

Agenda Item:

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date: September 12, 2017

<input checked="" type="checkbox"/> [X]	Consent	<input type="checkbox"/> []	Regular
<input type="checkbox"/> []	Workshop	<input type="checkbox"/> []	Public Hearing

Department:

Submitted By: Department of Airports

Submitted For:

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to receive and file: Airline Service Incentive Program Participation Agreement (Incentive Agreement) with MN Airlines LLC, d/b/a Sun Country Airlines, a Minnesota Limited Liability Company (Sun Country), providing for the waiver of various fees and charges at the Palm Beach International Airport (PBI) in connection with flights to Minneapolis-St. Paul, Minnesota (MSP), for the period of November 1, 2017, through October 31, 2018.

Summary: The Incentive Agreement provides a waiver of landing fees, per-use gate and ticket counter charges, joint use charges and aircraft parking fees, as well as terminal rental for one ticket counter in connection with Sun Country's non-stop flights to MSP during a twelve month promotional period beginning November 1, 2017. Delegation of authority for execution of the standard form Incentive Agreement was approved by the BCC in R-2014-0251. **Countywide (AH)**

Background and Justification: Sun Country operates at PBI pursuant to a Non-Signatory Airline Agreement (R2016-1128).

Attachments: One (1) Airline Service Incentive Program Participation Agreement

Recommended By:

Department Director

Date _____

Approved By:

County Administrator

Date _____

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2017	2018	2019	2020	2021
Capital Expenditures					
Operating Costs					
Operating Revenues		\$55,000			
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT*		\$55,000			
# ADDITIONAL FTE POSITIONS (Cumulative)					

Is Item Included in Current Budget? Yes X No
Budget Account No: Fund 4100 Department 120 Unit 8320/8430 RSource Various
Reporting Category

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

*The standard-form Airline Service Incentive Program Participation Agreement was established to encourage airlines to increase the number of non-stop flights to PBIA by providing certain incentives for a promotional period by offering airport fee reductions and/or waivers. The fiscal impact of this Incentive Agreement is an estimated \$55,000 in fee waivers.

C. Departmental Fiscal Review: CM Sumner

III. REVIEW COMMENTS

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

[Signature] 8/18/17
OFMB 8/18

[Signature] 8/24/17
Contract Dev. and Control

B. Legal Sufficiency:

Anne Helgert 8-24-17
Assistant County Attorney

C. Other Department Review:

Department Director

REVISED 9/03
ADM FORM 01
(THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT)

Summary of Certificates

This report displays detailed Certificate of Insurance information for a selected Insured. Any items shown in red are deficient.

Monday, July 17, 2017

Simple View Certificate Images Documents

Insured: MN Airlines, LLC Insured ID: PBI-SU-16-01

Status: Compliant

ITS Account Number: PLC2175

Project(s): Palm Beach County - Airport Properties

Insurance Policy	Required	Provided	Override
<u>General Liability</u>			
Expiration: 12/17/2017			
General Aggregate:	\$100,000,000	\$100,000,000	
Products - Completed Operations Aggregate:	\$100,000,000	\$100,000,000	
Personal And Advertising Injury:	\$25,000,000	\$25,000,000	
Each Occurrence:	\$100,000,000	\$100,000,000	
Fire Damage:	\$0	\$0	
Medical Expense:	\$0	\$0	
<u>Automobile Liability</u>			
Expiration: 5/1/2018	All Owned Autos Hired Autos Non-Owned Autos	Any Auto not provided Hired Autos Non-Owned Autos	X
Combined Single Limit:	\$1,000,000	\$1,000,000	
<u>Workers Compensation/Employers Liability</u>			
Expiration: 4/15/2018	WC Stat. Limits	WC Stat. Limits	
Each Accident:	\$1,000,000	\$1,000,000	
Disease - Policy Limit:	\$1,000,000	\$1,000,000	
Disease - Each Employee:	\$1,000,000	\$1,000,000	
<u>Aircraft Liability Insurance</u>			
Expiration: 12/17/2017			
Each Occurrence:	\$100,000,000	\$100,000,000	
Aggregate Limit:	\$100,000,000	\$100,000,000	
<u>Liquor Liability</u>			
Expiration: 12/17/2017			
Each Occurrence:	\$1,000,000	\$100,000,000	
Aggregate Limit:	\$1,000,000	\$100,000,000	

Notifications (Show All)

There were no deficiency letters issued.

