

## **MEMORANDUM**

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Date: September 18, 2012

Via: Therese Leary, City Manager

From: Harold Gallup, Director of Economic Development

Subject: Inter-local Agreement—Renewal for 2012-2017

Synopsis: The City created a dependent special district and designated it as the City of Lake Wales Airport Authority on September 29, 2005. In October 2007, the City and Authority entered into an Inter-Local Agreement for services as the Authority lacked the fiscal capacity to undertake the various tasks under its own administration. This Agreement shall be reviewed every five years or until termination by either party as provided for in the Agreement.

### **RECOMMENDATION**

Staff recommends that the City Commission authorize the Mayor to execute the inter-local agreement between the City and the Lake Wales Airport Authority as presented.

### **BACKGROUND**

On September 29, 2005, the City Commission of the City adopted Ordinance No. 2005-44 creating the Authority as a dependent special district of the City and designating it as the Airport Authority in accordance with the provisions of 189.4041, Florida Statutes.

On October 9, 2007, the City Commission and the Lake Wales Airport Authority entered into an Inter-Local Agreement for support services required by the Airport Authority in order for the Airport to conduct its daily required business.

The Authority does not have sufficient resources, including personnel, to adequately administer and implement its responsibilities as set forth in the Ordinance and needs the cooperation, support, and assistance of the City, including City personnel participating in the implementation of the objectives and responsibilities set forth in the Ordinance.

The City was and is able and willing to assist the Authority to accomplish the purposes set forth in the Ordinance, including provision of personnel and other City resources to administer and implement its objectives and responsibilities.

The parties recognize the City's assistance to the Authority requires funds to pay the costs incurred by the City, including the cost of capital improvements, purchase price of property acquired by the City (including closing costs), reasonable reserves and contingencies, and the cost of personnel and other City resources used to assist the Authority in the accomplishment of its objectives and responsibilities.

The Authority desires to renew this formalized agreement with the City to provide assistance to the Authority. The City and the Authority are desirous of entering into this renewal of the inter-local agreement to set forth the responsibilities and obligations of the parties hereto. The City Attorney had prepared the original agreement and has reviewed the attached agreement. This Agreement is the same form and content of the original document. This Agreement will be subject to review and renewal in September, 2017.

At an informal meeting of the Airport Authority Board held on Wednesday, September 12, 2012, four of the six remaining members of the Authority agreed to approve to enter into the inter-local agreement with the City. Formal action could not be taken because one of the four appeared by telephone and therefore a quorum was not present.

### **Highlights of the agreement**

The City will provide the services of its employees necessary to accomplish the purposes and intent of the Ordinance. The City's staff liaison with the Authority shall be its Public Services Director.

The City will hold title to any real or personal property acquired by the Authority in furtherance of the purposes and intent of the Ordinance.

The Authority recognizes and acknowledges that it is in the best interests of the Authority that the bank account(s) of the Authority be administered and managed by the City. Accordingly, the parties hereby agree that any bank account of the Authority shall be held by the City in trust for the Authority and administered and managed by the City in the same manner as other public funds of the City and in accordance with the Ordinance and this Agreement. Subject to oversight by the City Commission, the appropriate officials of the City, including the City Manager and the Finance Director or others subject to their direction, are authorized to take such actions as are necessary and appropriate to properly administer the Authority's account(s), including making such deposits and withdrawals as may be necessary from time to time.

Moneys in the Authority's account(s) shall be secured at all times in the manner prescribed by the laws of the State of Florida relating to the securing of public funds.

The Authority does hereby represent and warrant to the City that it has all requisite power, authority, and authorization to enter into this Agreement, has taken all necessary actions required to enter into this Agreement, make any payment contemplated hereby, and to fulfill any and all of its obligations, duties and responsibilities for or required of it by this Agreement, for their exercise individually or collectively.

The City does hereby represent and warrant to the Authority that it has all requisite power, authority and authorization to enter into this Agreement, has taken all necessary actions required to enter into this Agreement, and to fulfill any and all of its obligations,

duties and responsibilities required of it by this Agreement, whether exercised individually or collectively.

The City does hereby represent and warrant to the Authority that it does not intend to assign to any other person its obligations and responsibilities under this Agreement.

