

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: October 20, 2020 [x] Consent [] Regular
[] Workshop [] Public Hearing

Submitted By: Department of Airports

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to receive and file: Airline Service Incentive Program Participation Agreement (Incentive Agreement) with United Airlines, Inc. (United), providing for waiver of landing fees from July 1, 2020, through February 1, 2022, for flights from Washington Dulles International Airport (IAD).

Summary: The Incentive Agreement waives landing fees for certain flights. Delegation of authority for the execution of the standard Airline Service Incentive Program Participation Agreement was approved by the Board in R-2014-0251.

Background and Justification: United operates at PBI pursuant to a Signatory Airline Agreement (R-2020-0228).

Attachments:

One (1) Incentive Agreement

Recommended By: *JW* *Laura Burke* *9-22-20*
Department Director Date

Approved By: *KBaker* *10/5/2020*
County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
Operating Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>\$-0-</u>	<u>\$-0-</u>	<u>\$-0-</u>	<u>\$-0-</u>	<u>\$-0-</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes _____ No X
 Does this item include the use of federal funds? Yes _____ No X

Budget Account No: Fund _____ Department _____ Unit _____ RSource _____
 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 PBI by providing certain incentives for a promotional period by offering airport fee reductions and/or waivers. The Incentive Agreement allows for the waiver of landing fees for qualified flights from IAD. The fiscal impact cannot be determined at this time.

C. Departmental Fiscal Review: 

III. REVIEW COMMENTS

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

 9/24/2020
 OFMB  9/23/20

 9/30/2020
 Contract Dev. and Control 9-30-20 

B. Legal Sufficiency:

Anne Delgant 10/2/2020
 Assistant County Attorney

C. Other Department Review:

 Department Director

REVISED 11/17

(THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT)

🔍 Search

👤 Insured

Insured Name

United Airlines (DX00000689)

🔍

United Airlines, Inc. (DX00000689)

Active Records Only

Advance Search

Name: United Airlines, Inc. 👤

Account Number: DX00000689

Address:

Status: Compliant with minor/expiring deficiencies.

Insured Tasks Admin Tools

View

- 👤 Insured
- 📄 Notes
- 🔄 History
- ☰ Deficiencies
- 📶 Coverages
- ★ Requirements
- ⬆️ Contract Screen
- Add
- Edit
- Help
- Video Tutorials

Insured ▲

Business Unit(s) DBA Number Print Insured Info

Print Compliance Report

Account Information

Account Number: DX00000689

Risk Type: Standard - General Services

Do Not Call: Address Updated:

Address Information

Mailing Address	Physical Address
Insured: United Airlines, Inc.	
Address 1:	
Address 2:	
City:	
State:	
Zip:	

Country:		
Contract Information		
Contract Number:		
Contract Start Date:		Contract End Date:
Contract Effective Date:		Contract Expiration Date:
Description of Services:	Signatory Airline Agmt	Safety Form II:
Contact Information		
Contact Name:	Trevor Craig	Misc:
Phone Number:	8728259608	Alt Phone Number:
Fax Number:		
E-Mail Address:	trevor.craig@united.com	
Approval Date:		
Rush:	No	
Contract on File:	No	
Certificate Received:	No	
Indemnification Agreement:	No	
Tax Id:		

This Account created by c28 on 05/08/2020.

C E R T I F I C A T E
(Corporation)

The undersigned hereby certifies that the following are true and correct statements:

That I, Erin Conway, am the Assistant Secretary of United Airlines, Inc., a corporation organized and existing in good standing under the laws of the State of Delaware, hereinafter referred to as the "Corporation".

That, pursuant to the Corporation's corporate matrix, establishing signatory authority for the Corporation, Mike Yost, a Managing Director – Airport Affairs, Corporate Real Estate of the Corporation, is hereby authorized and instructed to execute Airline Service Incentive Program Participation Agreement between Palm Beach County and the Corporation, a copy of which is attached hereto.

That the Corporation is in good standing under the laws of the State of Florida, and has qualified, if legally required, to do business in the State of Florida and has the full power and authority to provide such Notification.

IN WITNESS WHEREOF, the undersigned has set his hand and affixed the Corporate Seal of the Corporation the 7/22/2020.

DocuSigned by:
Erin Conway
[Signature] C6C793A6DE38454... United Airlines, Inc.

Corporate Seal

Erin Conway
Assistant Secretary

**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 August, 2020 by and between Palm Beach County, a political subdivision of the State of Florida ("County"), and United Airlines, Inc, a Delaware corporation, having its office and principal place of business at 233 South Wacker Drive, Chicago, Illinois 60606 ("Airline"). ^{5th}

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, Airline has entered into that certain Signatory Airline Agreement with County, dated September 27, 2019 (the "Airline Agreement"), which is incorporated herein by reference, providing for scheduled air transportation at the Airport; 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 Airline Agreement:

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

Airport	Airport Identifier
Washington Dulles International Airport	IAD

I. "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;
the flight has weekly service frequency, at a minimum;
- (4) Notwithstanding Section I(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.

J. "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.

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)
Landing Fees	100% waiver of landing operations for IAD	From 7/1/2020 through 2/1/2022

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 Airline 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 Airline 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. NONDISCRIMINATION

Airline shall comply with the nondiscrimination provisions of the Airline Agreement, 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 Attorney's Office
Palm Beach County	Attn: Airport Attorney
846 Palm Beach Int'l Airport	301 North Olive Avenue
Attn: Director of Airports	Suite 601
West Palm Beach, FL 33406-1470	West Palm Beach, FL 33401
FAX: (561) 471-7427	FAX: (561) 355-4398

To: Airline:
United Airlines, Inc.
Vice President, Corporate Real Estate
11th Floor – HDQOU
Corporate Support Center
233 South Wacker Drive
Chicago, IL 60606

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 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 on February 1, 2022, 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: *Steven R. Schimp*
Signature
Steven R. Schimp
Print Name

By: *Laura Bube*
Signature
Director of Airports
Print Name

By: *Rebecca Reed*
Signature
REBECCA REED
Print Name

Approved as to Form and Legal Sufficiency:

By: */s/ Anne Helfant*
County Attorney

WITNESSES:

**AIRLINE:
UNITED AIRLINES, INC**

By: *Sarah Voss*
Signature
Sarah Voss
Print Name

By: *Michael Post*
Signature
Michael Post
Print Name

By: *brendan baker*
Signature
brendan baker
Print Name

Title: Managing Director Airport Affairs
6/24/2020

(Seal)