OIG”) commenced an audit of an Agreement for Rental Car Concession and Lease with Enterprise Leasing Company of Florida, LLC (“Enterprise”) dated December 4, 2018 (R2018-1859), which expired on September 30, 2022; and

**WHEREAS**, in June 2023, the OIG concluded its audit (2023-A-0005) (“OIG Report”), which included recommendations to implement controls to ensure contract compliance by the rental car concessionaires; and

**WHEREAS**, the County reserved the right to modify the Agreements based on any recommendations included in the OIG Report; and

**WHEREAS**, the Department is recommending the modification of the Agreements in order to implement controls to ensure compliance with terms and conditions of the Agreements by rental car concessionaires related to accountability and reporting; and

**WHEREAS**, the Board of County Commissioners desires to authorize the County Administrator or designee to execute a standard form First Amendment to Agreement for Rental Car Lease and Concession on behalf of the Board of County Commissioners to expedite processing of the amendments.

**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 Board of County Commissioners hereby: (i) adopts a standard form First Amendment to Agreement for Rental Car Lease and Concession in the form attached hereto and incorporated herein as Attachment “A” (“First Amendment”), and (ii) authorizes the County Administrator or designee to execute the First Amendment on behalf of the Board of County Commissioners.

3. The County Administrator or designee is hereby authorized to execute, on behalf of the Board of County Commissioners, standard form First Amendments, which include non-material changes. For purposes of this Resolution, "non-material changes" mean changes that will not modify any of the substantive obligations of the County.

4. It is the intention of the Board of County Commissioners that this delegation of signature authority is limited to the parameters set forth herein. In the event there is a material deviation from the approved standard terms and conditions of the First Amendment, which would constitute discretion of the County Administrator or designee relative thereto, then the approval of the Board of County Commissioners shall be required. The County Administrator's designee for purposes of this Resolution shall include the Director of the Department of Airports.

5. 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.

6. 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 GREGG K. WEISS, MAYOR	-
COMMISSIONER MARIA SACHS, VICE MAYOR	-
COMMISSIONER MARIA G. MARINO	-
COMMISSIONER MICHAEL BARNETT	-
COMMISSIONER MARCI WOODWARD	-
COMMISSIONER SARAH BAXTER	-
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**

JOSEPH ABRUZZO  
CLERK OF THE CIRCUIT COURT  
AND COMPTROLLER

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

**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY**

By: Anne Wehner  
County Attorney

**ATTACHMENT "A"**  
**FIRST AMENDMENT TO AGREEMENT FOR RENTAL CAR  
LEASE AND CONCESSION**

**FIRST AMENDMENT TO  
AGREEMENT FOR RENTAL CAR LEASE AND CONCESSION  
AT THE PALM BEACH INTERNATIONAL AIRPORT**

**THIS FIRST AMENDMENT TO AGREEMENT FOR RENTAL CAR LEASE AND CONCESSION** (this "First Amendment") is made and entered into \_\_\_\_\_, by and between Palm Beach County, a political subdivision of the State of Florida ("County"), and \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ ("Concessionaire").

**WITNESSETH:**

**WHEREAS**, County, by and through its Department of Airports (the "Department"), owns and operates the Palm Beach International Airport (the "Airport") located in Palm Beach County, Florida; and

**WHEREAS**, the parties entered into that certain Agreement for Rental Car Lease and Concession dated \_\_\_\_\_, 20\_\_ (R-2022-\_\_)(the "Agreement"), which provides for the right to conduct and operate an airport rental car concession at the Airport; and

**WHEREAS**, the parties hereto desire to further amend the Agreement in accordance with the terms and conditions set forth 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. 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. The terms "Article" and "Section" refers to sections and articles in the Agreement.

2. Effective as of October 1, 2022, Section ~~{insert applicable section number}~~, Local Revenue, shall be deleted in its entirety and replaced with the following:

~~2.XX~~ "Local Revenue" means revenue derived from a vehicle rental transaction with a customer who has not deplaned at the Airport, as evidenced by the zip code included on the customer's driver license indicating the customer resides in Palm Beach County.

