

PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: December 5, 2006 [X] Consent [] Regular [] Workshop [] Public Hearing
Department:
Submitted By: Department of Airports
Submitted For:

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to adopt: Resolution approving revised standard form Airline Service Incentive Program Participation Agreements; authorizing the County Administrator or his designee to execute and make certain amendments to the standard form agreements; repealing Resolution No. R-2004-2413; and providing an effective date.

Summary: The proposed agreement defines a new destination as an airport rather than a city; this allows the County to grant an incentive for a new non-stop destination to a secondary airport within a destination market. Defining a new destination at the airport level will help foster competition between airlines in certain markets where there is limited service to the primary airport.

The proposed agreement also allows the County to grant a lesser incentive to the airline; the current agreement credits an airline's landing fees and gate charges, the revised agreement gives the County discretion to grant landing fees only in cases where the economic impact is deemed lesser.

Additionally, the prior agreement has been replaced with two separate agreements to handle Domestic and International flights individually for purposes of clarity.
Countywide (LMB)

Background and Justification: (BACKGROUND & JUSTIFICATION CONTINUED ON PAGE 3)

- Attachments: 1. Resolution 2. Domestic Airline Service Incentive Program Participation Agreement 3. International Airline Service Incentive Program Participation Agreement

Recommended By: [Signature] 11/2/06
Department Director Date
Approved By: [Signature] 11/2/06
County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

FISCAL YEARS	2007	2008	2009	2010	2011
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues (Grants)	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	=====	=====	=====	=====	=====
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included In Current Budget? Yes _____ No X
 Budget Account No.: Fund various Department various Unit various Object various
 Reporting Category various

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

Airport revenues are used for the Incentive Program, no ad valorem or General Fund money is affected. The Incentive credit to a particular airline could amount to \$164,000, assuming a daily operation for one year, \$54,000 if only landing fees are granted. The airline company will still be responsible for various rental and baggage system charges.

C. Departmental Fiscal Review: CM Summer

III. REVIEW COMMENTS

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

Jim Durb 11-9-06
 OFMB
 11/09/2006
 11-9-06
 11-8-06

Dr. J. Jacobson 11/15/06
 Contract Dev. and Control
 11/15/06

B. Legal Sufficiency:
Amy Becke
 Assistant County Attorney

C. Other Department Review:

 Department Director

Background and Justification:

The Board originally approved an Airline Service Incentive Program Participation Agreement in 2002 to attract new non-stop airline service. The Program credits an airline for certain airport fees for qualified flights. The credit involves Airport revenues, no ad valorem or General Fund money is affected.

The objective of the program is to increase non-stop flights to new markets, which will benefit passengers, increase airline competition at PBIA, and increase overall revenues to airport concessions and the County. Defining a new destination at the airport level will help foster competition between airlines in certain markets where there is limited service to the primary airport. Discount carriers often select secondary airports to service locations; discount carriers have significant potential to increase competition and reduce fares to these markets.

RESOLUTION NO.

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA; APPROVING NEW STANDARD FORM AIRLINE SERVICE INCENTIVE PROGRAM PARTICIPATION AGREEMENTS; AUTHORIZING THE COUNTY ADMINISTRATOR OR HIS DESIGNEE TO EXECUTE THE STANDARD FORM AIRLINE SERVICE INCENTIVE PROGRAM PARTICIPATION AGREEMENTS; ESTABLISHING AN AIRLINE SERVICE INCENTIVE PROGRAM; AUTHORIZING THE COUNTY ADMINISTRATOR OR HIS DESIGNEE TO ENTER INTO CERTAIN AMENDMENTS TO AIRLINE SERVICE INCENTIVE PROGRAM PARTICIPATION AGREEMENTS; REPEALING RESOLUTION 2004-2413; AND PROVIDING AN EFFECTIVE DATE.

