

### SEMINOLE COUNTY GOVERNMENT AGENDA MEMORANDUM

**SUBJECT:** County/Sanford Airport Authority Business Development Agreement - Flyglobespan

**DEPARTMENT:** Economic Development <sup>WMM</sup> **DIVISION:** Economic Development

**AUTHORIZED BY:** William McDermott **CONTACT:** Sabrina O'Bryan **EXT.** 7134

<b>Agenda Date</b> 10/24/06	<b>Regular</b> <input type="checkbox"/>	<b>Consent</b> <input checked="" type="checkbox"/>	<b>Work Session</b> <input type="checkbox"/>	<b>Briefing</b> <input type="checkbox"/>
	<b>Public Hearing – 1:30</b> <input type="checkbox"/>	<b>Public Hearing – 7:00</b> <input type="checkbox"/>		

**MOTION/RECOMMENDATION:**

Approve and authorize the Chairman to execute the Business Development Agreement between the County and the Sanford Airport Authority for the Flyglobespan project.

**BACKGROUND:**

On October 25, 2005, the BCC approved a partnership with the Sanford Airport Authority for the Flyglobespan project to encourage economic development and job growth. The partnership will provide \$37,500 annually for seven years for a total of \$262,500. The Sanford Airport Authority will act on the item on October 10, 2006.

Summary of the terms of agreement:

- County funds will be matched by the Airport
- Flyglobespan will use the airport services and facilities for transatlantic flights to Central Florida for 7 years
- Flyglobespan guarantees a minimum of 100 departures per year
- Flyglobespan agrees to use hotels in Seminole County for the purpose of crew layovers and distressed passengers (if necessary)
- County has the right to cancel the agreement if the terms of the agreement are not met

The Airport is a target area for economic development and this project meets the goals of the Economic Development Strategic Plan.

Reviewed by:	
Co Atty:	<i>[Signature]</i>
DFS:	<i>[Signature]</i>
Other:	<i>[Signature]</i>
DCM:	<i>[Signature]</i>
CM:	<i>[Signature]</i>
File No.	CE002

**SEMINOLE COUNTY/SANFORD AIRPORT AUTHORITY**  
**BUSINESS DEVELOPMENT AGREEMENT**

**THIS AGREEMENT** is made and entered into on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between **SEMINOLE COUNTY**, a political subdivision of the State of Florida, whose address is 1101 E. First Street, Sanford, Florida 32771, hereinafter referred to as the "COUNTY", and **SANFORD AIRPORT AUTHORITY**, whose address is 1200 Red Cleveland Boulevard, Sanford, Florida 32773, hereinafter referred to as the "AIRPORT".

**W I T N E S S E T H:**

**WHEREAS**, it is the policy of the COUNTY to aggressively stimulate economic growth in Seminole County by, among other things, either attracting new industries and businesses to Seminole County or by encouraging expansion of existing industries and businesses within Seminole County; and

**WHEREAS**, the creation of new employment opportunities for residents of Seminole County and the increased tax revenues resulting from such industry or business expansion and relocation within Seminole County is beneficial to local economy; and

**WHEREAS**, the Board of County Commissioners has determined that offering a Jobs Growth Incentive Program encourages either existing industries and businesses to expand or new industries and businesses to enter Seminole County and thereby create diverse positive employment opportunities for the residents of Seminole County; and

**WHEREAS**, Seminole County, through its Board of County Commissioners, has enacted a Jobs Growth Incentive Ordinance and has

the fiscal capacity to conduct and accomplish the program relating thereto; and

**WHEREAS,** the growth of the Orlando Sanford International Airport is essential to the economic development of Seminole County; and

**WHEREAS,** AIRPORT has negotiated with Flyglobespan to provide passenger services from the Orlando Sanford International Airport to Europe, providing significant benefits to the area, including expanding travel opportunities and increased financial and economic impact; and

