

RESOLUTION NO. 2010-04-056

A RESOLUTION APPROVING A JOINT POWERS AGREEMENT ESTABLISHING THE LEWISTON NEZ PERCE COUNTY AIRPORT AUTHORITY BY AND BETWEEN NEZ PERCE COUNTY AND THE CITY OF LEWISTON, AND AUTHORIZING DOUGLAS A. ZENNER AS CHAIRMAN OF THE BOARD OF THE NEZ PERCE COUNTY COMMISSIONERS TO EXECUTE THE JOINT POWERS AGREEMENT ON BEHALF OF THE BOARD, AND FURTHER PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, it is the desire of Nez Perce County to enter into a Joint Powers Agreement Establishing the Lewiston Nez Perce County Airport Authority with the City of Lewiston; and

WHEREAS, a copy of said agreement is attached hereto; and

WHEREAS, it is the desire of the Board of Nez Perce County Commissioners to authorize Douglas A. Zenner, as Chairman, to execute said Joint Powers Agreement on behalf of the Board.

NOW, THEREFORE, BE IT HEREBY RESOLVED THAT:

Section 1: The Nez Perce County Board of Commissioners has reviewed the aforesaid Joint Powers Agreement between Nez Perce County and the City of Lewiston, approves the terms and conditions thereof, and authorizes Douglas A. Zenner as Chairman to execute said agreement on behalf of the Board.

Section 2: This Resolution shall take effect and be in force from and after its passage and approval.

This Resolution is duly approved and adopted by the Board of Nez Perce County Commissioners on the

12th day of April, 2010.

INST. NO. 780286
FILED FOR RECORD
FEE N/C REC. BY NEZ PERCE COUNTY
COMMISSIONERS
2010 MAY 5 AM 10 38
PATTY O. WEEKS
RECORDER, NEZ PERCE CO. ID.
BY [Signature] DEPUTY

BOARD OF COUNTY COMMISSIONERS
Nez Perce County, Idaho

[Signature]
DOUGLAS A. ZENNER, Chairman
Nez Perce County Commissioner
[Signature]
RONALD J. WHITMAN, Member
Nez Perce County Commissioner
[Signature]
MIKE GROW, Member
Nez Perce County Commissioner

ATTEST
[Signature]
PATTY O. WEEKS, Clerk
Nez Perce County, Idaho

1/16

JOINT POWERS AGREEMENT
 Establishing the
 Lewiston Nez Perce County Airport Authority

THIS AGREEMENT, made this 12th day of April, 2010, between NEZ PERCE COUNTY, a political subdivision of the State of Idaho ("County"), and THE CITY OF LEWISTON, an Idaho municipal corporation located within the County ("City").

RECITALS:

WHEREAS, the County and the City have jointly operated and are currently jointly operating, pursuant to an agreement for joint operation dated March 26, 2007, an airport known as the Lewiston Nez-Perce County Airport located within the City and County ("Airport"); and

WHEREAS, the Airport is of critical importance to the economy of the County and the City, and,

WHEREAS, the County and the City seek the highest quality and safest airport possible of the Airport location and the human use of adjacent lands; and

WHEREAS, Idaho Code Section 67-2328 expressly authorizes public entities to create a separate legal or administrative entity to exercise powers possessed by the public agencies creating such entity; and

WHEREAS, the County and the City have determined that it is in the best interests of the County and the City, and their inhabitants, to create a new Authority for the management and operation of the Airport; and

WHEREAS, the creation of the Airport Authority will result in administrative efficiencies, fiscal accountability and the reduction of political conflicts regarding the operation of the Airport; and

WHEREAS, the parties wish to continue exploring satisfactory resolutions of their mutual needs that will lead to an airport becoming a financially self sustaining entity.

Now, THEREFORE, for and in consideration of the mutual covenants contained herein, the parties agree:

Article I

DEFINITIONS, PURPOSE, AND AUTHORITY

Section 1.1: DEFINITIONS

For purposes of this Agreement, the following terms shall have the following definitions:

Airport means the Lewiston Nez-Perce County Airport, located in the City and County.

