

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 _____ 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 a new flight could amount to \$250,000 annually, assuming a daily flight. The value of fee waivers will vary depending on the relative importance to the flight to PBI and could result in a much greater amount. Airline fee waivers for new service will generate more passengers and concession revenues to partially offset fee waivers. Fee waivers are applied only after flights actually occur, and are granted through the billing process; no money is advanced to airline under this program.

C. Departmental Fiscal Review: Tom Simon

III. REVIEW COMMENTS

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

Jill Weh
 AM OFMB
 2/10 2/10/14

Dr. J. Jacobson
 Contract Dev. and Control
 2-11-14 BCO hds

B. Legal Sufficiency:

Anne Delgant 2-12-14
 Assistant County Attorney

C. Other Department Review:

 Department Director

RESOLUTION NO.

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA; APPROVING 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 AGREEMENT; REPEALING RESOLUTION 2011-0491; AND PROVIDING AN EFFECTIVE DATE.

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

WHEREAS, the Board of County Commissioners desires to market and promote new or expanded 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 certain airport fees in accordance with the terms and conditions of the standard form Airline Service Incentive Program Participation Agreement, attached hereto and incorporated herein as Attachment "A" (hereinafter referred to as "Participation Agreement"); and

WHEREAS, on April 5, 2011, the Board of County Commissioners adopted Resolution 2011-0491, modifying the Airline Service Incentive Program; and

WHEREAS, the Board of County Commissioners desires to repeal the Airline Service Incentive Program adopted pursuant to Resolution 2011-0491; and

WHEREAS, the Board of County Commissioners desires to authorize the County Administrator or his designee (hereinafter collectively referred to as the "County Administrator") to execute the standard form Participation Agreement 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 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: (i) be party to an agreement with the County authorizing the use of Airport facilities ("Use Agreement"); (ii) not be in default of the Use Agreement or any other agreement with the County; (iii) enter into the Participation Agreement with the County; and (iv) add a Qualified Flight on or after March 31, 2014. For purposes of this Resolution, the term "Airport Fees" means the fees and charges otherwise payable by an airline to the County pursuant to a Use Agreement, including, but not limited to, aircraft landing fees, aircraft gate usage charges, aircraft parking fees and license or rental fees.

4. The County Administrator is hereby authorized to reduce or waive all or a portion of the Airport Fees applicable to an airline providing a Qualified Flight for a promotional period not to exceed twenty four (24) months. In addition, the County Administrator may designate up to two (2)

flights to a targeted flight destination as a Qualified Flight if the additional flight will serve to increase the frequency of flights to the flight destination. The County Administrator shall, at a minimum, consider the following factors in determining the type, duration and amount and/or percentage of Airport Fees to be reduced or waived pursuant to this Resolution: (i) passenger demand for the flight destination, (ii) whether the flight destination will increase public and/or industry awareness of the Airport's facilities and services, (iii) the need for increased air transportation service to the flight destination, and (iv) whether the new air transportation service will promote competition at the Airport. The Airline Service Incentive Program shall be used to attract new or expanded air transportation service to targeted flight destinations. In addition, all Airport Fee reductions and/or waivers shall be offered on a fair, not unjustly discriminatory basis to similarly situated airlines agreeing to serve the targeted flight destinations.

5. It is the intention of the Board of County Commissioners that this delegation of authority is strictly limited to the parameters set forth herein. Except as otherwise provided for herein, any deviation from the parameters set for herein shall be brought before the Board of County Commissioners for approval. The County Administrator 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 County under a Participation Agreement. The County Administrator's designee under this Resolution shall include 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 2011-0491 in its entirety. Notwithstanding any provision of this Resolution to the contrary, the repeal of Resolution 2011-0491 shall not affect any agreement entered into pursuant to Resolution 2011-0491 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 PRISCILLA A. TAYLOR, MAYOR	-
COMMISSIONER PAULETTE BURDICK, VICE MAYOR	-
COMMISSIONER HAL R. VALECHE	-
COMMISSIONER SHELLEY VANA	-
COMMISSIONER STEVEN L. ABRAMS	-
COMMISSIONER MARY LOU BERGER	-
COMMISSIONER JESS R. SANTAMARIA	-

Then the Mayor 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"
AIRLINE INCENTIVE PROGRAM PARTICIPATION AGREEMENT

**AIRLINE SERVICE INCENTIVE PROGRAM
PARTICIPATION AGREEMENT**

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, owns and operates the 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 certain incentives for such service by Airline for a promotional period by offering Airport Fee reductions and/or waivers.