The agreement may be amended only by the mutual written agreement of the City and the Authority at any time and from time to time.

It is the intent of the parties hereto that the term of this Agreement should continue throughout the existence of the Authority. In the event that the Ordinance is repealed by the City commission, this Agreement shall expire.

This Agreement shall become effective immediately upon the execution by the appropriate officers of the City and the Authority, and upon filing of this Agreement with the Clerk of the Circuit Court of Polk County, Florida, as required by Section 163.01(11), Florida Statutes.

#### **OTHER OPTIONS**

None; the Authority does not have sufficient resources, including personnel, to adequately administer and implement its responsibilities as set forth in the Ordinance.

#### **FISCAL IMPACT**

There is a potential fiscal impact within the second five years of this agreement if the airport revenues are not sufficient to cover operating expenses. Then under this agreement the City's general fund will be required to subsidize the shortfall.

#### **ATTACHMENTS**

Inter-local agreement document is in the City Clerk's office for review.

## INTERLOCAL AGREEMENT

This Agreement entered into this \_\_\_ \_\_\_ day of October 2012, by and between the CITY OF LAKE WALES, a Florida municipal corporation (the "City"), and the LAKE WALES AIRPORT AUTHORITY, a dependent special district of the City of Lake Wales (the "Authority").

### WITNESSETH:

WHEREAS, on September 29, 2005, the City Commission of the City (the "City Commission") adopted Ordinance No. 2005-44 creating the Authority as a dependent special district of the City and designating it as the Airport Authority in accordance with the provisions of §189.4041, Florida Statutes; and

WHEREAS, Ordinance 2005-44, as amended from time to time (the "Ordinance"), provides for certain undertakings by the Authority or on behalf of the Authority; and

WHEREAS, the Authority does not have sufficient resources, including personnel, to adequately administer and implement its responsibilities as set forth in the Ordinance and needs the cooperation, support, and assistance of the City, including City personnel participating in the implementation of the objectives and responsibilities set forth in the Ordinance; and

WHEREAS, the City was and is able and willing to assist the Authority to accomplish the purposes set forth in the Ordinance, including provision of personnel and other City resources to administer and implement its objectives and responsibilities; and

WHEREAS, the parties recognize the City's assistance to the Authority requires funds to pay the costs incurred by the City, including the cost of capital improvements, purchase price of property acquired by the City (including closing costs), reasonable reserves and contingencies, and the cost of personnel and other City resources used to assist the authority in the accomplishment of its objectives and responsibilities; and

WHEREAS, the Authority desires to formalize its agreement with the City to provide assistance to the Authority; and

WHEREAS, the City and the Authority are desirous of entering into an interlocal agreement to set forth the responsibilities and obligations of the parties hereto;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties hereto agree as follows:

**SECTION 1. INTERLOCAL AGREEMENT** - The parties acknowledge and agree and intend this agreement is an interlocal agreement pursuant to section 163.01, Florida Statutes.

## SECTION 2. DEFINITIONS.

(a) As used in this Agreement, the following terms shall have the following meanings:

(1) "Authority" means the Airport Authority of the City of Lake Wales, Florida, and any successor thereto.

(2) "Authority Board" means the governing body of the Authority, or any successor board, commission or council thereto.

(3) "City" means the City of Lake Wales, Florida, a Florida municipal corporation.

(4) "City Commission" means the City Commission of the City, or any successor thereto.

(5) "Fiscal Year" means the period commencing on October 1 of each year and continuing to and including the succeeding September 30.

(6) "Ordinance" means Ordinance 2005-44 of the City of Lake Wales, as amended.

(b) Words imparting singular number shall include the plural number in each case and vice versa, and words imparting persons shall include firms, corporations or other entities, including governments or governmental bodies. References to Florida Statutes are to Florida Statutes (2005), as amended.

## SECTION 3. FINDINGS AND DETERMINATIONS.

(a) The City and the Authority do hereby accept and adopt the recitals set forth above and agree to incorporate them herein.

(b) (1) The parties do hereby recognize, find and acknowledge that the Authority did not and does not have sufficient funds available to it to pay all of the costs of operating the Authority and, as a result thereof, in the mutual interests of the parties for the City to pay certain costs incurred by the Authority. Payments by the City contemplated hereby shall not exceed a period of five (5) years, at which time the City and the Authority contemplate that the Authority will be capable of bearing all costs associated with operation of the Authority.

