

MEMORANDUM OF UNDERSTANDING

between

THE CITY OF ERIE

and

THE COUNTY OF ERIE

and

THE ERIE MUNICIPAL AIRPORT AUTHORITY

WHEREAS, a one-thousand nine-hundred twenty (1,920) foot runway extension and the resurfacing of the existing runway at the Erie International Airport ("Project") is essential for passenger safety (920 feet) as well as the future growth and economic development (1,000 feet) of the City of Erie and the entire Erie region; and

WHEREAS, the federal government, by delegated statutory authority to the Federal Aviation Administration ("FAA"), has agreed to contribute to the funding for the Project on the condition that the airport and state and local government contribute to the Project based on a formula presented by the FAA; and

WHEREAS, elected and/or appointed representatives of the City of Erie ("City"), County of Erie ("County") and the Erie Municipal Airport Authority ("Authority") (collectively referred to as "the parties") convened November 9, 2007 for the purpose of agreeing on a collaborative plan in order to: provide for a local funding match for the Project; address expansion of the Authority's governing board and arrive at compromises among the municipalities and Authority in furtherance of the Project; and

WHEREAS, the County has indicated a willingness to (1) provide a portion of the local match for the Project, (2) assist the Authority in providing the Authority's portion of the local match for the Project, and (3) assist the Authority in retiring the existing indebtedness of the Authority; and

WHEREAS, due to the significant investment the County is committing to the Project it desires that the Authority become a "regional authority" with an expanded board of directors to which the County shall be granted appointment power; and

WHEREAS, in order for the Authority to become a "regional authority" with appointments made by the County to the Authority board of directors, (1) the County must join as a member municipality of the Authority pursuant to Section 5604 of the Municipality Authorities Act ("Act"), thereby turning the existing Authority into a "joint authority" within the meaning of the Act and (2) the Articles of Incorporation of the Authority must be appropriately

amended pursuant to Section 5605 of the Act to reflect the status of both the City and the County as members of a joint authority; and

AND NOW, the County, the City, and the Authority, intending to be legally bound, hereby agree to the following:

1. The County shall:
 - a. commit \$21.5 million in local match funds for the Project, subject to the following terms, conditions, limitations and contingencies:
 - i. The \$21.5 million commitment (the "Commitment") shall be deposited in a construction fund, as more specifically described in Section 1(a)(iii), below, no later than August 1, 2008.
 - ii. The Commitment may be fulfilled by a combination of tax-exempt bond proceeds and other revenue sources of the County, as determined by the County in its discretion. It is understood by the parties that the County presently contemplates that the Commitment shall be derived solely from tax-exempt bond proceeds.
 - iii. Funds from the Commitment shall be deposited in a Project construction fund (the "Construction Fund"). Funds from the Construction Fund, including interest earnings thereon, shall be drawn down upon by the Authority solely for the payment of costs directly related to the Project. For the sake of clarity, such costs include, but are not limited to: (1) land acquisition costs, including without limitation the acquisition of land in fee, easements and/or other forms of real property rights; and (2) relocation costs, including cost associated with the reconfiguration of the Millcreek Golf and Learning Center ("MGLC") and the reconfiguration of Powell Avenue. Such costs include payments to the City in consideration for the agreement of the City to transfer the Erie Golf Club to Millcreek Township, in exchange for the waiver of the Township's right to demand that the Authority pay for the reconfiguration of MGLC and/or the transfer of real property rights in and/or around MGLC to the Authority, provided that: (1) such transaction occurs no later than September 15, 2008; (2) such transaction results in a net cost savings to the Project; and (3) the terms and conditions of such transaction are satisfactory to the Authority and the County. Such payments shall be in an amount up to \$2.21 million, provided that the foregoing conditions are satisfied. The Authority and the County agree that they shall not unreasonably withhold their consents to such payments.
 - iv. The Commitment and the drawing down of funds from the Construction Fund shall be subject to such terms, conditions, limitations and contingencies as is set forth in an intergovernmental cooperation agreement (the "ICA") between the County and Authority, as described in greater detail below.
 - b. utilize any interest generated from the investment of idle project funds from the bond proceeds to provide additional funding to the Project; and

