Bismarck

AIRPORT

DATE: December 5, 2016

FROM: Gregory B. Haug, Airport Director

ITEM: Agenda Item for December 13, 2016

REQUEST

Consider a Reimbursable Agreement with Federal Aviation Administration (FAA) for navigation aid flight checks associated with Runway 13/31 reconstruction (Phase 2).

BACKGROUND INFORMATION

On September 21, 2016 the Board approved actions for the first year of construction of Runway 13/31 reconstruction. This reimbursable agreement pays the FAA for flight checks for temporary relocations of Precision Approach Path Indicators (PAPI), Runway End Identifier Lights (REIL) during construction phasing and permanent positioning of the PAPI at the end of this phase. FAA requires the agreement and prepayment in place before scheduling the flight checks.

The Reimbursable Agreement will be funded through the summer by the approved airport spending plan. Staff will apply for the next Federal Aviation Administration (FAA) grant in August/September and the next state grant in May as part of the project funding package.

RECOMMENDED CITY COMMISSION ACTION

1. Approve the reimbursable agreement with FAA for $56,479.95 at enclosure 1.

STAFF CONTACT INFORMATION

Greg Haug, Airport Director, 701-355-1808, ghaug@bismarcknd.gov

Enclosures:

1. Reimbursable agreement

ON DECEMBER 13, 2016 AGENDA

CONTRACT REVIEW FORM

AIP ELIGIBLE

DEPARTMENT

Contract between the City of Bismarck and FAA

Purpose of Contract: REIMBURSABLE AGREEMENT FOR FLIGHT checks of NAVAIDS (PART of RWY 13/31 RECONSTRUCTION)

Contract Amount: $ 56,479.95

Contract Period: INDEF

Funding Source: FINANCE PLAN FOR RWY 13/31 RECONSTRUCTION

Project Number: (If needed, send copy to Fiscal)

Comments: MAY BE PART OF NEXT AIP GRANT OR RECOVERED IN PFC #7

After Mayor's Signature, route to: AIRPORT

Date:

Department Head Signature:

Date:

CITY ATTORNEY

Comments:

City Attorney Signature:

Date:

FINANCE

Comments:

Director of Finance Signature:

Date:

ADMINISTRATION

City Administrator Signature:

Date:

GRANTS COORDINATOR:

Please send copy of completed contracts to Administration.

Agreement Number
AJW-ON-AAC-17-AC-001065

NON-FEDERAL REIMBURSABLE AGREEMENT

BETWEEN

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

AND

CITY OF BISMARCK
BISMARCK, ND

WHEREAS, the Federal Aviation Administration (FAA) can furnish directly or by contract, material, supplies, equipment, and services which the **City of Bismarck** (Sponsor) requires, has funds available for, and has determined should be obtained from the FAA;

WHEREAS, it has been determined that competition with the private sector for provision of such material, supplies, equipment, and services is minimal; the proposed activity will advance the FAA's mission; and the FAA has a unique capability that will be of benefit to the Sponsor while helping to advance the FAA's mission;

WHEREAS, the authority for the FAA to furnish material, supplies, equipment, and services to the Sponsor upon a reimbursable payment basis is found in 49 U.S.C. § 106(l)(6) on such terms and conditions as the Administrator may consider necessary;

NOW THEREFORE, the FAA and the Sponsor mutually agree as follows:

ARTICLE 1. Parties

The Parties to this Agreement are the FAA/Flight Program Operations, and **City of Bismarck.**

ARTICLE 2. Type of Agreement

This Agreement is an "other transaction" authorized under 49 U.S.C. § 106(l)(6). It is not intended to be, nor will it be construed as, a partnership, corporation, joint venture or other business organization.

ARTICLE 3. Scope

A. The purpose of this Agreement between the FAA and the Sponsor is to provide **four separate special flight inspections of the PAPIs and REILs on Rwy 31 at Bismarck Municipal Airport (KBIS) Bismarck, ND.** This Agreement provides funding for the FAA to establish these services.