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

WHEREAS, the Board of County Commissioners desires to market and promote air transportation service at the Airport by adopting an Airline Service Incentive Program to be offered for a promotional period; and

WHEREAS, the Airline Service Incentive Program will provide for a reduction in Gate Usage Charges and/or Landing Fees in accordance with the terms and conditions of the standard form Airline Service Incentive Program Participation Agreement for Qualified Domestic Flights, which is attached hereto and incorporated herein as Attachment "A" ("Domestic Flight Participation Agreement"), and the standard form Airline Service Incentive Program Participation Agreement for Qualified International Flights, which is attached hereto and incorporated herein as Attachment "B" ("International Flight Participation Agreement") (hereinafter collectively referred to as the "Participation Agreements"); and

WHEREAS, on November 16, 2004, the Board of County Commissioners adopted Resolution 2004-2413, creating an Airline Service Incentive Program; and

WHEREAS, the Board of County Commissioners desires to modify the Airline Service Incentive Program adopted pursuant to Resolution 2004-2413 offered for the Airport; and

WHEREAS, the Board of County Commissioners desires to authorize the County Administrator or his designee to execute the standard form Participation Agreements on behalf of the Board of County Commissioners with any airline eligible to participate in the Airline Service Incentive Program.

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

1. The foregoing recitals are true and correct and are expressly incorporated herein by reference and made a part hereof. Terms not defined in this Resolution shall have the meanings provided in the Participation Agreements.

2. The Board of County Commissioners hereby adopts the standard form Participation Agreements. The County Administrator or his designee is hereby authorized to execute the Participation Agreements, on behalf of the Board of County Commissioners, with any airline eligible to participate in the Airline Service Incentive Program.

3. In order to be eligible to participate in the Airline Service Incentive Program, an airline must: (1) be party to an agreement with the County authorizing the use of Airport facilities ("Use Agreement"); (2) not be in default of the Use Agreement or any other agreement with the County; (3) enter into a Domestic Flight Participation Agreement or International Flight Participation Agreement with the County; (4) add a Qualified Domestic Flight or Qualified International Flight on or after the effective date of this Resolution; and (5) provide the Qualified Domestic Flight or Qualified International Flight for the Required Service Duration.

4. The County Administrator or his designee may require an airline to complete a Required Service Duration of six (6) or twelve (12) months pursuant to a Domestic Flight Participation Agreement or International Flight Participation Agreement and may execute, on behalf of the Board of County Commissioners, amendments to Participation Agreements for the purpose of extending the Required Service Duration of a Qualified Domestic Flight or Qualified International

Flight and the associated credits or waivers from six (6) to twelve (12) months. The County Administrator or his designee may provide a Gate Use Charge Credit in addition to a Landing Fee Credit to any airline providing a Qualified Domestic Flight to a city that is not currently served on a non-stop basis by any airline. A Qualified Domestic Flight to an airport that is not currently served on a non-stop basis, which is located within a city that is currently served on a non-stop basis, shall not be entitled to receive a Gate Use Charge Credit unless the County Administrator or his designee has determined that the Qualified Domestic Flight is to: (i) a market with high passenger demand, or (ii) to an expanding market, which is anticipated to increase in passenger demand.

5. It is the intention of the Board of County Commissioners that this delegation of signature authority is strictly limited to the parameters set forth herein. Except as otherwise provided for herein, any deviation from the standard terms and conditions shall be brought before the Board of County Commissioners for approval. The County Administrator or his designee is hereby authorized to execute, on behalf of the Board of County Commissioners, Participation Agreements that include non-material changes. For purposes of this Resolution, "non-material changes" mean changes that do not modify the substantive obligations of the parties under the Participation Agreements. The County Administrator's designee under this Resolution includes the Director of the Palm Beach County 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 repeal Resolution 2004-2413 in its entirety. Notwithstanding any provision of this Resolution to the contrary, the repeal of Resolution 2004-2413 shall not affect any agreement entered into pursuant to Resolution 2004-2413 prior to the effective date of this Resolution.

