

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

FISCAL YEARS	2014	2015	2016	2017	2018
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
Operating Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u># See below</u>	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included In Current Budget? Yes X No _____
 Budget Account No.: Fund 4100 Department 120 Unit 1110 Object 4945
 Reporting Category _____

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

* The net fiscal impact of the incentive package is difficult to estimate due to many unknowns, and is therefore not shown above. Factors to consider include: a portion of the waived fees are incremental to the new flight and would not have been realized otherwise; additional passenger traffic is likely to drive increased concession revenues (estimated \$450,000 per year), the long term passenger demand for the flights, and revenue earned beyond the incentive period. Landing fees, gate charges, and aircraft fee waivers could amount to \$375,000 per year. The VIP club annual rent value is \$225,000 but is not currently under lease. The Department of Airports and the Convention and Visitors Bureau will collectively spend \$250,000 in advertising and marketing support;

C. Departmental Fiscal Review: *C. M. Summer*

III. REVIEW COMMENTS

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

Susan Theuring 11/18/13
 OFMB *AM* 11/18

Dr. J. Jacobson 12/31/13
 Contract Dev. and Control
 12-3-13 *B. Wheeler*

B. Legal Sufficiency: _____

Anne Helfant 12-3-13
 Assistant County Attorney

C. Other Department Review: _____

 Department Director

**AIRLINE SERVICE INCENTIVE PROGRAM
PARTICIPATION AGREEMENT**

THIS AIRLINE SERVICE INCENTIVE PROGRAM PARTICIPATION AGREEMENT (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 American Airlines, Inc., a Delaware Corporation, having its office and principal place of business at 4333 Amon Carter Blvd., MD 5317, Fort Worth, Texas 76155 ("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 wishes to encourage Airline to increase the number of non-stop flights to the Airport by providing incentives for non-stop 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

The following words, terms, and phrases wherever used in this Agreement shall have the meanings set forth in this Section and the meanings shall apply to both singular and plural forms of such words, terms and phrases. Additional words, terms and phrases used in this Agreement, but not defined in this Section, shall have the meanings set forth in the then current Use Agreement:

- A. "Airline" means the air transportation company identified in the preamble of this Agreement, and includes any successor airline responsible for the operation of the Qualified Flight at the Airport following the merger of AMR Corporation and US Airways Group, Inc., if approved.
- B. "Customer Parking Program" means any program administered by County which rewards passengers using the Qualified Flight by discounting all or part of their parking cost at Airport.
- C. "Gate Charges" means rentals or charges paid by Airline for loading bridge, pre-conditioned air, 400-hertz power, apron fees and holdroom equipment and holdroom areas at the Airport.
- D. "Landing Fees" means the fees paid by Airline based on maximum gross certificated landing weight of each of Airline's aircraft landing at Airport.
- E. "Qualified Flight" means bi-directional, non-stop flight service provided by Airline between Los Angeles, CA and the Airport with a minimum frequency of twelve (12) landings per month at Airport. The minimum frequency requirement may be waived by Department in its sole and absolute discretion. As of the

effective date of this Agreement, the date of the first Qualified Flight is scheduled to occur on November 21, 2013.

- F. "Aircraft Parking Fees" means the fees paid by Airline for the privilege of parking Airline's aircraft on designated east/west remote aircraft apron areas at the Airport, either transient or overnight, or apron areas adjacent to loading bridges/concourse facilities for overnight usage.
- G. "Use Agreement" means an agreement between County and Airline, which grants rights and privileges for use of Airport, and shall include that certain Use and Lease Agreement by and between County and Airline dated January 29, 2007 (R-2007-0385), as amended ("Existing Agreement"), and any subsequent agreement between Airline or its successor and County.

3. FEE WAIVERS PROVIDED BY COUNTY

Subject to the terms and conditions of this Agreement, County agrees to waive the following fees and charges payable under the Use Agreement, commencing on the date of the first Qualified Flight and expiring twenty four (24) months thereafter:

- A. Landing Fees for the Qualified Flight;
- B. Aircraft Parking Fees for a maximum of thirty (30) aircraft parking operations during any one (1) month period and limited to no more than two (2) aircraft at any one time; provided, however, Airline acknowledges and agrees that County has made no warranties or representations to Airline regarding the availability of aircraft parking positions for Airline's use;
- C. Gate Charges for one (1) gate. Use of the gate shall not be limited to the Qualified Flight and shall be available for use by any aircraft operated by Airline; and
- D. Any rental or license fees applicable to use of the VIP/Club Room located near the security checkpoint and adjacent to Concourse B at the Airport ("Club Room"). In the event Airline notifies County in writing that it desires use of the Club Room in connection with its operations at the Airport and the Club Room has not been leased or licensed for use by a third party at the time of Airline's notice, the parties shall amend the Use Agreement to provide for the license of the Club Room to Airline through the remainder of the term of this Agreement, at no cost to Airline, for use by Airline's passengers. Airline acknowledges and agrees that: the Club Room shall be provided to Airline in its "As Is" condition; any improvements to the Club Room shall be made at Airline's sole cost and expense; and use of the Club Room by Airline shall be subject to availability at the time of Airline's notice. Upon the expiration or earlier termination of this Agreement, Airline shall have the option of retaining the Club Room and paying all fees and charges applicable to use of the Club Room or returning the Club Room to County.