**WHEREAS,** AIRPORT and COUNTY desire to enter into this Agreement for the purpose of encouraging job growth and economic development in Seminole County by assisting Flyglobespan in promotion and establishing local services at Orlando Sanford International Airport; and

**WHEREAS,** COUNTY has determined that, in order to enhance and preserve the economic well being and health and welfare of the citizens of the COUNTY, it is necessary, proper and desirable to enter into this Agreement with AIRPORT in order to enhance the economic development of Seminole County,

**NOW, THEREFORE,** in consideration of the premises and mutual covenants hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby covenant and agree as follows:

**SECTION 1. RECITALS.** The above recitals are true and correct and form a material part of this Agreement upon which the parties have relied.

**SECTION 2. PURPOSE.** The purpose of this Agreement is for the COUNTY to pay to Flyglobespan the sum of THIRTY-SEVEN THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$37,500.00) per year for each year during the term of this Agreement, payable from the Jobs Growth Incentive Fund, which funds shall be matched by the AIRPORT's marketing allocation for Flyglobespan in order to secure an economic incentive agreement with Flyglobespan to provide certain services to the Orlando Sanford International Airport. Said services are as follows:

(a) Flyglobespan agrees to use the Orlando Sanford International Airport for airport services and facilities associated with operating transatlantic flights to Central Florida for a seven (7) year period commencing on or about June 1, 2006.

(b) Flyglobespan guarantees a minimum of one hundred (100) live departures per year with at least one (1) live departure per quarter.

(c) Flyglobespan agrees to use hotels in Seminole County for the purpose of crew layovers and, when necessary, to accommodate distressed passengers.

**SECTION 3. SERVICES.** The COUNTY agrees to pay to Flyglobespan annually, on or before December 1 of each year beginning in 2006, the sum of THIRTY-SEVEN THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$37,500.00). Payment of said sum shall be contingent upon Flyglobespan and AIRPORT's compliance with their Memorandum of Understanding, executed on June 1, 2006, and Flyglobespan's continued provision of the services as listed in Section 2 of this Agreement.

**SECTION 4. DEFAULT.** In the event Flyglobespan's operations become inconsistent with the services as expressed in Section 2 above, or in

the event AIRPORT cancels, amends or reduces its annual marketing allocation of THIRTY-SEVEN THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$37,500.00) for Flyglobespan, then the COUNTY shall have the right to immediately cancel this Agreement without notice and make no further payment pursuant to the terms of this Agreement.

**SECTION 5. TERM.** This Agreement shall be effective upon execution by the parties and shall remain in effect until May 31, 2013.

**SECTION 6. REPORTS.** AIRPORT shall provide COUNTY with an annual report detailing the compliance with Flyglobespan with the terms of its Agreement with Flyglobespan and the services required under this Agreement as well as the economic impact of the activities of Flyglobespan at the Orlando Sanford International Airport. Said report shall be provided to the COUNTY on or before October 1 of each year. AIRPORT shall also immediately notify COUNTY in the event of either the AIRPORT's or Flyglobespan's non-compliance with any provision of the Agreement between AIRPORT and Flyglobespan or Flyglobespan's non-compliance with the service provisions of this Agreement.

**SECTION 7. FORCE MAJEURE.** In the event either party hereunder fails to satisfy a requirement imposed in a timely manner due to a hurricane, flood, tornado or other act of God or force majeure, then said party shall not be in default hereunder; provided, however, that performance shall recommence upon such event ceasing its effect.

**SECTION 8. BINDING EFFECT.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and the successors in interest, transferees and designees of the parties.

**SECTION 9. ASSIGNMENT.** This Agreement shall not be assigned by either party without the prior written approval of the other.

**SECTION 10. PUBLIC RECORDS.** AIRPORT shall allow public access to all documents, papers, letters or other materials which have been made or received by AIRPORT in conjunction with this Agreement.