(2) The parties do hereby recognize, find and acknowledge that the Authority will, subject to the limitations set forth in the Ordinance and this Agreement, administer funds on deposit from the State of Florida, the City, and any other governmental body or agency in support of the various activities undertaken by the Authority.

(c) The parties further find and acknowledge that the Authority does not have adequate resources available on a continuing basis to it to carry out its objectives and

responsibilities and requires assistance to implement and administer the purposes and intent of the Ordinance, and the parties agree the City is willing and capable to assist the Authority in performing its duties and responsibilities through the use of City personnel, provided that nothing in this Agreement is intended or shall be construed to supersede or avoid provisions in the Charter of the City restricting certain contact between members of the City Commission and employees of the City.

(d) The parties hereto recognize and find that it is in the best interest of each and the public to establish a cooperative relationship between the parties hereto in order to best carry out the purposes of the Ordinance.

#### SECTION 4. THE CITY.

So long as this Agreement remains in full force and effect, the City covenants with the Authority as follows:

(a) The City will provide the services of its employees necessary to accomplish the purposes and intent of the Ordinance. The City's staff liaison with the Authority shall be its Public Services Director.

(b) The City will hold title to any real or personal property acquired by the Authority in furtherance of the purposes and intent of the Ordinance.

(c) The Authority recognizes and acknowledges that it is in the best interests of the Authority that the bank account(s) of the Authority be administered and managed by the City. Accordingly, the parties hereby agree that any bank account of the Authority shall be held by the City in trust for the Authority and administered and managed by the City in the same manner as other public funds of the City and in accordance with the Ordinance and this Agreement. Subject to oversight by the City Commission, the appropriate officials of the City, including the City Manager and the Finance Director or others subject to their direction, are authorized to take such actions as are necessary and appropriate to properly administer the Authority's account(s), including making such deposits and withdrawals as may be necessary from time to time.

(d) Moneys in the Authority's account(s) shall be secured at all times in the manner prescribed by the laws of the State of Florida relating to the securing of public funds.

#### SECTION 5. THE AUTHORITY.

So long as this Agreement remains in full force and effect, the Authority covenants with the City as follows:

(a) The obligations of the Authority described herein shall not be deemed to constitute a general obligation of the Authority or the City, or a debt, liability or obligation of the Authority, the City, the State of Florida or any political subdivision thereof or a pledge of

the faith and credit of the Authority, the City, the State of Florida or any political subdivision thereof. Neither the Authority, the City, the State of Florida or any political subdivision thereof, shall be directly, indirectly or contingently obligated to levy or to pledge any form of ad valorem taxation whatsoever for the payment of any payment contemplated hereby.

(b) All income on investments of funds in the Authority's account(s) shall be retained therein and used for the purposes contemplated by the Ordinance and this Agreement.

(c) The Authority covenants and agrees to perform and comply with all applicable laws, rules and regulations relating to the preparation, administration and implementation of the duties and obligations set forth in the Ordinance and the performance of the Authority's covenants and obligations hereunder. In all events, the Authority shall comply with the policies and procedures of the City, including but not limited to the policies governing investments and the purchase and acquisition of goods and services.

#### SECTION 6. REMEDIES: NO GENERAL OBLIGATION.

In the event the Authority should fail to perform any promise, covenant or condition contained herein, the City shall be entitled to seek any remedy then available to it under applicable law and may proceed to obtain equitable relief, including injunctive relief, from any court of competent jurisdiction. The parties hereto recognize and acknowledge that none the obligations of the Authority established by this Agreement is a general obligation or a pledge of the full faith and credit of the Authority or any other governmental entity or political subdivision of the State of Florida, under any applicable statutory or constitutional provision.

#### SECTION 7. FURTHER DOCUMENTS.

The parties hereby agree to execute such agreements, instruments, certificates, or other documents as may be necessary from time to time under this Agreement to carry out the purposes and intent of this Agreement.

