

## AGENDA ITEM SUMMARY

**Department:**

**Submitted For:**

**Motion and Title: Staff recommends a motion to adopt:** Resolution approving a revised standard form Airline Service Incentive Program Participation Agreement authorizing the County Administrator or his designee to execute and make certain amendments to the standard form agreement; repealing Resolution 2006-2643; and providing an effective date.

The revised agreement has several changes to enhance the terms for airlines: the incentive may now be extended for a period longer than one year, although the County may cancel at any time with 90 days notice; fees will now be waived, rather than using a rebate system; payment bonds for waived fees will not be required; flights may be considered eligible without regard to minimum service duration; and flights may be considered eligible regardless of prior service history to the destination.

**Background and Justification:** The objective of the program is to increase non-stop flights to new markets, which will benefit passengers, increase airline competition at PBI, and increase overall revenues to airport concessions and the County. The added flexibility of the revised agreement will help attract and retain scheduled air service to markets such as Tallahassee and western US cities such as Denver, Las Vegas, and California markets.

**Recommended By:**

**Date**

**County Administrator**

Date \_\_\_\_\_

## II. FISCAL IMPACT ANALYSIS

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

FISCAL YEARS	20__	20__	20__	20__	20__
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
Operating Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	<u><u>* SEE BELOW</u></u>				
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	_____	_____	_____	_____	_____

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 waiver to a particular airline could amount to \$150,000, 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: Chris Simon

## III. REVIEW COMMENTS

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

John [Signature] 3/30/09  
OFMB    CN 3/26/09

Dr. S. Jacoby 3/31/09  
Contract Dev. and Control    3/31/09

### B. Legal Sufficiency:

James Brubaker  
Assistant County Attorney

### C. Other Department Review:

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

**RESOLUTION NO.**

**RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA; APPROVING THE NEW STANDARD FORM AIRLINE SERVICE INCENTIVE PROGRAM PARTICIPATION AGREEMENT; AUTHORIZING THE COUNTY ADMINISTRATOR OR HIS DESIGNEE TO EXECUTE THE STANDARD FORM AIRLINE SERVICE INCENTIVE PROGRAM PARTICIPATION AGREEMENT; 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 2006-2643; 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 Landing Fees and/or Gate Usage Charges in accordance with the terms and conditions of the standard form Airline Service Incentive Program Participation Agreement for Qualified Flights, which is attached hereto and incorporated herein as Attachment "A", Participation Agreement; and

**WHEREAS**, on December 5, 2006, the Board of County Commissioners adopted Resolution 2006-2643, modifying the Airline Service Incentive Program; and

**WHEREAS**, the Board of County Commissioners desires to further modify the Airline Service Incentive Program adopted pursuant to Resolution 2006-2643 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 Agreement.

2. The Board of County Commissioners hereby adopts the standard form Participation Agreement. The County Administrator or his designee is hereby authorized to execute the Participation Agreement, 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 a Use Agreement with the County; (2) not be in default of the Use Agreement or any other agreement with the County; (3) enter into the Participation Agreement with the County; and (4) add a Qualified Flight on or after January 1, 2009.

4. The County Administrator or his designee may provide a Gate Usage Charge waiver in addition to a Landing Fee waiver to any airline providing a Qualified Flight to a city that is not currently served on a non-stop basis by any airline. The County Administrator or his designee shall determine whether airline is entitled to a Gate Use Charge waiver in addition to the Landing Fee waiver by considering factors such as, but not limited to, (1) passenger demand for the destination, (2) development of a destination expected to increase in passenger demand, or (3) destinations with

intrinsic importance to Palm Beach County for reasons such as governmental, business, or general welfare concerns.

