

Minutes of the Fairhope Airport Authority

August 19, 2014

The Fairhope Airport Authority met Tuesday, August 19, 2014 at 4:30PM in the Delchamps Suite, Room 2, in the Civic Center at 161 N Section St.

Present: Charles Zunk, Chairman; other members present: Pamela Caudill, Charlie Bassett, Joe McEnerney, Rod Platt, and Jack Burrell. Howard Hadley was absent. Present also was David Bagwell, Attorney, and William Stromberg of Continental Motors. Cynthia A Boothe took the minutes.

The minutes of the June 17, 2014 meeting were considered and approved on a motion by Pam Caudill, second by Joe McEnerney and unanimously carried.

Addition to the Agenda: Charles Zunk asked for a motion to add to the agenda an executive session to discuss Airport Authority business. David Bagwell stated that the business to be discussed was legal to be handled in an executive session. A motion was made by Rod Platt, second by Charlie Bassett and unanimously carried.

Executive Session: A motion was made by Rod Platt and a second by Pam Caudill to go into an executive session to discuss sale of property and possible legal action for the Airport Authority not open to the public. David Bagwell presented a written legal opinion that the executive session was permissible for the reasons stated. A roll call of members was taken with all voting "aye". Charles Zunk stated that the executive session would last approximately thirty minutes and that the regular meeting of the Authority would resume after that. All visitors were then excused for the duration of the executive session with the regular meeting resuming at 5:58PM.

Update on "The Academy": Charlie Bassett stated that the Academy building is still not finished and that the schools are making temporary arrangements for classes until the completion of the building.

Update on FBO lease: Charles Zunk stated that if the members decide to go forward with the RFP process now, it could be completed about April of 2015. In light of all the other business the Airport Authority is handling at this time he asked for a motion to defer deciding on the RFP process for 30 days. A motion to defer was made by Jack Burrell, second by Charlie Bassett and unanimously carried.

Discussion of FY2014 AIP Grant: Charles Zunk stated that the grant money from the FAA has been approved and that it is a little less than a million dollars. ALDOT will grant \$55,000.00 to the project with the Airport Authority adding the final \$55,000.00 to make up the rest of the project cost. The FAA paperwork is on the City Council agenda for Thursday, August 21, 2014 to authorize Mayor Timothy M Kant to accept the grant money so that construction can begin. Of this grant money, \$150,000.00 will be used toward repaying the Airport Authority for the purchase of the land on the east side and will be given to PNC Bank to pay down the loan for the land.

Discussion of stream mitigation land sale: Charles Zunk stated that the contract for the land sale is ready and the Airport Authority will be selling 5.63 acres at \$10,000.00 an acre. The proceeds of the sale, less expenses, will be applied to the loan for the land. A motion was made to go forward with the sale by Rod Platt, second by Charlie Bassett and unanimously passed.

Resolution regarding dedication to City of Fairhope of land on McGowin Drive: Charles Zunk stated that all paperwork concerning the transfer of the easement on McGowin Drive to the City of Fairhope for maintenance is completed and asked for a motion to go forward with the transfer. A motion was made by Joe McEnerney, second by Pam Caudill and unanimously passed.

Resolution regarding PNC Consent Agreement and modification to Springing Mortgage: Charles Zunk stated that PNC has verbally approved the form of the Consent Agreement proposed by the Airport Authority, which will give the Authority consent to complete its four current projects, and to modify the springing mortgage so that the land in those projects is

excluded. The four projects include the sale of the land for stream mitigation, transferring easement on McGowin Drive to the City of Fairhope, receipt of the AIP grant money for the East Side, and the construction of the Academy. He asked for a motion to accept the modification agreement with PNC (attached). A motion was made by Pam Caudill, a second by Rod Platt and it was unanimously passed.

Treasurer's report: Joe McEnerney stated that the financial statements are correct. He also stated that half of the money for the construction of the Academy has been paid.

There being no further business, the meeting was adjourned at 6:11PM.