3. Section 5.08, Monthly Statement of Gross Revenues, is hereby deleted in its entirety and replaced by the following:

5.08 Monthly Statement of Gross Revenues. Within twenty (20) days after close of each and every month throughout the Term of this Agreement, Concessionaire shall submit to the Department, in a form and detail

satisfactory to the Department, a Statement of Gross Revenues that: (1) separately details Gross Revenues by category, including, at a minimum, the Gross Revenues listed in Section {insert applicable section number} and any exclusions as listed in Section {insert applicable section number} for the prior calendar month; (2) details the Year-to-Date Gross Revenues; (3) details the Year-to-Date Minimum Annual Guarantee (including any adjustment thereof, as provided in Section 5.02); (4) details the Year-to-Date Concession Fee Payments; and (5) identifies the total number of rental car transactions for the prior calendar month. Concessionaire shall provide a separate Statement of Gross Revenues for each Brand. The Department may require the Statement of Gross Revenues to be submitted electronically. The Department may extend the deadline for submission of the Statement of Gross Revenues for reasons beyond the reasonable control of Concessionaire or other good cause as reasonably determined by the Department; provided, however, any such extension shall not exceed thirty (30) days.

4. Effective as of October 1, 2022, Section 5.09, Accounting Records, shall be deleted in its entirety and replaced with the following:

5.09 Accounting Records. Concessionaire shall keep, throughout the Term of this Agreement, all books of accounts and records customarily used in this type of operation, and as from time to time may be required by the Department, in accordance with Generally Accepted Accounting Principles ("GAAP") prescribed by the American Institute of Certified Public Accountants or any successor agency thereto. Such books of accounts and records shall be retained and be available for three (3) years from the end of each Contract Year, including three (3) years following the expiration or termination of this Agreement. County shall have the right to audit and examine during normal business hours all such books of accounts and records relating to Concessionaire's operations hereunder. If the books of accounts and records are kept at locations other than the Airport, Concessionaire shall, at its sole cost and expense, arrange for them to be brought to a location convenient to the auditors for County in order for County to conduct the audits and inspections as set forth in this Section. Concessionaire shall maintain a record of each vehicle rental agreement written at the Airport, including a copy of each original agreement signed by Concessionaire's customer. Concessionaire shall also maintain driver license information supporting any vehicle rental agreement resulting in "Local Revenue". The vehicle rental agreement shall indicate that the Airport is the originating location. Accountability for the numbers generated on the vehicle rental agreements issued and unissued shall be maintained. Accounting records of Concessionaire shall be stored sequentially, or in such other manner approved by the Department, to provide reasonable and expeditious access for audit purposes hereunder. Failure to maintain books of accounts and records as required under this Section shall be deemed to be a material breach of this Agreement. The obligations arising under this Section shall survive the expiration or termination of this Agreement.

5. Section 5.10, Audit Requirements, is hereby deleted in its entirety and replaced with the following:

- 5.10 Audit Requirements. Within ninety (90) days following the end of each Contract Year, Concessionaire shall provide to the Department a special purpose audit report on all Gross Revenues from operations at the Airport and from the operations of any of Concessionaire's subsidiaries, contractors, management companies, or related or affiliated companies involved in providing services covered by this Agreement. The audit report shall cover the preceding Contract Year. Each audit report shall be in the format required by the Department and shall be prepared by an independent Certified Public Accountant, not a regular employee of Concessionaire, in accordance with Generally Accepted Auditing Standards prescribed by the American Institute of Certified Public Accountants or any successor agency thereto. The audit report shall include the following:
- A. A schedule of all Gross Revenues by category and month, which shall include, but not be limited to, the categories of Gross Revenues listed in Section {insert applicable section number} and the exclusions from Gross Revenues listed in Section {insert applicable section number}. Each category of Gross Revenues and exclusion from Gross Revenue shall be separately stated (i.e., each category of Gross Revenues and exclusion from Gross Revenues should be identified as a separate line item).
  - B. For Local Revenue transactions, the auditor shall randomly sample no less than twenty five (25) Local Revenue transactions by obtaining a copy of the driver license information for each such transaction to confirm the customer zip codes are located within Palm Beach County. The audit report shall disclose the findings of the transactions sampled. In the event it is determined that Concessionaire has failed to maintain the required driver license information for more than three (3) Local Revenue transactions, Concessionaire shall cause the auditor to: (i) review all Local Revenue transactions for the preceding Contract Year to determine the amount of Concession Fees payable to the County for each instance Concessionaire failed to maintain the required driver license information, and (ii) provide a schedule in the audit report of the amounts due to County as a result of such review.
  - C. A schedule of the payments made to County by month and in total.
  - D. A schedule stating the Concession Fees due to County pursuant to the terms and conditions of the Agreement by month and in total, which shall include any amounts previously excluded from Gross Revenues resulting from the review of Local Revenue transactions as provided above.
  - E. A schedule summarizing the total number of vehicle rental transactions, and any sales taxes collected, by month.



- F. The audit report shall include an opinion on each of the schedules required to be submitted with the audit report.