8. This Resolution shall be 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 KAREN T. MARCUS	-
COMMISSIONER JEFF KOONS	-
COMMISSIONER WARREN H. NEWELL	-
COMMISSIONER MARY MCCARTY	-
COMMISSIONER BURT AARONSON	-
COMMISSIONER	-
COMMISSIONER ADDIE L. GREENE	-

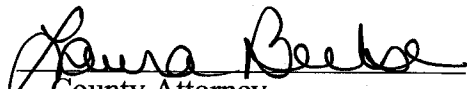
Then the Chair thereupon declared this Resolution duly passed and adopted this ____ day of _____, 20__.

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: 
County Attorney

**AIRLINE SERVICE INCENTIVE PROGRAM
PARTICIPATION AGREEMENT FOR QUALIFIED DOMESTIC FLIGHTS**

THIS AIRLINE SERVICE INCENTIVE PROGRAM PARTICIPATION AGREEMENT FOR QUALIFIED DOMESTIC FLIGHTS (this "Agreement") is made and entered into this ___ day of _____, 200__ by and between Palm Beach County, a political subdivision of the State of Florida ("County"), and _____, a _____, having its office and principal place of business at ("Airline").

WITNESSETH:

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

WHEREAS, Airline is engaged in the business of scheduled air transportation of passengers; and

WHEREAS, County desires to market and promote air transportation service at the Airport; and

WHEREAS, County and Airline entered into that certain _____ Agreement dated _____, authorizing the use of Airport facilities ("Use Agreement"); and

WHEREAS, the Use Agreement provides for County's ability to charge certain fees and charges for use of the Airport facilities; and

WHEREAS, County wishes to encourage Airline to increase the number of non-stop destinations served by Airline from the Airport by providing certain incentives for such service by Airline for a promotional period.

NOW THEREFORE, in consideration of the mutual covenants, promises and representations contained herein, the parties hereto agree to the following terms and conditions:

1. RECITALS

The recitals set forth above are true and correct and form a part of this Agreement.

2. DEFINITIONS

A. "Airline Service Incentive Program" means the incentive program detailed in this Agreement and the Resolution.

B. "Airline Service Incentive Reporting Forms" means the forms attached hereto as Exhibit "A".

C. "Board" means the Palm Beach County Board of County Commissioners.

D. "Flight Destination" means a particular city or airport.

[INSERT IF APPLICABLE: E. "Gate Usage Charge" means a charge assessed by County on Airline for loading bridge use, pre-conditioned air, 400-hertz power, and holdroom equipment and areas pursuant to the Use Agreement.

[INSERT IF APPLICABLE: F. "Gate Usage Charge Credit" means a one-time credit of up to **[CHOOSE ONE: twelve (12) OR six (6)]** months of Gate Usage Charges, payable by Airline to County for a Qualified Domestic Flight. The amount of a Gate Usage Charge Credit shall be based on the Per Use Gate Charge

(as hereinafter defined) applicable to Airline under its Use Agreement with County. The term "Per Use Gate Charge" shall have the meaning provided in Exhibit "E" (Rate and Fee Schedule) of the Airline-Airport Use and Lease Agreement adopted by the Board pursuant to Resolution No. 2006-1906, as such agreement and calculations may be amended from time to time, or any successor resolution or agreement adopted by the Board establishing similar charges. Notwithstanding the foregoing, Gate Usage Charge Credits shall not exceed the actual charges assessed to Airline during the Required Service Duration.]

