

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

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Meeting Date:      April 5, 2011             [X] Consent       [ ] Regular
                                                    [ ] Workshop      [ ] Public Hearing

Department:

Submitted By:      Department of Airports

Submitted For:
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I. EXECUTIVE BRIEF

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 agreements; repealing Resolution 2009-0634; and providing an effective date.

Summary: The revised agreement provides for the fee waiver for a second flight to a new destination; the current agreement only allows the Department to waive fees for one flight to a new destination. Granting the fee waiver for the second flight will be contingent on evaluating the impact of the flight to the County, determined by the Director of Airports as set forth in the Resolution.

The proposed change is recommended by the Aviation and Airports Advisory Board during the meeting of January 12, 2011 to further increase the incentive to airlines to add non-stop service to Palm Beach International Airport.

The Program only involves Airport revenues and has no impact to the General Fund or ad valorem revenues. (Countywide AH)

Background and Justification: The Airline Incentive Agreement Program has been in place since 2002 for the purpose of attracting new non-stop airline service to Palm Beach County from new markets, which will benefit passengers, increase airline competition at PBIA, 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, Denver, Las Vegas, and California and possibly increase service to Canadian and Caribbean markets.

- Attachments:**
1. Resolution
 2. Airline Service Incentive Program Participation Agreement for Qualified Flights

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Recommended By:  Sam Kelly                 2/22/11
                  Department Director           Date

Approved By:    [Signature]                2/14/11
                  County Administrator         Date
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II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

FISCAL YEARS	2011	2012	2013	2014	2015
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
Operating Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<i>~0~ *See below</i>				
# 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 waiver to a particular airline for two flights could amount to \$330,000, assuming a daily operation for one year. The airline company will still be responsible for various rental and baggage system charges.

C. Departmental Fiscal Review: CM Simmer

III. REVIEW COMMENTS

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

* Fiscal impact is indeterminable contingent on the assumption of daily operation for 1 year.

[Signature] 3/7/11
OFMB VA 3/7/11

[Signature] 3/8/11
Contract Dev. and Control
E Jones 3/8/11

B. Legal Sufficiency:

Anne Deland 3/9/11
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 2009-0634; 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”, hereinafter referred to as “Participation Agreement”; and

WHEREAS, on April 21, 2009, the Board of County Commissioners adopted Resolution 2009-0634, 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 2009-0634 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 attached 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 April 15, 2011.

4. The Director of Airports 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 Director of the Department of Airports may designate a second flight to the Flight Destination as a Qualified Flight. The Director of Airports shall determine whether an airline is entitled to a Gate Use Charge waiver and/or designation of a second flight as

Qualified 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 2009-0634 is hereby repealed in its entirety. Notwithstanding any provision of this Resolution to the contrary, the repeal of Resolution 2009-0634 shall not affect any agreement entered into pursuant to Resolution 2009-0634 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, CHAIR	-
COMMISSIONER SHELLEY VANA, VICE CHAIR	-
COMMISSIONER PAULETTE BURDICK	-
COMMISSIONER STEVEN L. ABRAMS	-
COMMISSIONER BURT AARONSON	-
COMMISSIONER JESS R. SANTAMARIA	-
COMMISSIONER PRISCILLA A. TAYLOR	-

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

ATTACHMENT "A"
PARTICIPATION AGREEMENT

**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 assess Airline 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 and Overnight Aircraft storage fees.
- 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 April 15, 2011, or the flight is converted to jet-powered aircraft on or after April 15, 2011;
- (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;
- (5) the flight satisfies the eligibility rules set forth in the Resolution; and
- (6) Notwithstanding section G. (2) above, the Director of Airports may designate a second flight of Airline, or any Airline to the Flight Destination as a Qualified Flight.

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 of this Agreement 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.

21. INSPECTOR GENERAL PROVISION

Pursuant to Ordinance No. 2009-049, as amended, Palm Beach County's Office of Inspector General is authorized to review past, present and proposed County contracts, transactions, accounts, and records. The Inspector General's authority includes, but is not limited to, the power to audit, investigate, monitor, and inspect the activities of entities contracting with the County, or anyone acting on their behalf, in order to ensure compliance with contract requirements and to detect corruption and fraud.

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