**SECTION 11. RECORDS AND AUDITS.**

(a) AIRPORT shall maintain in its place of business all non-exempt books, documents, papers and other evidence pertaining to work performed under this Agreement. Such non-exempt public records shall be and remain available at AIRPORT's main campus at all reasonable times during the term of this Agreement and for five (5) years after Agreement closure.

(b) AIRPORT agrees that COUNTY or its duly authorized representative shall, until the expiration of five (5) years after Agreement closure, have access to examine any of AIRPORT's non-exempt books, documents, papers and records involving transactions related to this Agreement. AIRPORT agrees that payments made under this Agreement shall be subject to reduction for amounts charged which are found the basis of audit examination not to constitute allowable costs.

(c) All required records shall be maintained until an audit has been completed and all questions arising from it are resolved or until five (5) years after closure of this Agreement, whichever is sooner. AIRPORT shall provide proper facilities for access to and inspection of all required records.

(d) The phrase "non-exempt", as used herein, means that the record is non-exempt under Article 1, Section 24, Florida Constitution

and Chapter 119, Florida Statutes, relating to release of public records to members of the public upon request.

**SECTION 12. NOTICES.**

(a) Whenever either party desires to give notice unto the other, notice may be sent to:

**For COUNTY:**

County Manager  
Seminole County Services Building  
1101 E. First Street  
Sanford, Florida 32771

**with copies to:**

Economic Development Director  
Seminole County Government  
1310 E. Second Street  
Sanford, Florida 32771

**For AIRPORT:**

President/CEO  
Sanford Airport Authority  
1200 Red Cleveland Boulevard  
Sanford, Florida 32773

(b) Either party may change, by written notice as provided herein, the address or persons for receipt of notices or invoices. All notices shall be effective upon receipt.

**SECTION 13. INDEMNITY AND INSURANCE.**

(a) Each party to this Agreement is responsible for all personal injury and property damage attributable to the negligent acts or omissions of that party and officers, employees and agents thereof.

(b) The parties further agree that nothing contained herein shall be construed or interpreted as denying to any party any remedy or defense available to such party under the laws of the State of

Florida, nor as a waiver of sovereign immunity of COUNTY beyond the wavier provided in Section 768.28, Florida Statutes.

(c) AIRPORT shall provide necessary workers' compensation coverage and unemployment compensation for its employees.

**SECTION 14. CONFLICT OF INTEREST.**

(a) The parties agree that they will not engage in any action that would create a conflict of interest in the performance of their obligations pursuant to this Agreement or which would violate or cause others to violate the provisions of Part III, Chapter 112, Florida Statutes, relating to ethics in government.

(b) The parties hereby certify that no officer, agent or employee has any material interest (as defined in Section 112.312(15), Florida Statutes, as over 5%) either directly or indirectly, in the business of the party to be conducted hereunder; that no such person shall have any such interest at any time during the term of this Agreement; and that no person shall use any monies derived under this Agreement for lobbying the Legislature in contravention of Section 216.347, Florida Statutes. The occurrence of an event of ethics violation as envisioned herein shall be grounds for unilateral termination of this Agreement by the non-offending party.

**SECTION 15. EQUAL OPPORTUNITY EMPLOYMENT.** The parties agree that they will not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, sex, age, national origin, or disability and will take steps to ensure that applicants are employed, and employees are treated during employment, without regard to race, color, religion, sex, age, national

origin or disability. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

**SECTION 16. COMPLIANCE WITH LAWS AND REGULATIONS.** In performing under this Agreement, the parties shall abide by all statutes, ordinances, rules and regulations pertaining to or regulating to the acts contemplated to be performed herein, including those now in effect and hereafter adopted. Any material violation of said statutes, ordinances, rules or regulations shall constitute a material breach of this Agreement, and entitle the non-violating party to terminate this Agreement immediately upon delivery of written notice of termination to the violating party.