- G. "Landing Fee" means a charge assessed by County to Airline based on landed weight for aircraft arriving at Airport pursuant to the Use Agreement.
- H. "Landing Fee Credit" means a one-time credit of up to **[CHOOSE ONE: twelve (12) OR six (6)]** months of Landing Fees, payable by Airline to County for a Qualified Domestic Flight.
- I. "Qualified Domestic Flight" means domestic flight service by Airline to Airport, which meets the following criteria:
- (1) the flight is added on or after the effective date of the Resolution, or the flight is converted to jet-powered aircraft on or after the effective date of the Resolution;
 - (2) the Flight Destination is not currently served on a non-stop basis by any airline and has not been served by Airline on a non-stop basis within the preceding thirty-six (36) months, or the Flight Destination is not currently served by Airline or any airline on a non-stop basis by jet-powered aircraft and has not been served by Airline using jet-powered aircraft within the preceding thirty-six (36) months;
 - (3) the flight consists of non-stop arrival and departure passenger service;
 - (4) the flight has weekly service frequency at a minimum;
 - (5) the flight is provided for the Required Service Duration; and
 - (6) the flight satisfies the eligibility rules set forth in the Resolution.
- J. **[CHOOSE ONE: "Required Service Duration" means twelve (12) consecutive months of operation, commencing on or about _____, 20__.** **OR: "Required Service Duration" means six (6) consecutive months of operation, commencing on or about _____, 20__.]**
- K. "Resolution" means Resolution No. ____ - ____ adopted by the Palm Beach Board of County Commissioners on _____, as may be amended from time to time, which is incorporated herein by this reference.

3. CREDITS FOR QUALIFIED DOMESTIC FLIGHTS

- A. Subject to the terms and conditions of this Agreement and the Resolution, County agrees to provide Airline with a **[CHOOSE ONE: Gate Usage Charge Credit and Landing Fee Credit OR Landing Fee Credit]** for each Qualified Domestic Flight identified in Exhibit "B".
- B. Airline shall complete and deliver to County all required Airline Service Incentive Reporting Forms within ninety (90) days of completion of the Required Service Duration of a Qualified Domestic Flight. Airline acknowledges and agrees County shall have no obligation to accept incomplete or inaccurate Airline Service Incentive Reporting Forms. Within forty-five (45) days of receipt of complete Airline Service Incentive Reporting Forms, County shall notify Airline

of the [**CHOOSE ONE:** Gate Usage Charge Credit and Landing Fee Credit **OR** Landing Fee Credit] earned by Airline for each Qualified Domestic Flight identified in Exhibit "B". County shall apply the credit(s) earned by Airline hereunder against the applicable charges. .

- C. Airline acknowledges and agrees that Airline shall not be entitled to receive [**CHOOSE ONE:** Gate Use Charge Credits or Landing Fee Credits **OR** Landing Fee Credits] hereunder in the event Airline: (i) is in default of the Use Agreement or any other agreement between Airline and County; or (ii) has failed to pay any rentals, fees or charges payable to County under the Use Agreement or any other agreement between Airline and County when due.

4. **DEFAULT**

A default under the terms of this Agreement shall occur if either party hereto breaches any term, condition or covenant contained in this Agreement to be performed or observed by such party, and such party fails to remedy the breach within thirty (30) days after written notice thereof from the non-defaulting party.

5. **TERMINATION**

- A. In the event Airline is in default of this Agreement, the Use Agreement or any other agreement between Airline and County, County shall have the right to terminate this Agreement upon written notice to Airline, whereupon County shall be released from all further obligations under this Agreement.
- B. In the event Airline fails to submit all required, completed Airline Service Incentive Reporting Forms in accordance with the requirements of this Agreement, County shall have the right to terminate this Agreement upon written notice to Airline, whereupon County shall be released from all further obligations under this Agreement.
- C. Upon termination of this Agreement, Airline acknowledges and agrees that Airline shall not be eligible to receive any [**INSERT IF APPLICABLE:** Gate Usage Charge Credits or] Landing Fee Credits contemplated under this Agreement and shall forgo any claim against County for such credits.

6. **FEDERAL REQUIREMENTS**

This Agreement is intended to satisfy the standards for airport incentive programs for promotion of air carrier service set forth in the Federal Aviation Administration's ("FAA") Statement of Policy and Procedures Concerning the Use of Airport Revenue, 64 FR 7696, February 16, 1999, as now or hereafter amended. If at any time the FAA determines that the Airline Service Incentive Program or this Agreement does not comply with any federal laws, rules or regulations or the County's grant agreement obligations, County shall have the right to terminate this Agreement upon written notice to Airline, whereupon the parties shall be released from all further obligations under this Agreement.