- c. agree that any reduction in the Project cost and/or any additional sources of revenue which reduce the overall local commitment to the Project, shall be shared as follows:
 - i. 75% of the reduction in net cost returned to the County from its original commitment
 - ii. 25% of the reduction in net cost returned to Authority from its original commitment; and
- d. agree to join as a member municipality of the Authority which shall be changed into a "joint authority" within the meaning of section 5604 of the Act, further agreeing to do the following:
 - i. participate in the submission of an application to the Secretary of the Commonwealth requesting the County's joinder as a member municipality and take all other steps necessary as prescribed by the Municipality Authorities Act to join the Authority as a member municipality; and
 - ii. amend the Articles of Incorporation of the Authority pursuant to Section 5605 of the Act to reflect the status of both the City and the County as members of a "joint authority;" and
 - iii. appoint four directors to the board of the joint Authority in a manner and method prescribed by the County Administrative Code, provided the County shall comply with Section 5610 of the Act, 53 Pa. C.S.A. §5610 in making such appointments and creating said appointment procedure.

The obligations of the County under this Memorandum of Understanding ("MOU") are contingent upon: (1) the performance by the Authority and the City of their respective obligations hereunder; (2) the re-structuring of the Authority as contemplated by this Agreement and the seating of the County's appointments to the Authority no later than May 1, 2008, time being of the essence; and (3) the execution and delivery of an ICA by the Authority and the County which is satisfactory to the Authority and the County in each party's sole discretion, no later than May 1, 2008, time being of the essence. With respect to the ICA, the Authority and the County hereby acknowledge and agree that: (1) this MOU only sets forth the obligations of the parties with respect to the Project in a general manner; and (2) implementation of this MOU will require a separate agreement, the ICA, which sets forth in much greater detail the terms, conditions, limitations and contingencies under which the County shall make funds available for the Project and such funds shall be expended. Such terms, conditions, limitations and contingencies include, but are not limited to: (1) compliance with provisions of the Internal Revenue Code of 1986, as amended, regarding the use of tax-exempt bonds proceeds; (2) time frames for the completion of various tasks relating to the Project; (3) various contingencies with respect to the County's obligations, including (without limitation) obtaining adequate FAA funding to complete the Project; (4) terms and conditions under which funds provided by the County may be disbursed; (5) financial and operating covenants of the Authority; and (6) provisions for termination of the ICA.

2. The Authority shall:

- a. consent to the County's joinder as a member municipality of the Authority, thereby turning the Authority into a "joint authority" within the meaning of Section 5604 of the Act, 53 Pa. C.S.A. §5604, further agreeing to do the following:
 - i. participate in the submission of an application to the Secretary of the Commonwealth requesting the County's joinder as a member municipality and take all other steps necessary as prescribed by the Municipality Authorities Act to have the County join the Authority as a member municipality; and
 - ii. consent to expanding the joint Authority's board of directors to nine members and consent to the appointment by the County of four new directors to the board of the joint Authority in a manner and method prescribed by the County Administrative Code, provided the County shall comply with Section 5610 of the Act, 53 Pa. C.S.A. § 5610, in making such appointments and creating said appointment procedure; and
 - iii. amend the Articles of Incorporation of the Authority pursuant to Section 5606 of the Act to reflect the status of both the City and the County as members of a "joint authority."
- b. enter into the ICA with the County, as described in Section 1, above, setting forth, among other things, the Authority's agreement to the terms, conditions, limitations and contingencies set forth in Section 1, above, with respect to the expenditure of funds provided by the County; and
- c. obtain any and all necessary approvals by the Federal Aviation Administration and/or Pennsylvania Bureau of Aviation and any other governing agencies which may be required to effectuate all actions set forth in this MOU; and
- d. comply with the terms and conditions of this MOU and the ICA with respect to the expenditure of funds provided by the County; and
- e. negotiate a local PLA Agreement with respect to the Project; and
- f. provide not less than \$6 million to pay for costs directly related to the Project. Such monies shall be deposited by the Authority into the Construction Fund no later than August 1, 2008. The disbursement of such funds from the Construction Fund shall be subject to all of the terms, conditions, limitations and contingencies which are applicable to the Construction Fund generally; and
- g. agree that any reduction in the Project cost and/or any additional sources of revenue which reduce the overall local commitment to the Project, shall be shared as follows:
 - i. 75% of the reduction in net cost returned to the County from its original commitment
 - ii. 25% of the reduction in net cost returned to Authority from its original commitment.

