

**PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS**

**AGENDA ITEM SUMMARY**

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|                                   |  |  |
|-----------------------------------|--|--|
| <b>Meeting Date: May 16, 2023</b> | <input checked="" type="checkbox"/> <b>Consent</b> | <input type="checkbox"/> <b>Regular</b>        |
|                                   | <input type="checkbox"/> <b>Workshop</b>           | <input type="checkbox"/> <b>Public Hearing</b> |

**Submitted By: Department of Airports**

**I. EXECUTIVE BRIEF**

**Motion and Title: Staff recommends motion to receive and file:**

- (A)** Airline Service Incentive Program Participation Agreement (Incentive Agreement) with Avelo Airlines (Avelo), providing for waiver of landing, ticket counter and gate fees from February 4, 2023, through February 4, 2025, for flights from Wilmington Airport, Delaware (ILG).
- (B)** Incentive Agreement with Avelo, providing for waiver of landing, ticket counter and gate fees from February 17, 2023, through February 17, 2025, for flights from Raleigh-Durham International Airport, North Carolina (RDU).

**Summary:** Avelo entered into a Non-signatory Airline Agreement (R-2022-0687), which permits airline operations at the Palm Beach International Airport (PBI). The Incentive Agreements waive landing, ticket counter and gate fees for flights from ILG and RDU for two years. Avelo will continue to pay baggage handling system charges that may apply to their ILG and RDU operations, as well as any and all charges applicable to other Avelo flight operations. Delegation of authority for execution of the standard form Airline Service Incentive Agreement was approved by the Board in R-2014-0251 to market and promote new or expanded air transportation service at PBI by offering a promotional period. **Countywide (AH)**

**Background and Justification:** N/A

**Attachments:** Two (2) Incentive Agreements with Avelo (ILG and RDU)

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**Recommended By:** *Diana Burke* 4-19-23  
**Department Director** **Date**

**Approved By:** *Paul* 4/28/23  
**County Administrator** **Date**

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

| Fiscal Years                                   | <u>2023</u>         | <u>2024</u>         | <u>2025</u>         | <u>2026</u>         | <u>2027</u>         |
|--|---------------------|---------------------|---------------------|---------------------|---------------------|
| Capital Expenditures                           | _____               | _____               | _____               | _____               | _____               |
| Operating Costs                                | _____               | _____               | _____               | _____               | _____               |
| Operating Revenues                             | _____               | _____               | _____               | _____               | _____               |
| Program Income (County)                        | _____               | _____               | _____               | _____               | _____               |
| In-Kind Match (County)                         | _____               | _____               | _____               | _____               | _____               |
| <b>NET FISCAL IMPACT</b>                       | <u><u>\$-0-</u></u> | <u><u>\$-0-</u></u> | <u><u>\$-0-</u></u> | <u><u>\$-0-</u></u> | <u><u>\$-0-</u></u> |
| <b># ADDITIONAL FTE POSITIONS (Cumulative)</b> | _____               | _____               | _____               | _____               | _____               |

Is Item Included in Current Budget? Yes X No \_\_\_\_\_  
 Does this item include the use of federal funds? Yes \_\_\_\_\_ No X  
 Budget Account No: Fund 4100 Department 120 Unit 8320/8430 RSource Various  
 Reporting Category \_\_\_\_\_

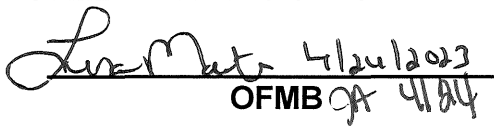
**B. Recommended Sources of Funds/Summary of Fiscal Impact:**


Under the Airline Agreement, airlines pay landing, ticket counter and gate fees, as well as baggage handling system charges that may apply to their operations. The Incentive Agreements allow for the waiver of landing, ticket counter and gate fees for qualified flights from ILG and RDU for two years; however, these amounts cannot be fully quantified at this time. For context, based on Avelo's proposed flight schedule of two-times per week per flight, the value of the waived fees for ILG and RDU total \$189,945.60 over the two year period. It is believed the waiver of certain fees is offset by the promotion of new or expanded air service by the airline. The Incentive Agreement(s) will automatically terminate if the flights to ILG or RDU are discontinued. The Non-signatory Airline Agreement incorporates the rates and charges established under the Signatory Airline Agreement (R-2019-1155), which are updated each October 1. Revenues from terminal rents, landing fees, and baggage system charges will average \$14 to \$16 million annually over a five-year period and recover the cost of airport operations, maintenance, and debt service for the terminal, terminal systems, and airfield.

C. Departmental Fiscal Review: 

**III. REVIEW COMMENTS**

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

 4/24/2023  
 OFMB 9A 4/24  
 EJR  
 424.23

 4/26/23  
 Contract Dev. and Control  
 4/26/23

**B. Legal Sufficiency:**

Anne Delgent 4/28/23  
 Assistant County Attorney

**C. Other Department Review:**

\_\_\_\_\_  
 Department Director

REVISED 11/17

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

**AIRLINE SERVICE INCENTIVE PROGRAM  
PARTICIPATION AGREEMENT**

**THIS AIRLINE SERVICE INCENTIVE PROGRAM PARTICIPATION AGREEMENT FOR QUALIFIED FLIGHTS** (this "Agreement") is made and entered into this 7<sup>th</sup> day of February, 2023, by and between Palm Beach County, a political subdivision of the State of Florida ("County"), and Avelo Airlines, Inc., a Nevada corporation, having its office and principal place of business at 12 Greenway Plaza Suite 400, Houston TX 77046 ("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**, Airline has entered into that certain Non-signatory Airline Agreement with County, dated December 15, 2021 (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.

2/4/23 - 2/4/25  
I L G

H. "Flight Destination" means the following airport destinations:

| Airport                      | Airport Identifier |
|------------------------------|--------------------|
| Wilmington Airport, Delaware | ILG                |

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;
- (4) the flight has weekly service frequency, at a minimum;
- (5) 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 flights from RDU   | From 2/4/2023 through 2/4/2025 |
| Ticket Counter | 100% waiver of fees & charges associated with one (1) per-use ticket counter (2 positions) per flight to RDU | From 2/4/2023 through 2/4/2025 |
| Gate           | 100% waiver of fees & charges associated with one (1) common use gate per flight to/from RDU                 | From 2/4/2023 through 2/4/2025 |

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:  
Avelo Airlines, Inc.  
Airport Relations/Bud Hafer  
12 Greenway Plaza  
Houston, TX 77027  
Email: [bud.hafer@aveloair.com](mailto:bud.hafer@aveloair.com)  
and [notice@aveloair.com](mailto:notice@aveloair.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 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 17, 2025, 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: Roy Walter  
Signature  
Roy Walter  
Print Name

By: Paul Rana Raba  
Signature  
Director of Airports

By: Shawna Larose  
Signature  
Shawna Larose  
Print Name

**Approved as to Form and Legal Sufficiency:**

By: Isi Anne Helfant  
County Attorney

**WITNESSES:**

**AIRLINE:  
AVELO AIRLINES, INC.**

By: Bud Hafer  
Signature  
Bud Hafer  
Print Name

By: Sean P. Hopkins  
Signature  
Sean P. Hopkins  
Print Name

By: Daniel Camejo  
Signature  
Daniel Camejo  
Print Name

Title: Vice President of Contracts

(Seal)