AMENDMENT AND CONSENT AGREEMENT

This **AMENDMENT AND CONSENT AGREEMENT** (this "Agreement") to be effective as of _____, 2014 (the "Effective Date"), is made by and between the **FAIRHOPE AIRPORT AUTHORITY**, a public corporation under the laws of the State of Alabama (the "Authority"), and **PNC BANK, NATIONAL ASSOCIATION**, a national banking association (the "Bank").

Recitals

A. The Bank has heretofore made a loan (the "Loan") to the Authority, the repayment of which is evidenced by that certain \$8,935,000 original principal amount Airport Improvement Refunding Bond, Series 2010, dated August 26, 2010 (the "Bond") from the Authority, for the purpose of refinancing certain indebtedness incurred by the Authority respecting the H.L. "Sonny" Callahan Airport (the "Airport") owned and operated by the Authority; and

B. In order to induce the Bank to make the Loan and acquire the Bond, the Authority executed and delivered that certain Mortgage and Security Agreement dated August 26, 2010 (the "Springing Mortgage"), which such agreement is to be held by the Bank and not recorded until such time, if any, as the occurrence of a Recordable Event (as defined in the Springing Mortgage"); and

C. The Springing Mortgage covers certain real property of the Authority defined in the Springing Mortgage as the "Land", which such Land aggregate approximately 257 acres and is more particularly described on Exhibit A to the Springing Mortgage ("Exhibit A"); and

D. Section 8.2 of the Springing Mortgage restricts the Authority from selling, conveying, mortgaging, bargaining, encumbering, pledging, assigning or otherwise transferring any Property (as defined in the Springing Mortgage) covered by the Springing Mortgage including, without limitation, all or any portion of the Land, without the consent of the Bank; and

E. The Authority, acting upon the advice of various professionals and advisors, has determined that certain limited portions of the Land herein defined as the "Released Public Road Portion" and "Released Stream Mitigation Portion" are not necessary for the safe and efficient operation of the Airport, and has further determined it to be necessary, wise and in the public interest that the Released Public Road Portion be transferred and dedicated to the City of Fairhope (the "City"), and that the Released Stream Mitigation Portion be sold, transferred and conveyed to a third party for use in generating wetland mitigation credits under the Clean Water Act, all as more particularly described and set forth herein; and

F. The Authority has further determined it to be necessary, wise and in the public interest to (i) lease a portion of the Land aggregating approximately 4.05 acres to the Baldwin County Board of Education for the operation of an aviation academy on the premises of the Airport, and (ii) agree to certain terms and conditions respecting the use of the Airport and the land therein imposed by the Federal Aviation Administration (herein defined as the "AIP

Terms and Conditions”) as a condition to the receipt by the Authority of federal funds (the “Airport Grant”) to be used to pay the costs of additional taxiways, ramps and building sites for the Airport; and

G. The Authority has requested that the Bank permit the Authority to undertake the actions described in paragraphs E and F of these recitals by consenting to such actions and amending the Springing Mortgage to remove the Released Public Road Portion and Released Stream Mitigation Portion therefrom, which the Bank has agreed to do, all as more particularly described and set forth herein.

NOW THEREFORE, for and in consideration of ten dollars (\$10.00), the recitals, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Authority and the Bank hereby agree as follows:

Section 1. Consent to Sale of Released Public Road and Released Stream Mitigation Portion; Use of Proceeds from Sale of Released Stream Mitigation Portion. (a) The Authority has determined that it is necessary, desirable and in the public interest that a portion of the Land aggregating approximately ½ of an acre, which such portion is more particularly described on Appendix I hereto (the “Released Public Road Portion”), be released from the Springing Mortgage and conveyed to the City, at no cost, for dedication as a public road, and the Bank hereby consents to such release and conveyance. The Bank hereby consents to the transfer of the Released Public Road Portion from the Authority to the City as aforesaid.

(b) The Authority has determined that a portion of the Land aggregating not more than 6 acres, which such portion is more particularly described on Appendix II hereto (the “Released Public Road Portion”) and consists of approximately 5,100 feet of drainage ditch over-growth with non-native vegetation, is not needed for the operation of the Airport. The Authority has received an offer to purchase the Released Public Road Portion from the Authority and use the same to generate stream mitigation credits under Section 404 of the Clean Water Act. The Bank hereby consents to the sale of the Released Public Road Portion from the Authority as aforesaid.