4. TERMINATION OF AIRLINE'S EXISTING AGREEMENT

In the event that the merger of AMR Corporation and US Airways Group, Inc., is approved County shall permit Airline to terminate the Existing Agreement, without cause, upon fifteen (15) days prior written notice to County, for the purpose of consolidating the operations of Airline and US Airways, Inc., at the Airport, subject to the following terms and conditions:

- A. The Qualified Flight will be in operation upon the termination of the Existing Agreement and is reasonably expected to continue in operation through the remainder of the term of this Agreement, as determined by the Department in its reasonable discretion;

- B. Airline is not in material default of its Existing Agreement (or an event with the passage of time or giving of notice would constitute a material default);
- C. Final approval of the merger of AMR Corporation and US Airways Group, Inc., has been granted by the applicable governing authorities;
- D. Airline shall surrender possession of the Airline Premises to County in accordance with the Existing Agreement in good and fit condition on or before the date of termination of the Existing Agreement; and
- E. Upon termination of the Existing Agreement, the parties shall be released from all further obligations thereunder with the exception of those obligations arising prior to the date of such termination or which expressly survive termination of the Existing Agreement.

5. MARKETING PROGRAM

Subject to the terms and conditions of this Agreement, County agrees to develop and implement a marketing program to promote the Qualified Flight. County shall determine the timing and nature of the advertising efforts under the marketing program; however, County agrees to coordinate with Airline in an effort to ensure consistency and effectiveness in the parties marketing efforts. The marketing program will provide for no less than \$250,000 in marketing expenditures, which will include advertising in various formats such as print and social media, website promotion and outdoor advertising. Funding for the marketing program may provided by County, the Palm Beach County Convention and Visitors Bureau, or any other local agency or business in support of the Qualified Flight. If Airline ceases to operate the Qualified Flight, then County shall have no further obligations under this Section to provide a marketing program.

6. CUSTOMER PARKING PROGRAM

Subject to the terms and conditions of this Agreement, County agrees to provide a Customer Parking Program to promote the Qualified Flight for a minimum period of ninety (90) days.

7. 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.

8. TERMINATION

- A. In the event Airline is in default of this Agreement, the Existing Agreement, 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. If for any reason the Qualified Flight permanently ceases operation or does not meet the criteria of a Qualified Flight, County shall have the right to terminate this Agreement upon written notice to Airline, whereupon all waivers shall terminate, and Airline shall become obligated to pay all prospective fees and charges in accordance with the Use Agreement. Upon termination of this Agreement, Airline acknowledges and agrees that Airline shall not be eligible to receive any waiver of Gate Charges or Landing Fees under this Agreement and shall forgo any claim against County for such waivers.

9. SUCCESSORS AND ASSIGNS

The terms, conditions, and covenants of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors and assigns. In the event of the merger of AMR Corporation and US Airways Group, Inc. during the term of this Agreement, the successor airline operating the Qualified Flight shall be entitled to the privileges and rights afforded Airline hereunder; provided, that the successor airline has a valid Use Agreement with County, is not in material default of its Use Agreement (or an event with the passage of time or giving of notice would constitute a material default), and has assumed Airline's obligations hereunder, including, but not limited to, the continued operation of the Qualified Flight.

10. 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.

11. 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.

12. 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:

Department of Airports
Palm Beach County
846 Palm Beach International
Airport
West Palm Beach, FL 33406-1470
FAX: (561) 471-7427

With copy to:

Palm Beach County Attorney's Office
Attn: Airport Attorney
301 North Olive Avenue
Suite 601
West Palm Beach, FL 33401
FAX: (561) 355-4398

To: Airline:

Vice President Real Estate – MD5317
American Airlines, Inc.
P.O. Box 619616
DFW Airport, TX 75261

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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. AMENDMENT

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

22. 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.

23. NO THIRD PARTY BENEFICIARIES

No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including, but not limited to, any citizen or employees of County and/or Airline.

24. CONSENT AND APPROVAL

Whenever this Agreement calls for an approval, consent, authorization or other action by the Department or County, such approval, consent, authorization or other action may be provided or performed by the Department, on behalf of County, by and through its Director of the Department or his or her designee.

25. OFFICE OF INSPECTOR GENERAL

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the Airline, its officers, agents, employees and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

26. NON-DISCRIMINATION

Airline acknowledges that County is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Airline is prohibited from discriminating against any employee, applicant, or client because of race, color, creed, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, or gender identity and expression.

27. EFFECTIVE DATE AND TERM

This Agreement shall become effective upon the date this Agreement has been approved by the Palm Beach County Board of County Commissioners and signed by the parties hereto and shall expire twenty four (24) months after the date of the first Qualified Flight, 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.

ATTEST:
SHARON R. BOCK,
CLERK AND COMPTROLLER

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

By: _____
Deputy Clerk

By: _____
Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS
AND CONDITIONS

By: _____
County Attorney

By: *[Signature]*
Director, Department of Airports

WITNESSES:

AIRLINE:

By: *[Signature]*
Signature
Donna Robinson
Print Name

By: *[Signature]*
Signature
Michael Wesche
Print Name

By: *[Signature]*
Signature
Constance Norton
Print Name

Title: Sr. Principal Real Estate

(Seal)