7. **AIRPORT FUNDING REQUIREMENTS**

County's obligation to perform under this Agreement shall be contingent upon satisfaction of the funding and rate requirements of the Palm Beach County Airport System Bond Resolution No. R-84-427 dated April 3, 1984, as amended and supplemented ("Bond Resolution"). County may terminate this Agreement upon written notice to Airline in the event County determines, at its sole discretion, that insufficient funds are available to support the Airline Service Incentive Program or that continuation of the Airline Service Incentive Program will or may result in a violation of the funding or rate requirements of the Bond Resolution, whereupon the parties shall be released from all further obligations under this Agreement.

8. NOTICES

All notices and elections (collectively "notices") to be given or delivered by or to any party hereunder, shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service, or alternatively shall be sent by United States certified mail with return receipt requested. The effective date of any notice shall be the date of delivery of the notice if by personal delivery, courier services, or if mailed, upon the date which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-deliverable, as the case may be. The parties hereby designate the following address as the address to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

To: County:	With copy to:
Department of Airports	Palm Beach County Attorney's Office
Palm Beach County	Attn: Airport Attorney
846 Palm Beach International	301 North Olive Avenue
Airport	Suite 601
West Palm Beach, FL 33406-1470	West Palm Beach, FL 33401

To: Airline:

Either party may change the address for notices to such party upon three (3) days prior written notice.

9. GOVERNING LAW AND VENUE

This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Florida. Venue in any action, suit or proceeding in connection with this Agreement shall be in Palm Beach County, Florida.

10. ENFORCEMENT COSTS

Each party shall bear its own costs or expenses, including attorney's fees, associated with the enforcement of the terms or conditions of this Agreement.

11. ANNUAL BUDGETARY FUNDING

This Agreement and all obligations of County hereunder are subject to and contingent upon annual budgetary funding and appropriations by the Palm Beach County Board of County Commissioners.

12. SEVERABILITY

In the event that any section, paragraph, sentence, clause, or provision of this Agreement is held to be invalid by a court of competent jurisdiction, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

13. HEADINGS

The paragraph headings or captions appearing in this Agreement are for convenience only, are not part of this Agreement and are not to be considered in interpreting this Agreement.

14. ENTIRE UNDERSTANDING

This Agreement represents the entire understanding between the parties and supersedes all other negotiations, representations, or agreement, either written or oral, relating to this Agreement.

15. WAIVER

No waiver of any provision of this Agreement shall be effective against any party hereto unless it is in writing and signed by the party waiving the provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

16. NON-EXCLUSIVITY OF REMEDIES

No remedy herein conferred upon either party hereunder is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by a party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

17. AMENDMENT

This Agreement may be modified and amended only by written instrument executed by the parties hereto.

18. ATTACHMENTS

Exhibits attached hereto shall be incorporated herein by this reference.

19. COUNTERPARTS

This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original. All of which together shall constitute one (1) and the same instrument.

20. EFFECTIVE DATE AND TERM

This Agreement shall take effect upon execution of this Agreement by the parties hereto and shall expire upon completion of the parties' obligations hereunder, unless sooner terminated pursuant to the terms of this Agreement.

{Remainder of page intentionally left blank.}

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year first written above.

WITNESSES:

By: _____
Signature

Print Name

By: _____
Signature

Print Name

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**

By: _____
County Attorney

WITNESSES:

By: _____
Signature

Print Name

By: _____
Signature

Print Name

PALM BEACH COUNTY:

By: _____
County Administrator or Designee

AIRLINE:

By: _____
Signature

Print Name

Title: _____

(Seal)

EXHIBIT "A"
AIRLINE SERVICE INCENTIVE REPORTING FORMS

EXHIBIT "B"
QUALIFIED DOMESTIC FLIGHTS ELIGIBLE FOR CREDIT

**AIRLINE SERVICE INCENTIVE PROGRAM
PARTICIPATION AGREEMENT FOR QUALIFIED INTERNATIONAL FLIGHTS**

THIS AIRLINE SERVICE INCENTIVE PROGRAM PARTICIPATION AGREEMENT FOR QUALIFIED INTERNATIONAL FLIGHTS (this "Agreement") is made and entered into this ____ day of _____, 200__ by and between Palm Beach County, a political subdivision of the State of Florida ("County"), and _____, a _____, having its office and principal place of business at ("Airline").