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 material 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. Resolution 2006-2643 is hereby repealed in its entirety. Notwithstanding any provision of this Resolution to the contrary, the repeal of Resolution 2006-2643 shall not affect any agreement entered into pursuant to Resolution 2006-2643 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 JEFF KOONS, Chairman	-
COMMISSIONER BURT AARONSON, Vice Chairman	-
COMMISSIONER KAREN T. MARCUS	-
COMMISSIONER SHELLEY VANA	-
COMMISSIONER STEVEN L. ABRAMS	-
COMMISSIONER JESS R. SANTAMARIA	-
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 FLIGHTS**

**THIS AIRLINE SERVICE INCENTIVE PROGRAM PARTICIPATION AGREEMENT FOR QUALIFIED FLIGHTS** (this "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ 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 collect certain fees and charges for use of the Airport facilities; and

**WHEREAS**, County wishes to encourage Airline to increase the number of non-stop flights to 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, as may be modified from time to time by the Department upon prior written notice to Airline.
- C. "Board" means the Palm Beach County Board of County Commissioners.
- D. "Flight Destination" means {Insert Name(s) of Flight Destination(s)}.
- 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, including Commuter Operating Charges.
- 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. "Qualified Flight" means flight service provided by Airline between a Flight Destination and the Airport, which meets the following criteria:

- (1) the flight is added on or after January 1, 2009, or the flight is converted to jet-powered aircraft on or after January 1, 2009;
- (2) the Flight Destination is not currently served on a non-stop basis by any airline or the Flight Destination is not currently served by Airline or any other airline on a non-stop basis by jet-powered aircraft;
- (3) the flight consists of non-stop arrival and departure service;
- (4) the flight has weekly service frequency, at a minimum; and
- (5) the flight satisfies the eligibility rules set forth in the Resolution.

H. "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 FLIGHTS**

A. Subject to the terms and conditions of this Agreement and the Resolution, County agrees to waive [**CHOOSE ONE:** Gate Usage Charge and Landing Fee **OR** Landing Fee], which would otherwise be payable by Airline to County under the Use Agreement, for each Qualified Flight between the Flight Destination and Airport. Airline shall submit monthly a completed Airline Service Incentive Report Forms to the Department together with the Activity Report (as defined in the Use Agreement) for each Qualified Flight. Airline acknowledges that the Department shall have no obligation to accept incomplete or inaccurate reporting forms. Notwithstanding anything in this Agreement to the contrary, Airline shall not be entitled to receive a waiver of Gate Usage Charges or Landing Fees: (i) in the event Airline fails to submit completed, accurate Airline Service Incentive Reporting Forms in accordance with the requirements of this Section 3 for each Qualified Flight; or (ii) for any flight that ceases to be a Qualified Flight during the term of this Agreement.

B. 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) if Airline uses facilities located in Concourse B or C applicable to Airline under the Use Agreement with County or shall be based on the Commuter Operating Charge (as hereinafter defined) if Airline uses facilities located in Concourse A. The terms "Per Use Gate Charge" and "Commuter Operating 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 for each Qualified Flight between the Flight Destination and Airport.

### 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 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.
- D. County shall have the right to terminate this Agreement for convenience at any time upon ninety (90) days prior written notice to Airline.
- E. If for any reason the Flight ceases to be considered a Qualified Flight, this Agreement shall automatically terminate.

## **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 either party hereunder, shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service or overnight delivery service, telecopied or faxed (provided in each case a receipt is obtained), 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 overnight delivery service, or on the date of transmission with confirmed answer back if by telecopier or fax if transmitted before 5PM on a business day and on the next business day if transmitted after 5PM or on a non-business day, or if mailed, upon the date on 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 addresses as the addresses 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
FAX: (561) 471-7427	FAX: (561) 355-4398

To: Airline:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Either party may from time to time change the address to which notice under this Agreement shall be given such party, upon three (3) days prior written notice to the other party.

**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 by the parties hereto and shall expire one (1) year from the effective date of this Agreement, unless sooner terminated pursuant to the terms of this Agreement. This Agreement shall automatically renew on a year-to-year basis unless either party provides the other party at least ninety (90) days written notice prior to the end of the then current term of its intent not to renew 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**