Agreement means this Joint Powers Agreement, dated 4/12/10.

Authority means the Lewiston Nez-Perce County Airport Authority created under Section 3.1 of this Agreement.

Board means the Board of Commissioners of the Authority, created under Section 3.2 of this Agreement.

City means the City of Lewiston, Nez Perce County, Idaho.

Commercial means regularly-scheduled airline activities.

County means Nez Perce County, Idaho.

FAA means the Federal Aviation Administration of the U.S. Department of Transportation.

Lewiston Nez-Perce County Airport Property means the real and personal property leased to the Authority.

Master Plan means the Lewiston Nez-Perce County Airport Master Plan Update, 2008, or its successor.

Transition period means the period of time from the initial appointment of the Board until the final completion and transfer of authority from the City and County to the Board. During the Transition Period, the Board shall coordinate with the City, the County and the current Airport Advisory Board to effectuate a successful transition of authority.

Section 1.2: PURPOSE

The purpose of this agreement is (1) to create an Authority for the management and operation of airport activity in the City and the County, including the Airport, and (2) to implement the Airport Master Plan and amend the same as necessary or advisable.

Section 1.3: AUTHORITY

This Agreement is entered into under the authority of Title 21, Chapter 4, and Sections 67-2326 through 67-2333, Idaho Code.

ARTICLE II

DURATION, AMENDMENT, TERMINATION AND TRANSITION

Section 2.1: DURATION

The term of the Agreement shall commence April 15, 2010 and terminate only as provided herein.

Section 2.2: AMENDMENT

The County and the City reserve the right to amend this Agreement at any time by written agreement between the County and the City, provided, that no amendment shall violate or impair any then-existing contractual obligation relating to the Airport.

Section 2.3: TERMINATION

The County and the City reserve the right to terminate this Agreement, by mutual written agreement between the County and the City, at any time. In the event of such termination, any then-existing valid contractual obligations of the Authority shall become joint obligations of the County and City.

Section 2.4: TRANSITION

After the creation of the Authority, the Authority shall have up to sixty (60) days to prepare a transition plan for the commencement of the Authority's full operation of the Airport. The transition plan shall be submitted to the City and the County for approval. During this initial transition period the City shall continue to administer the Airport pursuant to the Extension Agreement between the City and the County dated December 16, 2009. The transition plan shall contain:

- a. proposed budget,
- b. proposed workforce,
- c. continuation of administrative oversight by the City, if any,
- d. extension of transition period, if any,
- e. such other items as necessary to effectuate the Transition.

ARTICLE III

CREATION OF AIRPORT AUTHORITY

Section 3.1: AIRPORT AUTHORITY

There is hereby created a separate administrative entity, pursuant to Section 67-2328, Idaho Code, to be known as the Lewiston Nez-Perce County Airport Authority (the "Authority"). The Authority shall be a public entity of the State of Idaho with the powers set forth in this Agreement.

Section 3.2: GOVERNING BOARD

The Authority shall be governed by a board of commissioners (the "Board") consisting of five (5) members, to be appointed as follows: two (2) members shall be appointed by the County.

Two (2) members shall be appointed by the City. The members so appointed may not be current members of the governing boards or current employees of the appointing entity. Appointing entities shall attempt to appoint members with expertise in engineering, maintenance, marketing, business, accounting or aviation. One (1) member shall be appointed by unanimous vote of the four thus appointed. Members shall be compensated at a salary of \$300.00 (three hundred dollars) per month and shall be reimbursed for their actual, documented expenses under such rules and procedures as the Board may establish.