**SECTION 17. EMPLOYEE STATUS.**

(a) Persons employed by AIRPORT in the performance of services and functions pursuant to this Agreement shall have no claim to pension, workers' compensation, unemployment compensation, civil service or other employee rights or privileges granted to COUNTY's officers and employees either by operation of law or by the COUNTY.

(b) AIRPORT assumes total responsibility for salaries, employment benefits, contractual rights and benefits, contract payments, and Federal, State and local employment taxes, if any, attributable to AIRPORT personnel or contractors and agrees to indemnify and hold the COUNTY harmless from any responsibility for same.

(c) In performing this Agreement, planning, development, constructing, equipping and operating the Project or carrying out of any of the activities to be carried out by AIRPORT, AIRPORT shall be acting independently, in the capacity of an independent entity and not as a joint venture, partner, associate, employee, agent or representative of the COUNTY.

**SECTION 18. NO THIRD PARTY BENEFICIARIES.** This Agreement is made for the sole benefit of the parties hereto and their respective successors and assigns including any successor in interest to AIRPORT's interest in the Project and is not intended to and shall not benefit a third party. No third party shall have any rights hereunder or as a result of this Agreement or any rights to enforce any provisions of this Agreement.

**SECTION 19. CONTINGENT FEES/CONFLICTING EMPLOYMENT.** AIRPORT covenants that it has employed and retained only bonafide employees working for AIRPORT and attorneys and consultants to solicit or secure this Agreement. The COUNTY warrants that it has not paid or agreed to pay any personal company, corporation, individual or firm, other than a bonafide employee working for AIRPORT, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award of making this Agreement.

**SECTION 20. GOVERNING LAW/ATTORNEY'S FEES.** This Agreement shall be construed and interpreted according to the laws of the State of Florida. In the event of litigation between the parties arising from or pertaining to this Agreement, the prevailing party shall be entitled to recover from the other reasonable fees and costs as allowable by law.

**SECTION 21. CONSTRUCTION OF AGREEMENT.** This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that both parties, COUNTY and AIRPORT, have contributed substantially and materially to the preparation hereof.

**SECTION 22. CONSTITUTIONAL AND STATUTORY LIMITATION ON AUTHORITY OF COUNTY.** The terms and conditions of this Agreement placed upon the COUNTY are applicable only to the extent they are within and consistent with the constitutional and statutory limitation of the authority of the COUNTY. Specifically, the parties acknowledge that the COUNTY is without authority to grant or pledge a security interest in any of the COUNTY's revenue.

**SECTION 23. COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which, when and executed and delivered, shall be original but all counterparts shall together constitute one and the same instrument.

**SECTION 24. HEADINGS.** All sections and descriptive headings in this Agreement are inserted for convenience only and shall not affect the construction or interpretation hereof.

**SECTION 25. SEVERABILITY.** If any provision, term or clause of this Agreement is determined to be invalid or unenforceable, then such provision term or clause shall be null or void and shall be deemed separable from the remaining covenants of this Agreement and shall in no way affect the validity of the remaining covenants and provisions of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date indicated below.

ATTEST:

SANFORD AIRPORT AUTHORITY

~~G. GEOFFREY LONGSTAFF~~  
Secretary/Treasurer

By: \_\_\_\_\_  
LARRY A. DALE, President/CEO

(CORPORATE SEAL)

Date: \_\_\_\_\_

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
SEMINOLE COUNTY, FLORIDA

\_\_\_\_\_  
MARYANNE MORSE  
Clerk to the Board of  
County Commissioners of  
Seminole County, Florida.

By: \_\_\_\_\_  
CARLTON HENLEY, Chairman

Date: \_\_\_\_\_

For the use and reliance  
of Seminole County only.

As authorized for execution by  
the Board of County Commissioners  
at their \_\_\_\_\_, 20\_\_\_\_,  
regular meeting.

Approved as to form and  
legal sufficiency.

\_\_\_\_\_  
County Attorney

AC/lpk  
8/22/06  
SAA business dev agt-Flyglobespan