(c) All proceeds from the sale of the Released Stream Mitigation Portion, less such amount as shall be used to pay the fees and expenses of the Authority (including, without limitation, the fees for any land surveys, subdivision fees, and reasonably attorneys’ fees charged by counsel to the Authority) incurred in the transfer, sale or conveyance of the Released Stream Mitigation Portion, and less such amount as shall be used to pay the reasonable attorneys’ fees of counsel to the Bank pursuant to Section 5 hereof, shall be deposited with the Bank and used to pay principal on the Bond (such principal to be in inverse order of maturity of the Bond).

Section 2. Consent to Operating Lease. The Bank hereby consents to the Authority’s execution and delivery of that certain operating Lease dated September 6, 2013, between the Authority and the Baldwin County Board of Education, a copy of which is attached as Appendix III hereto.

Section 3. Consent to AIP Terms and Conditions. The Bank hereby consents to the Authority’s acceptance of those certain Terms and Conditions of Airport Improvement Program

Credits (the “AIP Terms and Conditions”), a copy of which is included as Appendix IV hereto, in connection with the Authority’s receipt and acceptance of the Airport Grant.

Section 4. Amendment of Springing Lease. The parties hereto hereby covenant and agree that the Released Public Road Portion and the Released Stream Mitigation Portion shall no longer be subject to the Springing Mortgage. [Without limiting the generality of the foregoing, the parties hereto agree that Exhibit A to the Springing Mortgage shall at all times from and after the Effective Date be deemed to no longer include the Released Public Road Portion and the Released Stream Mitigation Portion, and the said Exhibit A is hereby deemed amended to reflect the same.] [The parties hereto covenant and agree that the Springing Mortgage is hereby amended to replace Exhibit A with the description of the Land set forth on Appendix V hereto].

Section 5. Reasonable Attorneys’ Fees of Counsel to the Bank. The Authority hereby agrees to pay directly, or reimburse the Bank for, the reasonable attorneys' fees of counsel to the Bank incurred in connection with the review and negotiation of this Agreement.

Section 6. Release of Claims. The Authority acknowledges that it has no defense, counterclaim, offset, cross-complaint, claim or demand of any kind or nature whatsoever (collectively, " Authority Claims") that can be asserted to reduce or eliminate all or any part of its liability to repay the Loan or pay any amounts evidenced by the Bond which are now due and owing, or to seek affirmative relief or damages of any kind or nature from the Bank, which arise out of or are related to the Loan, the Bond, the Springing Mortgage, or any other agreements or documents executed in connection therewith or related thereto. To the extent any Authority Claim may exist as of the date hereof, the Authority, on behalf of itself and its respective heirs, successors and assigns, hereby forever and irrevocably releases the Bank and its respective officers, representatives, agents, attorneys, employees, successors and assigns, from any and all claims, demands, damages, suits, cross-complaints, causes of action and debts of any kind and nature whatsoever, whether known or unknown and wherever and howsoever arising.

Section 7. Amendment; Scope of Amendment. Except as set forth in Section 5 hereof, nothing herein is deemed to amend or otherwise modify the Springing Mortgage, and the said Springing Mortgage shall remain in full force and effect.

Section 8. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama, without regard to principles governing conflicts of law, and all applicable laws of the United States of America.

Section 9. Counterparts; Captions. This Agreement may be executed in one or more counterparts each of which when executed and delivered shall constitute an original. All such counterparts together shall be deemed to be one and the same instrument. The captions to the sections and paragraphs of this Agreement are for the convenience of the parties only and are not part of this Agreement.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective authorized officers as of the Effective Date.

FAIRHOPE AIRPORT AUTHORITY

By: _____
Name: _____
Its: _____

PNC BANK, NATIONAL ASSOCIATION

By: _____
Name: _____
Its: _____

APPENDIX I

Appendix I

APPENDIX II

Appendix II

APPENDIX III

APPENDIX IV

APPENDIX V

Appendix V