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 Service Incentive Program" means the incentive program detailed in this Agreement and the Resolution.
- B. "Airline Service Incentive Report" has the meaning set forth in Section 3(B) below.
- C. "Airport" has the meaning set forth in the recitals of this Agreement.
- D. "Airport Fee" means the fees and/or charges specified in Section 3(A) below.
- E. "Board" means the Palm Beach County Board of County Commissioners.
- F. "Department" means the Palm Beach County Department of Airports.
- G. "Flight Destination" means {Insert Name(s) of Flight Destination(s)}.

- H. "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 March 31, 2014, or the flight is converted to jet-powered aircraft on or after March 31, 2014;
 - (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) Notwithstanding Section H(2) above, the Director of the Department may designate a second flight to the Flight Destination as a Qualified Flight in accordance with the requirements set forth in the Resolution; and
 - (6) the flight satisfies the eligibility rules set forth in the Resolution.
- I. "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.
- J. "Use Agreement" means _____.

3. AIRPORT FEE WAIVERS/REDUCTIONS FOR QUALIFIED FLIGHTS

A. In consideration of the Qualified Flight provided by Airline, County agrees to waive and/or reduce the Airport Fees listed below in accordance with the following:

Airport Fee	Description of Waiver/Reduction	Duration Waived (Months)

B. County may require Airline to submit report(s) regarding Airline's air service activity hereunder in a form and substance, and at a frequency, acceptable to the Department ("Airline Service Incentive Report").

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 or complete Airline Service Incentive Report(s) as may be required by County hereunder, 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. County shall have the right to terminate this Agreement for convenience at any time upon ninety (90) days prior written notice to Airline.
- D. If for any reason the flight ceases to be considered a Qualified Flight or Airline ceases to provide the Qualified Flight, this Agreement shall automatically terminate, and Airline shall become obligated to pay all Airport Fees in accordance with the Use Agreement.
- E. Upon termination of this Agreement, Airline acknowledges and agrees that Airline shall not be eligible to receive any waiver of Airport Fees under this Agreement and shall forgo any claim against County for such waivers.

6. FEDERAL REQUIREMENTS

This Agreement is intended to comply with all applicable federal laws, rules, regulations and policies related to airport incentive programs for promotion of air carrier service, including, but not limited to, the Federal Aviation Administration's ("FAA") Statement of Policy and Procedures Concerning the Use of Airport Revenue, 64 FR 7696 (February 16, 1999), the FAA's Policy Regarding Airport Rates and Charges, 61 FR 31994, June 21, 1996, as such policies are now or hereafter amended. If at any time the FAA determines that the Airline Service Incentive Program or this Agreement fails to comply, in whole or in part, with any federal laws, rules, regulations or policies 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 now or hereafter amended and/or 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. 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 Airline or 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.

9. 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, or genetic information.

10. 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 service 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 to such party, upon three (3) days prior written notice to the other party.

11. 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.

12. 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 employee of County and/or Airline.

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 agreements, 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. ATTACHMENTS

Exhibits attached hereto shall be incorporated herein by this reference.

23. 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.

24. EFFECTIVE DATE AND TERM

This Agreement shall become effective upon the date this Agreement has been signed by the parties hereto and shall expire _____ (___) months after the date of the first Qualified Flight, 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:

PALM BEACH COUNTY:

By: _____
Signature

By: _____
County Administrator or Designee

Print Name

By: _____
Signature

Print Name

Approved as to Form and Legal Sufficiency:

By: _____
County Attorney

WITNESSES:

AIRLINE:

By: _____
Signature

By: _____
Signature

Print Name

Print Name

By: _____
Signature

Title: _____

Print Name

(Seal)