Delivery of an audit report containing a qualified opinion, an adverse opinion, or a disclaimer of opinion, as defined by the American Institute of Certified Public Accountants or any successor agency thereto, shall be deemed to be a material breach of this Agreement. If the audit report indicates that the amount of Concession Fees (together with any sales taxes thereon) due and owing for any Contract Year is greater than the amount paid by Concessionaire to County during such Contract Year, the Concessionaire shall pay the difference to County with the audit report. If amount of Concession Fees actually paid by Concessionaire to County during any Contract Year exceeds the Concession Fees due and owing for such Contract Year, 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. The Department may extend the deadline for submission of the audit report for reasons beyond the reasonable control of Concessionaire or other good cause as reasonably determined by the Department; provided, however, any such extension shall not exceed sixty (60) days. County reserves the right to review and modify the audit requirements contained herein, which modifications shall become effective upon receipt of written notice by the Director to Concessionaire. Such modifications to the audit requirements shall be limited to changes necessary for clarification or furtherance of the provisions of this Agreement or to comply with GAAP.

6. Article 5, Concession Fees, Facility Rental and Accountability, is hereby amended to add the following new Section 5.15:

- 5.15 Required Reports. The parties acknowledge and agree that failure to timely provide accurate reports and audits, including, but not limited to, the reports required by Sections 5.08, 5.10 and 20.03(D), in accordance with the terms and conditions of this Agreement ("Reporting Requirements") may result in a significant loss and reputational damage to the County and Airport in the event issues are not timely identified and rectified. Notwithstanding any provision of this Agreement to the contrary, in the event Concessionaire fails to timely provide any required report or audit with the Reporting Requirements as provided in this Agreement, County may assess liquidated damages in the amount of Fifty Dollars (\$50.00) per day until such required

report or audit is delivered to County, unless Concessionaire has requested, and the Department has approved, an extension to such deadline for delivery in writing. The parties agree that the liquidated damage amounts are a reasonable estimate of the damages to the Airport's goodwill and reputation that would be incurred by County, and Concessionaire agrees to pay to County liquidated damages in accordance with this Section upon demand by County. The amount is not intended to be a penalty, but a reasonable measure of damages incurred by County. County shall invoice Concessionaire for such liquidated damages, and Concessionaire shall pay County within thirty (30) days of the date of County's invoice. Failure to timely pay liquidated damages as required by this Section shall be considered a material default of this Agreement. The Security Deposit shall also serve as security for the payment of liquidated damages. The availability of liquidated damages shall not preclude County from exercising other remedies, such as termination of this Agreement, due to default. Nothing in this Section shall be constructed as preventing County from recovering any direct costs incurred by County due to Concessionaire's default or non-performance.

7. Section 20.03, Airport Concession Disadvantaged Business Enterprise Participation Goal, is hereby amended to delete subsection D in its entirety and replace it with the following:

- D. Concessionaire shall provide written reports in accordance with the schedule established by the Department. Concessionaire acknowledges and agrees that, as of the Effective Date, Concessionaire shall be required to deliver written reports to the Department on a quarterly basis with information from the preceding quarter on or before the 30th day of each reporting month (January, April, July and October of each Contract Year) to the Department, in a form and detail satisfactory to the Department, unless otherwise notified in writing by the Department. The written reports shall detail ACDBE participation for each quarter, as well as the cumulative "to date" participation for the entire Contract Year. Quarterly reports shall be certified by an authorized representative of Concessionaire as being true and accurate. The Department may request Concessionaire provide a certification of receipt of payment from the ACDBE firms participating in this Agreement, in a form and detail satisfactory to the Department. In the event the ACDBE participation level drops below the established ACDBE participation goal, Concessionaire shall take immediate corrective measures to ensure that the ACDBE participation is increased to the established ACDBE participation goal. Concessionaire shall document its good faith efforts to achieve the ACDBE participation goal and provide written reports to the Department documenting such good faith efforts. The Department may require the reports required hereunder to be submitted electronically. The Department may extend the deadline for submission of a quarterly report for reasons beyond the

reasonable control of Concessionaire or other good cause as reasonably determined by the Department; provided, however, any such extension shall not exceed sixty (60) days.

8. 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.

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

10. This Amendment shall be considered effective when signed by the parties.

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Agreement as of the day and year first above written.

**PALM BEACH COUNTY, a political  
subdivision of the State of Florida**

By: \_\_\_\_\_  
Director, Department of Airports

**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY**

By: \_\_\_\_\_  
County Attorney

**CONCESSIONAIRE:**

By: \_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Title

(SEAL)