Section 3.3: TERMS OF OFFICE

Of the members of the Board appointed by the County and the City, one (1) shall be appointed to a two-year term, and one (1) shall be appointed to a three-year term, commencing on October 1st of the year of their appointment. Thereafter, members shall be appointed to three-year terms. The member appointed by the four members of the Board (the "Independent Member") shall serve a three-year term commencing on October 1st of the year of appointment. Thereafter the "Independent Member" shall be appointed for three year terms. All members of the Board, if otherwise eligible, may be reappointed by the Appointing authority or in the case of the member appointed by the Airport Authority, by the unanimous vote of the four other members of the Airport Authority. Any member may be removed only by the unanimous vote of the remaining Board members with the concurrence of the original appointing authority. Any vacancy shall be filled by the entity which originally appointed such member to fill the unexpired term. Appointments made during the transition period shall be effective until the end of such transition period.

Section 3.4: OFFICERS

The Board shall designate one (1) of its members as Chairman, one (1) as vice-chairman, one (1) as secretary, and shall appoint a treasurer who need not be a member of the Board, any of whom may be removed in the manner provided in the bylaws of the Board. The Board may appoint other officers as it deems necessary.

Section 3.5: BYLAWS, MEETINGS

The Board shall adopt bylaws for its own operation and shall establish such regular meeting dates (which shall not be less frequently than monthly) and times as it shall deem necessary. Any Three (3) members shall constitute a quorum, and a majority of the quorum present shall be sufficient to take any action. Regular and special meetings of the Board shall be conducted in compliance with Sections 67-2340 through 67-2347, Idaho Code.

ARTICLE IV

POWERS OF THE BOARD

Section 4.1: POWERS

In addition to any other powers set forth in this Agreement, the Board of the Authority shall have and may exercise the following powers in the name of the Authority:

1. To sue and be sued in its own name.
2. To adopt an official seal and alter the same at pleasure.
3. To authorize any action by motion, resolution, or other official action.
4. To promulgate and adopt all necessary rules and regulations for the management and control of Airport property including, but not limited to, landing and takeoff areas (including runways and landing strips for aircraft); taxiway areas for aircraft; passenger and cargo ramp areas and facilities; aircraft parking areas and facilities; facilities for the purpose of controlling or assisting landings, takeoffs, and other movements of aircraft using the airport, including, without limitation, control towers, flood lights, landing lights, beacons, signals, radio aids, and other conveniences and aids to operation, navigation, or ground control of

aircraft; automobile parking; Airport Terminal; aircraft tie-downs and hangars; hours and days of operation and all rules and regulations necessary for the safe, effective, and efficient operation of all airport facilities.

5. To order, direct, superintend, and manage all repairs, alterations, and improvements.
6. To lease Airport real and personal property from the County and the City and to acquire, construct, or lease buildings, structures, facilities, and equipment as it may deem necessary to fulfill its duties. Such Lease arrangements are not to exceed ten dollars (\$10) per year. Real property may not be conveyed or disposed of except by lease not exceeding twenty (25) years, except for conveyance to the County and/or City in conformance with Paragraph 4.2 (D) of this Agreement, or by written concurrence of the City, County and FAA.
7. To acquire in the name of the Authority, by gift or purchase, or by lease, such personal property as it may deem necessary in connection with the improvement, extension, enlargement, or operation of the Airport facilities, and to sell, convey, lease, or dispose of any personal property in accordance with the statutory requirements applicable to counties, upon such terms and conditions and for such consideration as the Board deems appropriate.
8. To enter into contracts and agreements, cooperative and otherwise, affecting the affairs of the Airport, with the FAA, the state and any of its agencies or instrumentalities, any corporation or person, public or private, any municipality, and any political or governmental subdivision, within or without the state, and to cooperate with any one (1) or more of them in acquiring, constructing, operating, or maintaining the Airport. Copies of any and all such contracts and agreements shall be submitted to the City and the County at least three weeks prior to execution of such documents by the Authority. If either the City or County shall advise the Authority of their objection to such contract or agreement, such contract or agreement shall not be executed by the Authority until such objection is resolved.
9. To receive moneys and property from the County or the City and to receive gifts, grants, and donations of money or property from any person or entity, to expand or utilize the same for

the purpose of the Authority, to deposit moneys in accordance with the public depository laws of the state, and to invest moneys of the Authority in investments permitted under Sections 67-1210 and 67-1210A, Idaho Code.