WITNESSETH:

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

WHEREAS, Airline is engaged in the business of scheduled air transportation of passengers; and

WHEREAS, County desires to market and promote air transportation service at the Airport; and

WHEREAS, County and Airline entered into that certain _____ Agreement dated _____, authorizing the use of Airport facilities ("Use Agreement"); and

WHEREAS, the Use Agreement provides for County's ability to certain fees and charges for use of the Airport facilities; and

WHEREAS, County wishes to encourage Airline to increase the number of non-stop destinations served by Airline from the Airport by providing certain incentives for such service by Airline for a promotional period.

NOW THEREFORE, in consideration of the mutual covenants, promises and representations contained herein, the parties hereto agree to the following terms and conditions:

1. RECITALS

The recitals set forth above are true and correct and form a part of this Agreement.

2. DEFINITIONS

- A. "Airline Service Incentive Program" means the incentive program detailed in this Agreement and the Resolution.
- B. "Airline Service Incentive Reporting Forms" means the forms attached hereto as Exhibit "A" to this Agreement.
- C. "Board" means the Palm Beach County Board of County Commissioners.
- D. "Flight Destination" means a particular city or airport.
- E. "Gate Usage Charge" means a charge assessed by County on Airline for loading bridge use, pre-conditioned air, 400-hertz power, and holdroom equipment and areas pursuant to the Use Agreement.
- F. "Landing Fee" means a charge assessed by County to Airline based on landed weight for aircraft arriving at Airport pursuant to the Use Agreement.

- G. "Letter of Credit" means a clean Irrevocable Letter of Credit in a form and issued by a company acceptable to County, in its sole discretion.
- H. "Qualified International Flight" means international flight service provided by Airline to Airport, which meets the following criteria:
- (1) the flight is added on or after the effective date of the Resolution, or the flight is converted to jet-powered aircraft on or after the effective date of the Resolution;
 - (2) the Flight Destination is not currently served on a non-stop basis by any airline and has not been served by Airline on a non-stop basis within the preceding thirty-six (36) months, or the Flight Destination is not currently served by Airline or any airline on a non-stop basis by jet-powered aircraft and has not been served by Airline using jet-powered aircraft within the preceding thirty-six (36) months;
 - (3) the flight consists of non-stop arrival and departure service;
 - (4) the flight has bi-weekly service frequency, at a minimum;
 - (5) the flight is provided for the Required Service Duration; and
 - (6) the flight satisfies the eligibility rules set forth in the Resolution.

For purposes of this definition, stops at interim destinations to re-fuel, clear customs, or satisfy other operational needs shall be considered non-stop service provided that no passengers originate or terminate at the interim destination.

- I. **[CHOOSE ONE:** "Required Service Duration" means six (6) consecutive months of operation, commencing on or about _____, 20____. **OR** "Required Service Duration" means twelve (12) consecutive months of operation, commencing on or about _____, 20____.]
- J. "Resolution" means Resolution No. ____ - ____ adopted by the Palm Beach Board of County Commissioners on _____, as may be amended from time to time, which is incorporated herein by this reference.