3. The City shall:

- a. consent to the County's joinder as a member municipality of the Authority, thereby turning the Authority into a "joint authority" within the meaning of Section 5604 of the Act, 53 Pa. C.S.A. §5604, further agreeing to do the following:
 - i. participate in the submission of an application to the Secretary of the Commonwealth requesting the County's joinder as a member municipality and take all other steps necessary as prescribed by the Municipality Authorities Act to have the County join the Authority as a member municipality;
 - ii. amend the Articles of Incorporation of the Authority pursuant to Section 5605 of the Act to reflect the status of both the City and the County as members of a "joint authority"; and
 - iii. consent to expanding the joint Authority's board of directors to nine members and consent to the appointment by the County of four new directors to the board of the joint Authority in a manner and method prescribed by the County Administrative Code, provided the County shall comply with Section 5610 of the Act, 53 Pa. C.S.A. § 5610, in making such appointments and creating said appointment procedure. The City shall retain appointment power over the original five seats on the Authority's board.

4. It is the intention of the Parties that this MOU shall not become effective until it is properly approved and executed by each of the Parties.

5. Should the nature or extent of this project change significantly due to increased costs or decreased revenues which would require obtaining additional funding, the parties shall meet and discuss possible remedies.

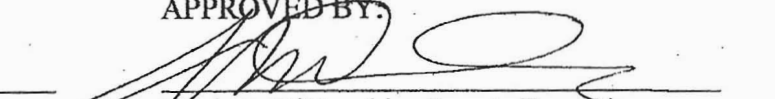
6. The solicitors of each of the Parties are authorized to take all necessary steps to implement the terms of this MOU.

[Signatures to appear on the following pages.]

On the motion of Mr. Fatica, seconded by Mrs. Loll,
this Memorandum of Understanding was passed and approved on this 8th day of
April, 2008, by a vote of 5 - 0 - 1.

APPROVED BY:


Chair, Erie County Council


Mark A. DiVecchio, County Executive

ATTEST:


County Clerk

DATE: April 8, 2008

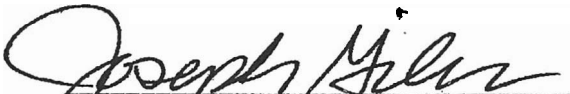
RESOLUTION NUMBER 27, 2008

**Approving the Memorandum of Understanding of April 8, 2008
for the Erie Airport Runway Project**

BE IT RESOLVED by the County Council of the County of Erie that the Memorandum of Understanding (MOU) attached hereto as Exhibit A is hereby approved.

BE IT FURTHER RESOLVED that Resolution Number 5, 2008 adopted on February 5, 2008 and Resolution Number 16, 2008 adopted on March 25, 2008 and their respective attached MOU's are hereby rescinded.

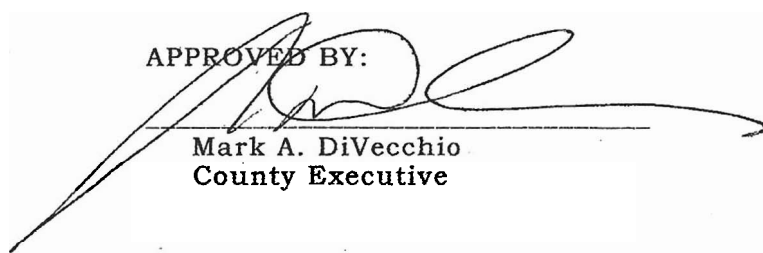
On the motion of Mr. Fatica, seconded by Mrs. Loll, this resolution was passed on this 8th day of April, 2008 by a vote of 5 - 0 - 1.