10. To borrow money and incur indebtedness, in compliance with applicable Federal and State laws and regulations, not exceeding the budgeted revenues and expenses for the then-current and preceding fiscal year of the Authority, and to evidence the same by notes, warrants, or other evidence of indebtedness.
11. To have the management, control, and supervision of all the business and affairs of the Airport, subject to the terms of this agreement.
12. To hire an airport manager and necessary employees, who shall serve at the pleasure of the Board. Compensation for the airport manager shall be fixed annually by the Board during the normal budget process.
13. To retain and compensate agents, engineers, and consultants.
14. To retain or employ regular legal counsel and to retain such special legal counsel as may be deemed necessary.
15. To fix, periodically increase or decrease, and collect rates, fees, tolls, or charges for the use or availability of the facilities of the Airport.
16. To maintain civil actions for the abatement of any violation of any of the Authority's rules, regulations, or standards.
17. To insure Airport property and to enter into contracts for insurance, including, but not limited to, liability insurance, the types of such insurance and the limits of liability proposed by the Authority shall be presented to the City and County for approval.

18. To maintain and administer recordkeeping and management functions.
19. To exercise all or any part or combination of the powers set forth in this Agreement, and to do all things necessary or incidental to the proper operation of this Agreement.

Section 4.2: LIMITATIONS ON POWER

1. Nothing in the foregoing enumerations of powers shall be construed as (1) authorizing the board to create any legal, contractual, fiscal, or tort obligation binding upon the County or the City, (2) nor to incur any indebtedness or liability exceeding the revenues of the Authority for any fiscal year, except as authorized by law or regulation.
2. The Authority shall have no power to levy or cause to be levied any taxes or to require the County or the City to levy any taxes.
3. The operation of the Airport by the Authority shall be subject to existing leases, rights, contracts, assurances, and privileges heretofore granted by the City and County.
4. All Airport property shall be leased by the County and the City to the Authority for the use and benefit of the Airport. Such Lease arrangements are not to exceed \$10 (ten dollars) per year. The Authority shall not acquire or hold title to land except by lease from the County and/or the City. Any land hereafter acquired for Airport purposes shall, to the extent consistent with FAA regulations, be acquired by, and title thereto shall be held in the name of, the County and the City jointly for the use and benefit of the Airport and leased to the Authority for Airport purposes. Upon termination of this Agreement, said lease or leases shall terminate.
5. All buildings, improvements, facilities, equipment, and personal property for the use of the Airport shall be leased by the County and the City to the Authority for the use and benefit of the Airport, and the title thereto shall remain with the City and County. Upon

termination of this Agreement, title to all buildings, improvements, facilities, equipment, and personal property for the use of the Airport shall vest jointly in the County and the City.

6. All Airport construction shall be subject to the zoning laws and building codes of the City.
7. In addition to the foregoing limitations, the Authority shall be bound and limited by the covenants and restrictions set forth in Article VI of this Agreement.

ARTICLE V

FINANCE AND BUDGET

Section 5.1: ANNUAL BUDGET

1. The fiscal year of the Authority shall commence on October 1 of each year and shall end on September 30 of the following year. The Board shall prepare a preliminary annual budget for each fiscal year, showing the anticipated revenues and expenditures, which budget shall be adopted as set forth hereinafter. The preliminary budget shall be submitted to the County and the City prior to May 15th of each year. Nothing herein shall be construed as obligating the County or the City to grant any revenue request or contribution. Any payments or contributions consented to by the City and the County will be paid quarterly, unless otherwise agreed.
2. On or before the first Monday in August, there shall be held at a time and place determined by the Board a meeting and public hearing upon the proposed budget of the Authority. Notice of the meeting and public hearing shall be published in a newspaper of general circulation in the County in one (1) issue thereof. The place, hour, and day of such hearing shall be specified in said notice, as well as the places where such budget

may be examined prior to such hearing. A summary of such proposed budget shall be published with and as a part of the publication of such notice of hearing in substantially the form required in Section 31-1604, Idaho Code. On or before August 15 of each year, a budget for the Authority shall be approved by the Board.

