

RESOLUTION NO. 2016-

04

**A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF MORROW, GEORGIA, AUTHORIZING A NOTIFICATION LETTER TO THE ADMINISTRATOR OF THE FEDERAL AVIATION ADMINISTRATION (“FAA”) AND AMENDMENT TO THE COMPLIANCE ACTION PLAN SUBMITTED TO THE FAA DATED DECEMBER 8, 2015 THROUGH PARTICIPATION WITH CLAYTON COUNTY GOVERNMENT, CLAYTON COUNTY PUBLIC SCHOOLS AND THE OTHER CLAYTON COUNTY CITIES IN RESPONSE TO THE FAA POLICY CLARIFICATION ON THE USE OF AVIATION FUEL TAX REVENUE PUBLISHED IN THE FEDERAL REGISTER IN NOVEMBER OF 2014.**

**WHEREAS**, the Mayor and City Council of the City of Morrow, Georgia (the “City”) through Resolution No. 2015-12 authorized participation with the Clayton County government, the Clayton County Public Schools and the other Clayton County cities (referred to as the “Clayton County Entities, hereinafter) to jointly consider, prepare and submit a compliance action plan to the FAA on or before December 8, 2015 to document how the Clayton County Entities will comply with the FAA 2014 Policy Clarification for the Use of Aviation Fuel Tax Revenue (the “FAA Clarification”);

**WHEREAS**, the compliance action plan was prepared, signed by the Mayor and other authorized officials and submitted to the FAA on December 8, 2015. The Clayton County Entities submitted an action plan to the FAA on December 8, 2015, based on the FAA’s general “mandate” for action plans by that date but without benefit of the agency providing any details as to their content and the uncertainty as to the scope of the FAA Clarification. The owner of Hartsfield-Jackson Atlanta International Airport (“H-JAIA”), the City of Atlanta, had not provided although required to do so under the FAA Policy (and still has not provided) any notifications to the Clayton County Entities regarding compliance requirements and therefore there had been no opportunity for the Clayton County Entities to discuss the 2014 clarification’s requirements directly with H-JAIA. Further, the action plan submitted by the state of Georgia did not address compliance matters related to taxing authorities with no direct governmental affiliation with an airport;

**WHEREAS**, The Clayton County Entities decided to submit a response to the FAA’s 2014 Clarification directive to avoid any risk of sanctions for failing to submit such a plan, to demonstrate the impact of the 2014 Clarification if it were to be applied to Clayton County, its impossibility of performance, and the impact on H-JAIA if the real but indirect costs to the county of the airport’s extraterritorial presence in Clayton County were to be quantified and charged to the airport;

**WHEREAS**, after further analysis of the 2014 clarification, the underlying law, and FAA precedent, we believe that the FAA could not have intended in that 2014 Clarification to apply airport revenue diversion principles described in 49 USC §47133 to local government taxing authorities that are not project grant recipients or have no ability under local law to spend aviation fuel tax revenues for a purpose specified in the 49 USC §47133. In the absence of an express intent on the part of Congress to limit the taxing authority of local governments like Clayton County, we believe the FAA would refrain from any interpretation that would apply the airport revenue diversion rules of section 47133 to the Clayton County Entities government taxing authorities and general sales tax revenue. We have therefore

concluded that the FAA did not intend to construe section 47133 so as to restrict the taxing authority of the Clayton County Entities and will seek FAA confirmation of this conclusion;

**NOW, THEREFORE, BE IT RESOLVED**, that the Mayor and City Council authorize the City of Morrow, Georgia to execute the attached notification letter/amendment to the December 8, 2015 Action Plan with accompanying analysis thereby amending the Action Plan to the extent that any aspects of the Action Plan are inconsistent with the conclusions and analysis of the notification/amendment. The attached notification/amendment is to be prepared and submitted on or before \_\_\_\_\_ and executed for the City of Morrow, Georgia by the Mayor. This Resolution shall take effect immediately upon its adoption.

SO RESOLVED this 13<sup>th</sup> day of Sept, 2016.

  
\_\_\_\_\_  
Mayor

ATTEST:  
  
\_\_\_\_\_  
City Clerk

(THE SEAL OF THE CITY OF MORROW, GEORGIA)



Approved as to form:  
  
\_\_\_\_\_  
City Attorney