3. **GATE USAGE CHARGE AND LANDING FEE WAIVERS FOR QUALIFIED INTERNATIONAL FLIGHTS**

- A. Subject to the terms and conditions of this Agreement and the Resolution, County agrees to waive Gate Usage Charges and Landing Fees, which would otherwise be payable by Airline to County under the Use Agreement during the Required Service Duration, for each Qualified International Flight identified in Exhibit "B". Notwithstanding anything in this Agreement to the contrary, Airline shall not be entitled to receive a waiver of Gate Usage Charges or Landing Fees in the event Airline fails to: (1) complete the Required Service Duration for a Qualified International Flight; or (2) submit completed, accurate Airline Service Incentive Reporting Forms in accordance with the requirements of this Section 3. Notwithstanding any provision of this Agreement to the contrary, Airline acknowledges and agrees that Airline shall not be entitled to a waiver of Gate Usage Charges or Landing Fees hereunder until County has received a Letter of Credit in accordance with Section 3(B).
- B. Prior to the effective date of this Agreement, Airline shall provide the Department with a Letter of Credit in an amount equal to the Gate Usage Charges and Landing Fees to be waived by County during the Required Service Duration. Airline shall keep and maintain the Letter of Credit in full force and effect during

the entire term of this Agreement and for no less than three (3) months following submission of the required Airline Service Incentive Reporting Forms. Not less than forty-five (45) days prior to the expiration of the Letter of Credit, Airline shall submit to the Department evidence, in a form and detail satisfactory to the Department, that the Letter of Credit has been renewed. Airline shall complete and deliver the required Airline Service Incentive Reporting Forms to County within ninety (90) days of completion of the Required Service Duration. Airline acknowledges and agrees that County shall have no obligation to accept incomplete or inaccurate Airline Service Incentive Reporting Forms. County shall have the right to draw upon the Letter of Credit in an amount equal to the Gate Usage Charges and Landing Fees, which were waived by County pursuant to this Agreement, and to retain the proceeds in the event Airline fails to: (1) complete the Required Service Duration of a Qualified International Flight; (2) submit complete, accurate Airline Incentive Reporting Forms in accordance with the requirements of this Section 3; or (3) to provide evidence to the Department that Airline has renewed the Letter of Credit as required by this Section 3.

- C. For purposes of this Section 3, the amount of the Gate Usage Charge waiver shall be based on the Per Use Gate Charge (as hereinafter defined) applicable to Airline under its Use Agreement with County. The term "Per Use Gage Charge" shall have the meaning provided in Exhibit "E" (Rate and Fee Schedule) of the Airline-Airport Use and Lease Agreement adopted by the Board pursuant to Resolution No. 2006-1906, as such agreement and calculations may be amended from time to time, or any successor resolution or agreement adopted by the Board establishing similar charges. Notwithstanding the foregoing, Gate Usage Charge waivers shall be limited to the actual Gate Usage Charges incurred by Airline during the Required Service Duration.

4. **DEFAULT**

A default under the terms of this Agreement shall occur if either party hereto breaches any term, condition or covenant contained in this Agreement to be performed or observed by such party, and such party fails to remedy the breach within thirty (30) days after written notice thereof from the non-defaulting party.

5. **TERMINATION**

- A. In the event Airline is in default of this Agreement, the Use Agreement or any other agreement between Airline and County, County shall have the right to draw upon the Letter of Credit provided for in Section 3 in an amount equal to the Landing Fees and Gate Usage Charges waived by County hereunder and to terminate this Agreement upon written notice to Airline, whereupon County shall be released from all further obligations under this Agreement.
- B. In the event Airline fails to submit all required, completed Airline Service Incentive Reporting Forms in accordance with the requirements of this Agreement or to complete the Required Service Duration, County shall have the right to draw upon the Letter of Credit provided for in Section 3 in an amount equal to the Landing Fees and Gate Usage Charges waived by County hereunder and to terminate this Agreement upon written notice to Airline, whereupon County shall be released from all further obligation under this Agreement.
- C. Upon termination of this Agreement, Airline acknowledges and agrees that Airline shall not be eligible to receive any waiver of Gate Usage Charges or Landing Fees under this Agreement and shall forgo any claim against County for such waivers.

6. FEDERAL REQUIREMENTS

This Agreement is intended to satisfy the standards for airport incentive programs for promotion of air carrier service set forth in the Federal Aviation Administration's ("FAA") Statement of Policy and Procedures Concerning the Use of Airport Revenue, 64 FR 7696, February 16, 1999, as now or hereafter amended. If at any time the FAA determines that the Airline Service Incentive Program or this Agreement does not comply with any federal laws, rules or regulations or the County's grant agreement obligations, County shall have the right to terminate this Agreement upon written notice to Airline.