Section 5.2: AIRPORT FUNDS

The Authority shall establish such fund or funds for the deposit and expenditure of Airport moneys as it deems necessary or appropriate, consistent with generally accepted municipal accounting practices, and shall provide for the manner of expenditure of funds. All moneys, credits reserves or other assets held in funds or accounts for the benefit of the Airport by the City shall be transferred to the Airport funds of the Authority, at such times and manner as agreed to by the City, the County and the Authority. The Board shall require the annual audit of all Airport funds by an independent auditor and shall provide copies of each annual audit to the County and the City. All budgeting and expenditures shall be in compliance with state law and federal regulations.

Section 5.3: EXISTING LIABILITIES, GRANT ASSURANCES

1. All liabilities and grant assurances existing at the time of the creation of the Authority shall remain the responsibility of the City and County. All future liabilities and grant assurances, to the extent allowed by Federal or State laws and regulations, shall become the liability of the Authority.
2. Responsibility for accrued personnel benefits for current Airport employees, including sick leave, and vacation benefits provided by the City's Personnel Policy Manual shall be negotiated between the City and the Authority during the Transition Period. Current airport personnel are the Airport Manager, the landside operation and maintenance Coordinator and the airside operation and maintenance Coordinator.

ARTICLE VI

COVENANTS AND RESTRICTIONS

Section 6.1: The Authority shall comply with the following covenants and restrictions. All capitalized terms shall have the meanings assigned thereto in the Master Plan, except as otherwise defined in this Agreement.

1. The Authority shall obtain and maintain property damage and comprehensive liability insurance in amounts sufficient to protect the Airport property and to insure the County, the City, and the Airport against tort and other damage claims. The amount of insurance shall be subject to approval annually by the County and the City.
2. The Authority will cooperate with the City and the County to insure that the zoning laws of each entity complies with the past and future FAA grant assurances or with requirements of any governmental entity that authorizes funding or grant to the Airport.
3. The Authority shall provide to the City and County, at the end of the first full year of Airport operation under the Authority, a long term capital improvement plan and any proposed changes to the Airport Master Plan. After the initial presentation, the Authority shall provide the City and the County any proposed changes to the long capital improvement plan or the Airport Master Plan in a timely manner.

ARTICLE VII

MISCELLANEOUS

Section 7.1: TERMINATION OF PRIOR AGREEMENTS

All prior agreements relating to the joint operation of the Airport, including, but not limited to, the agreement between the City and the County entered into on or about March 26, 2007 are hereby extended to the extent necessary to provide an orderly transition of powers from the City and the County to the Authority, but in no event beyond September 30, 2010. Nothing herein shall be construed as impairing any existing contract obligations, all of which obligations shall continue in force and effect in accordance with their terms as obligations of the Authority.

Section 7.2: ENFORCEMENT OF RULES AND REGULATIONS

In addition to the Board's powers to enforce Airport rules and regulations by civil action, the City may, by ordinance, provide that the violation of any such rule or regulation shall be a misdemeanor and may provide for the enforcement of the same.

Section 7.3: INVALIDITY

If any section of this Agreement is declared invalid by a court of competent jurisdiction, or if the FAA refuses to honor this Agreement or any portion thereof, either party may terminate this Agreement within 60 days of such declaration of invalidity by written notice to the other party.

Section 7.4: EFFECTIVE DATE

This Agreement shall be in full force and effect from and after April 12, 2010.

NEZ PERCE COUNTY, IDAHO

BY Douglas A. Jenner
Chairman

ATTEST:

NEZ PERCE COUNTY CLERK

BY William Wittman, Secretary

CITY OF LEWISTON

Nez Perce County, Idaho

By [Signature]

Mayor

ATTEST:

CITY CLERK

BY Kyle Kuchmar