#### SECTION 8. REPRESENTATIONS AND WARRANTIES.

(a) The Authority does hereby represent and warrant to the City that it has all requisite power, authority, and authorization to enter into this Agreement, has taken all necessary actions required to enter into this Agreement, make any payment contemplated hereby, and to fulfill any and all of its obligations, duties and responsibilities for or required of it by this Agreement, for their exercise individually or collectively.

(b) The City does hereby represent and warrant to the Authority that it has all requisite power, authority and authorization to enter into this Agreement, has taken all necessary actions required to enter into this Agreement, and to fulfill any and all of its obligations,

duties and responsibilities required of it by this Agreement, whether exercised individually or collectively.

(c) The City does hereby represent and warrant to the Authority that it does not intend to assign to any other person its obligations and responsibilities under this Agreement.

#### SECTION 9. AMENDMENTS.

This Agreement may be amended only by the mutual written agreement of the City and the Authority at any time and from time to time.

#### SECTION 10. THIS AGREEMENT CONSTITUTES A CONTRACT.

In consideration of the acceptance of their mutual duties, obligations, and responsibilities hereunder, this Agreement shall be deemed to be and shall constitute a contract between the City and the Authority.

#### SECTION 11. SEVERABILITY.

If any one or more of the covenants, agreements or provisions of this Agreement shall be held contrary to any express provision of law or contrary to any policy or express law, although not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separate from the remaining covenants, agreements or provisions of this Agreement.

#### SECTION 12. CONTROLLING LAW.

All covenants, stipulations, obligations, and agreements of the City and the Authority contained in this Agreement shall be deemed to be covenants, stipulations, obligations and agreements of each of the City and Authority, respectively, to the full extent authorized by the Ordinance and provided by the Constitution or the laws of the State of Florida. Any and all provisions of this Agreement and any proceedings seeking to enforce or challenge any provisions of this Agreement shall be governed by the laws of the State of Florida. Venue for any proceeding pertaining to this agreement shall be Polk County, Florida.

#### SECTION 13. NO MEMBER LIABILITY.

No covenant, stipulation, obligation or agreement contained herein shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future member of the governing body or agent or employee of the City or the Authority in its, his or their individual capacity, and neither the members of the City Commission or the Authority Board, nor any official executing this Agreement shall be liable personally or shall be subject to any accountability for reason of the execution by the City or the Authority of

this Agreement or any Ordinance pertaining thereto.

#### SECTION 14. FILING.

The Clerk of the City is hereby authorized and directed after approval of this Agreement by the City Commission and the Authority Board of the Authority and the execution thereof by the duly qualified and authorized officers of each of the parties hereto, to file this Agreement with the Clerk of the Circuit Court of Polk County, Florida, in accordance with Section 163.01(11), Florida Statutes.

#### SECTION 15. ASSIGNMENT.

Neither party to this Agreement may assign, sell, transfer, convey, or give any or all of its rights, duties, obligations, and responsibilities under this Agreement, without the prior written approval and consent of the other party.

#### SECTION 16. CITY COMMISSION FINAL APPROVAL.

The City Commission, as the elected body representing the citizens of the City, and in accordance with the provisions of the Ordinance, shall have final approval for the expenditure of funds under this Agreement.

#### SECTION 17. EXPIRATION DATE.

It is the intent of the parties hereto that the term of this Agreement should continue throughout the existence of the Authority. In the event that the Ordinance is repealed by the City commission, this Agreement shall expire.

#### SECTION 18. EFFECTIVE DATE.

This Agreement shall become effective immediately upon the execution by the appropriate officers of the City and the Authority, and upon filing of this Agreement with the Clerk of the Circuit Court of Polk County, Florida, as required by Section 163.01(11), Florida Statutes.

IN WITNESS WHEREOF, the parties hereto, by and through the undersigned, have entered into this Interlocal Agreement on the date and year first above written.

Execution on following page

City of Lake Wales, Florida

Lake Wales Airport Authority

\_\_\_\_\_  
Michael Carter, Mayor

\_\_\_\_\_  
Frank, Gioscia, Chairman

Date\_\_\_\_\_

Date\_\_\_\_\_

ATTEST:

ATTEST:

\_\_\_\_\_  
Clara VanBlargan, City Clerk

\_\_\_\_\_  
Teresa Allen, City Staff Liaison

Approved as to form

\_\_\_\_\_  
Albert C. Galloway, Jr., City Attorney