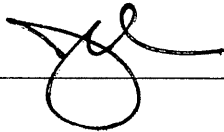
Do you have an updated Certificate? Click the button below to submit a Certificate.

Certificate Submittal

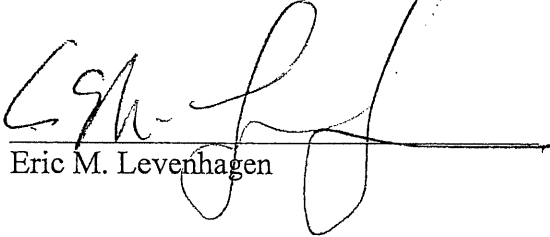
INCUMBENCY CERTIFICATE

I, Eric M. Levenhagen, Executive Vice President & General Counsel of MN Airlines, LLC d/b/a Sun Country Airlines (the Company), do hereby certify that the following named executive is duly elected and authorized to execute and deliver airport agreements and related agreements, on behalf of the Company, as of the date of this certificate, and further that the following is a true specimen of his signature.

Jim Tucker, Executive Vice President, Finance



Certified as of the 12th day of July, 2017



Eric M. Levenhagen

**AIRLINE SERVICE INCENTIVE PROGRAM
PARTICIPATION AGREEMENT**

THIS AIRLINE SERVICE INCENTIVE PROGRAM PARTICIPATION AGREEMENT FOR QUALIFIED FLIGHTS (this “Agreement”) is made and entered into JUL 20 2017 by and between Palm Beach County, a political subdivision of the State of Florida (“County”), and MN Airlines LLC, d/b/a Sun Country Airlines, a Minnesota Limited Liability Company, having its office and principal place of business at 1300 Corporate Center Curve, Eagan, MN 55121 (“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 Minneapolis-St. Paul, Minnesota (MSP).
- 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. R2014-0251 adopted by the Palm Beach Board of County Commissioners on March 11, 2014, as may be amended from time to time, which is incorporated herein by this reference.
- J. "Use Agreement" means that certain Non-Signatory Airline Agreement dated September 13, 2016 (R2016-1128).

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/Period of Waiver/Reduction
Landing Fees, Per Use Gate Charges, Per Use Ticket Counter Charges, Joint Use Charges, Aircraft Parking Fees, Baggage Handling System Fees	100% waiver of applicable Landing Fees, Per Use Gate Charges, Per Use Ticket Counter Charges, Joint Use Charges, and Aircraft Parking Fees for Qualified Flight. Waiver does <u>not</u> apply to any charter flights.	12 months, commencing November 1, 2017 and ending October 31, 2018
Terminal Rental	Waiver of Terminal Rental for one ticket counter (two positions) and up to 250 square feet of ticket office space. Waiver does <u>not</u> apply to any charter flights.	12 months, commencing November 1, 2017 and ending October 31, 2018

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 warrants and represents to County that all of its employees are treated equally during employment without regard to race, color, national origin, religion, ancestry, sex, age, familial status, marital status, sexual orientation, gender identity and expression, disability, or genetic information. Airline has submitted to County a copy of its non-discrimination policy, which is consistent with the above, as contained in Resolution R-2014-1421, as may be amended, or in the alternative, if Airline does not have a written non-discrimination policy, it has acknowledged through a signed statement provided to County affirming their non-discrimination policy conforms to R-2014-1421, as may be amended.

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

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:

Sun Country Airlines
Attn: Jim Tucker
1300 Corporate Center Curve
Eagan, MN 55121
Email: Jim.Tucker@suncountry.com

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. The term of this Agreement shall commence on November 1, 2017, and expire on October 31, 2018, unless sooner terminated pursuant to the terms of this Agreement.

(Remainder of page left blank)

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year first written above.

WITNESSES:

By: Jeff S Bolton
Signature
Jeffrey S. Bolton
Print Name

By: Ray Wactor
Signature
Ray Wactor
Print Name

Approved as to Form and Legal Sufficiency:

By: Anne Helgert
County Attorney

WITNESSES:

By: Karen Krazo
Signature
Karen Krazo
Print Name

By: Hailey Passer
Signature
Hailey Passer
Print Name

PALM BEACH COUNTY:

By: Jim Kelly
Director of Airports

AIRLINE: MN Airlines LLC,
d/b/a, Sun Country Airlines

By: Jim Tucker
Signature
Jim Tucker
Print Name

Title: EVP Finance

(Seal)