7. AIRPORT FUNDING REQUIREMENTS

County's obligation to perform under this Agreement shall be contingent upon satisfaction of the funding and rate requirements of the Palm Beach County Airport System Bond Resolution No. R-84-427 dated April 3, 1984, as amended and supplemented ("Bond Resolution"). County may terminate this Agreement upon written notice to Airline in the event County determines, at its sole discretion, that insufficient surplus funds are available to support the Airline Service Incentive Program or that continuation of the Airline Service Incentive Program will or may result in a violation of the funding or rate requirements of the Bond Resolution, whereupon the parties shall be released from all further obligations under this Agreement.

8. NOTICES

All notices and elections (collectively "notices") to be given or delivered by or to any party hereunder, shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service, or alternatively shall be sent by United States certified mail with return receipt requested. The effective date of any notice shall be the date of delivery of the notice if by personal delivery, courier services, or if mailed, upon the date which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-deliverable, as the case may be. The parties hereby designate the following address as the address to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

<p>To: County:</p> <p>Department of Airports Palm Beach County 846 Palm Beach International Airport West Palm Beach, FL 33406-1470</p>	<p>With copy to:</p> <p>Palm Beach County Attorney's Office Attn: Airport Attorney 301 North Olive Avenue Suite 601 West Palm Beach, FL 33401</p>
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To: Airline:

9. GOVERNING LAW AND VENUE

This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Florida. Venue in any action, suit or proceeding in connection with this Agreement shall be in Palm Beach County, Florida.

10. ENFORCEMENT COSTS

Each party shall bear its own costs or expenses, including attorney's fees, associated with the enforcement of the terms or conditions of this Agreement.

11. ANNUAL BUDGETARY FUNDING

This Agreement and all obligations of County hereunder are subject to and contingent upon annual budgetary funding and appropriations by the Palm Beach County Board of County Commissioners.

12. SEVERABILITY

In the event that any section, paragraph, sentence, clause, or provision of this Agreement is held to be invalid by a court of competent jurisdiction, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

13. HEADINGS

The paragraph headings or captions appearing in this Agreement are for convenience only, are not part of this Agreement and are not to be considered in interpreting this Agreement.

14. ENTIRE UNDERSTANDING

This Agreement represents the entire understanding between the parties and supersedes all other negotiations, representations, or agreement, either written or oral, relating to this Agreement.

15. WAIVER

No waiver of any provision of this Agreement shall be effective against any party hereto unless it is in writing and signed by the party waiving the provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

16. NON-EXCLUSIVITY OF REMEDIES

No remedy herein conferred upon either party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by either party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

17. AMENDMENT

This Agreement may be modified and amended only by written instrument executed by the parties hereto.

18. ATTACHMENTS

Exhibits attached hereto shall be incorporated herein by this reference.

19. COUNTERPARTS

This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original. All of which together shall constitute one (1) and the same instrument.

20. EFFECTIVE DATE AND TERM

This Agreement shall take effect upon execution of this Agreement by the parties hereto and shall expire upon completion of the parties' obligations hereunder, unless sooner terminated pursuant to the terms of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year first written above.

WITNESSES:

By: _____
Signature

Print Name

By: _____
Signature

Print Name

Approved as to Form and Legal Sufficiency:

By: _____
County Attorney

WITNESSES:

By: _____
Signature

Print Name

By: _____
Signature

Print Name

PALM BEACH COUNTY:

By: _____
County Administrator or Designee

AIRLINE:

By: _____
Signature

Print Name

Title: _____

(Seal)

EXHIBIT "A"
AIRLINE SERVICE INCENTIVE REPORTING FORMS

EXHIBIT "B"
QUALIFIED INTERNATIONAL FLIGHTS ELIGIBLE FOR WAIVERS