Joseph F. Giles, Chairman
Erie County Council

Date: April 8, 2008

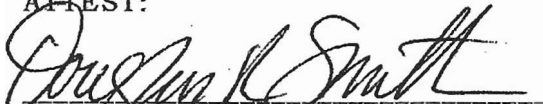
APPROVED BY:



Mark A. DiVecchio
County Executive

Date: 4.9.8

ATTEST:

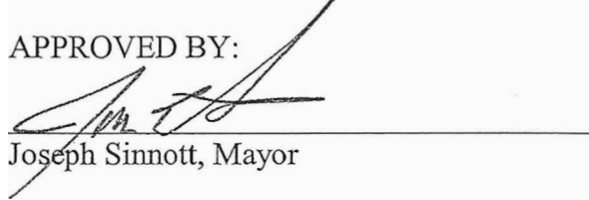


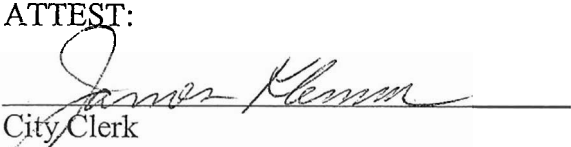
Douglas R. Smith
County Clerk

Date: April 8, 2008

On the motion of Mrs. Jenkins-Husband, seconded by Mr. Thompson,
this Memorandum of Understanding was passed and approved on this 16th day of
April, 2008, by a vote of 6 - 1.


Chair, Erie City Council

APPROVED BY:

Joseph Sinnott, Mayor

ATTEST:

City Clerk

DATE: APR 16 2008

ORIGINAL
SIGNATURES

RECEIVED
APR 16 2008
CITY CLERK

Debra Jenkins-Husband
Mrs. Jenkins-Husband

[Signature]
Seconded By:

By-----

COUNCIL CHAMBERS

Erie, Pa. ~~April 16, 2008~~

Resolved, by the Council of the City of Erie,

That the proper City officials are authorized and directed to enter into a Memorandum of Understanding (MOU) between the City of Erie, the County of Erie and the Erie Municipal Airport Authority for the purpose of furthering the Authority's runway extension project.

JOURNAL 126-

CITY COUNCIL - CITY OF ERIE, PA.

NO. 8

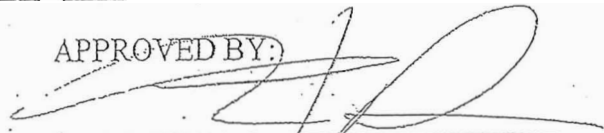
2008	Ayes	Nays
Aleksandrowicz	/	
Cappabianca		/
Horan-Kunco	/	
Husband	/	
Schember	/	
Thompson	/	
Jones	/	

6-1

Distribution: 1. Clerk-White 2. Finance-Blue 3. Public Works-Green
4. Public Safety-Yellow 5. Economic & C.D.-Pink 6. Mayor/Misc.-Gold

On the motion of TONY LOGUE, seconded by LOU BIZZARRO,
this Memorandum of Understanding was passed and approved on this 11 day of
APRIL, 2008, by a vote of 4 - 0.


Secretary, Erie Municipal Airport Authority

APPROVED BY:

Louis J. Porreco, President, Erie Municipal
Airport Authority

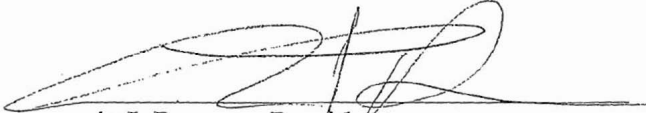
DATE: APRIL 11, 2008

RESOLUTION 2008 - 13

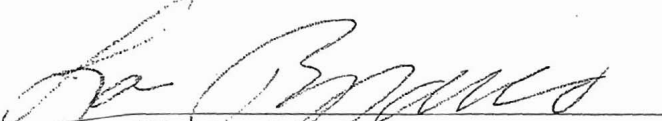
ERIE MUNICIPAL AIRPORT AUTHORITY

It is hereby RESOLVED on this 11th day of April, 2008, by the Erie Municipal Airport Authority ("Authority"), to approve the Memorandum of Understanding ("MOU") between the County of Erie, the City of Erie and the Authority, pertaining to County funding of the Runway Extension Project, expansion of the Authority board of directors and other issues as set forth in the MOU, said MOU being incorporated herein as if fully set forth. The officers of the Authority are authorized to execute said MOU on behalf of the Authority and the agents of the Authority are authorized to take any action as provided for in the MOU.

APPROVED THIS 11th DAY OF APRIL 2008.



Louis J. Porreco, President



Lou Bizzarro, Secretary

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