

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date: May 7, 2024

Consent Regular
 Workshop Public Hearing

Submitted By: Department of Airports

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: First Amendment (Amendment) to Advertising Concession Agreement at the Palm Beach International Airport (PBI) (R2019-0502) (Agreement) with Clear Channel Airports, Inc., a Pennsylvania corporation (Clear Channel), exercising the option to renew the Agreement to September 30, 2026, for payment of concession fees equal to 57% of advertising gross revenues, but not less than a minimum annual guarantee (MAG) of \$689,254.76.

Summary: The Agreement provides for the installation, operation, and maintenance of advertisement displays at PBI. The term of the Agreement expires on September 30, 2024, and provides for the option to renew for one additional period of two years. Clear Channel pays concession fees equal to 57% of advertising gross revenues, or a MAG, which is currently \$689,254.76. The MAG adjusts annually based on the greater of the preceding year's MAG or 85% of the preceding year's percentage fee. This Amendment exercises the renewal option, extending the term to September 30, 2026, and adds provisions for liquidated damages for failure to timely submit required reports and audits consistent with provisions added to other similar agreements. An Airports Concession Disadvantaged Business Enterprise (ACDBE) goal of 7.5% was established for this Agreement. The cumulative ACDBE participation to date is 4.3%. **Countywide (AH)**

Background and Justification: On November 18, 2018, the Department of Airports issued Request for Proposals PB 18-15 (RFP) for the advertising concession at the Palm Beach International Airport (PBI). The Board of County Commissioners approved the Agreement with In-Ter-Space Services, Inc., d/b/a Clear Channel Airports on April 16, 2019. On November 7, 2022, In-Ter-Space Services, Inc., changed its name to Clear Channel Airports, Inc.

Attachments:

- Amendment (3)

Recommended By: *[Signature]* Department Director 4/15/24 Date

Approved By: *[Signature]* Assistant County Administrator 4/19/24 Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2024</u>	<u>2025</u>	<u>2026</u>	<u>2027</u>	<u>2028</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
Operating Revenues	<u>\$-0-</u>	<u>(\$689,255)</u>	<u>(\$689,255)</u>	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u><u>\$-0-</u></u>	<u><u>(\$689,255)</u></u>	<u><u>(\$689,255)</u></u>	_____	_____
# ADDITIONAL FTE	_____	_____	_____	_____	_____
POSITIONS (Cumulative)	_____	_____	_____	_____	_____

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

Budget Account No: Fund 4100 Department 120 Unit 8430 RSource 4463
 Reporting Category _____

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

The fiscal impact above assumes payment of the \$689,255 MAG throughout the two year renewal term of 10/1/24 to 9/30/26. Clear Channel will pay the greater of a privilege fee equal to 57% of gross revenues, but not less than the \$689,255 MAG. The MAG may be adjusted annually to 85% of the privilege fee for the preceding contract year, but not less than the previous MAG.

C. Departmental Fiscal Review: [Signature] 4/1/24

III. REVIEW COMMENTS

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

[Signature] 4/15/24
 KK4110 OFMB QA 410

[Signature] 4/16/24
 Contract Dev. and Control
 7006 4/15/24

B. Legal Sufficiency:

[Signature] 4-17-24
 Assistant County Attorney

C. Other Department Review:

 Department Director

REVISED 11/17

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

**FIRST AMENDMENT TO
ADVERTISING CONCESSION AGREEMENT**

THIS FIRST AMENDMENT TO ADVERTISING CONCESSION AGREEMENT (this "Amendment") is made and entered into this May 7, 2024 by and between Palm Beach County, a political subdivision of the State of Florida ("County"), and Clear Channel Airports, Inc., a Pennsylvania corporation, formerly In-Ter-Space Services, Inc., d/b/a Clear Channel Airports, a Pennsylvania corporation ("Concessionaire"), with its office and address at 7450 Tilghman Street, Suite 104, Allentown, PA 18106.

WITNESSETH:

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

WHEREAS, Concessionaire, under that certain Advertising Concession Agreement between the parties dated April 16, 2019 (R-2019-0502) ("Agreement"), operates and manages the advertising concession at the Airport; and

WHEREAS, on November 16, 2022, Concessionaire amended its name from In-Ter-Space Services, Inc., to Clear Channel Airports, Inc.; and

WHEREAS, the parties hereto desire to 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. Recitals. The foregoing recitals 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. Renewal Term. The Term of the Agreement is hereby extended for an additional two (2) years in accordance with Section 2.02 of the Agreement, commencing on October 1, 2024, and expiring on September 30, 2026.

3. Article 5, Concession Fee and Accounting Standards, is hereby amended to add the following Section 5.16:

5.16 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 5.03, 5.12 and 17.04(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 construed as preventing County from recovering any direct costs incurred by County due to Concessionaire's default or non-performance.

4. Section 17.04, 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.

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

7. Effective Date. This Amendment shall become effective when signed by both parties hereto and approved by the Palm Beach County Board of County Commissioners.

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

ATTEST:
JOSEPH ABRUZZO,
CLERK OF THE CIRCUIT COURT
AND COMPTROLLER

PALM BEACH COUNTY,
A POLITICAL SUBDIVISION OF THE
STATE OF FLORIDA, BY ITS BOARD
OF COUNTY COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Maria Sachs, Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS
AND CONDITIONS

By: Cherie Helgert
County Attorney

By: Jan Burke
Director, Department of Airports

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

CONCESSIONAIRE:
Clear Channel Airports, Inc.

Donna Laudenskager
Signature

[Signature]
Signature

Donna Laudenskager
Print Name

Martin Gottrup
Print Name

Jon Abeln
Signature

President
Title

JON ABELN
Print Name

(Seal)

