

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: **June 3, 2008** Consent Regular
 Workshop Public Hearing
 Department:
 Submitted By: **Department of Airports**
 Submitted For:

I. EXECUTIVE BRIEF

- Motion and Title: Staff recommends motion to:**
- (A) Approve a one-time revision to the Airline Service Incentive Program Participation Agreement form, reducing the required service duration from 6 months to 12 weeks for White Airways, S.A. for international flights to Lisbon, Portugal.
 - (B) Authorize the County Administrator or his designee to execute the revised form agreement with White Airways, S.A.

Summary:
 The BCC approved the original standard form Airline Service Incentive Program (Program) Participation Agreement in 2002 (R-2002-2294), providing for airport fee reductions to attract air service from new destinations. The current standard form agreement approved pursuant to Resolution 2006-2643 requires the airline's service duration to last a minimum of 6 months. Staff recommends a one time reduction in this requirement to 12 weeks to attract White Airways, which is proposing direct flights between Lisbon, Portugal and Palm Beach County during the summer of 2008. The agreement will be executed by the County Administrator or his designee upon finalization of the agreement authorizing White Airways to conduct airline operations at PBIA.

The County will be waiving an estimated \$7,800 in airport fees; however, approximately \$17,600 in airport fees would remain payable to the County. Additional concession revenues will likely be earned due to increased passenger traffic. **Countywide (AH)**

Background and Justification:
 The Program waives certain airport fees for qualified international flights. The waiver involves airport revenues. No ad valorem or General Fund money will be used. 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. The Program is used for the initial startup of airline service. Airlines are not eligible for credits or waivers of fees in subsequent years for the same flight.

Attachments:
 Proposed White Airways, S.A. Agreement with revised service duration

Recommended By: *[Signature]* 5/5/08
Department Director Date
 Approved By: *[Signature]* 5/3/08
County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

FISCAL YEARS	2008	2009	2010	2011	2012
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
Operating Revenues	(17,600)	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	(17,600)	_____	_____	_____	_____
# 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 this airline will be approximately \$7,800 over the 12 week service period; airport fees of approximately \$17,600 will be charged. Other concession fees may be increased as a result of the additional passenger traffic.

C. Departmental Fiscal Review: Michael Simon

III. REVIEW COMMENTS

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

Atwillhite 5-19-08
 OFMB
 5-19-08
no
 5/14
Contract Dev. and Control 5/21/08
 5/20/08

B. Legal Sufficiency:

Anne Delgent 5/22/08
 Assistant County Attorney

C. Other Department Review:

 Department Director

**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 White Airways, S.A. , a _____, having its office and principal place of business at R. Henrique Callado, n.º4-piso 2 Edificio Orange-Leiã 2740-303 Porto Salvo, which is located in Portugal ("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 Covering the Operation of Aircraft at Palm Beach International Airport, dated _____, 2008, 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. "Required Service Duration" means twelve weeks of operation, commencing on or about July 18, 2008.
- J. "Resolution" means Resolution No. 2006-2643 adopted by the Palm Beach Board of County Commissioners on December 06, 2006, 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 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 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:

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:
White Airways, SA
R. Henrique Callado, n.º4 - piso 2
Edificio Orange – Leião
2740-303 Porto Salvo
Portugal

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:
WHITE AIRWAYS, S.A.**

By: _____
Signature

Print Name

Title: _____

(Seal)

EXHIBIT "A"
AIRLINE SERVICE INCENTIVE REPORTING FORMS

To be used for new non-stop Domestic or International Flights

- | | | |
|-----|-------------------------------|------------------------------------|
| 1. | Airline Name | <u>White Airways, S.A.</u> |
| 2. | Dates of Service (from – to) | _____ |
| 3. | Flight Number(s) | _____ |
| 4. | Aircraft Type | <u>A310</u> |
| 5. | First Fiscal Year | <u>FY2008 (10/01/07 – 9/30/08)</u> |
| 6. | Landed Weight | <u>273,400 lbs.</u> |
| 7. | Number of Landings | <u>12</u> |
| 8. | Landing Fee Rate | <u>\$1.2793/1,000 lbs.</u> |
| 9. | Total Landing Fee | <u>\$4,197.13</u> |
| 10. | Gate Usage Charge Rate | <u>\$299.20/aircraft turn</u> |
| 11. | Total Gate Usage Charge | <u>\$3,590.40</u> |
| 12. | Second Fiscal Year | <u>FY2009 (10/01/08 – 9/30/09)</u> |
| 13. | Landed Weight | _____ |
| 14. | Number of Landings | _____ |
| 15. | Landing Fee Rate | _____ |
| 16. | Total Landing Fee | _____ |
| 17. | Gate Usage Charge Rate | _____ |
| 18. | Total Gate Usage Charge | _____ |
| 19. | TOTAL INCENTIVE AMOUNT | <u>\$7,787.53</u> |

NOTE: Landings are to be separated by fiscal year as the rates change each fiscal year

CONTACT NAME: _____

CONTACT PHONE NUMBER _____

EXHIBIT "B"
QUALIFIED INTERNATIONAL FLIGHTS ELIGIBLE FOR WAIVERS

Lisbon Portela Airport (LIS)
Lisbon, Portugal