Therefore, this project is titled:

City of Bismarck, Bismarck, ND

B. The FAA will perform **four separate special flight inspections of the PAPIs and REILs on Rwy 31 at Bismarck Municipal Airport (KBIS) Bismarck, ND.**

C. The Sponsor will perform the following activities:

1. Provide funding as estimated in Article 7.

2. Upon signature and payment of agreement, contact James Field at 405-954-9318 or james.d.field@faa.gov and inform him when the site is ready for inspection. You may call the Oklahoma City Service Center if you have any questions at 405-954-9780.

D. This agreement is in whole or in part funded with funding from an AIP grant [ ] Yes [x] No. If Yes, the grant date is: N/A and the grant number is: N/A. If the grant information is not available at the time of agreement execution, the Sponsor will provide the grant information to the FAA when it becomes available.

ARTICLE 4. Points of Contact

A. FAA:

1. Flight Program Operations will perform the Scope of Work included in this Agreement. Robert Loveland is the Manager, Flight Inspection Scheduling Subteam, and liaison with the Sponsor for any Flight Inspection issues and can be reached at 405-954-3955. The Flight Program Operations Agreement Administrator, Kadi Barrett, can be reached at 405-954-7568. These liaisons are not authorized to make any commitment, or otherwise obligate the FAA, or authorize any changes which affect the estimated cost, period of performance, or other terms and conditions of this Agreement.

2. FAA Contracting Officer: The execution, modification, and administration of this Agreement must be authorized and accomplished by the Contracting Officer, Avis Franklin, who can be reached at 405-954-7836.

B. Sponsor Point(s) of Contact

Sponsor: City of Bismarck
Attention: Mr. Tim Thorsen, Assistant Airport Director
Address: Bismarck Airport
PO Box 991
Bismarck, ND 58502

Phone: (701) 355-1808
E-mail: tthorsen@bismarcknd.gov

ARTICLE 5. Non-Interference with Operations: [RESERVED]

ARTICLE 6. Property Transfer [RESERVED]

ARTICLE 7. Estimated Costs

A. The estimated FAA costs associated with this Agreement are as follows:

DESCRIPTION OF REIMBURSABLE ITEM	ESTIMATED COST
LABOR	
NA	**$0**
NON-LABOR	
Flight Inspection	**$52,785.00**
Non-Labor Overhead (7%)	**$3,694.95**
Total Non-Labor	**$56,479.95**
TOTAL ESTIMATED COST	**$56,479.95**

Detailed Estimate:

Flight Inspection Estimated Cost

Challenger Rate $3,519/hr	**Type**	**Hours**	**Inspections**	**Estimated Cost**
PAPIs and REILs on Rwy 31 at KBIS	Special	12	4	$52,785.00
		7% Administrative Overhead		$3,694.95
		Total Estimated Cost		**$56,479.95**

B. The FAA- Flight Program Operations reserves the right to determine which aircraft will be used for flight inspections. Flight hour rates will be adjusted automatically according to the most current edition of FAA Order 2500.36, Application of Flight Hour Rates. The **estimates** are based on rates in effect at the time this Agreement is signed.

C. Estimated costs contained herein are for planning purposes only and can vary depending on the actual aircraft used, and actual flight hours expended to reach the facility and to accomplish the inspection. As required by regulation, the final bill submitted to the customer will reflect **actual** hours and costs to Flight Program Operations.

D. **Sponsor** will be notified of any necessary deviations or changes to the instrument flight procedure and agrees to negotiate with the FAA to resolve additional reimbursement issues exceeding 10% of the cost estimate, in accordance with Article 9.

E. FAA flight inspection aircraft may be delayed from scheduled itineraries for unanticipated reasons such as a National Airspace System priority, weather, or unscheduled aircraft maintenance. FAA is not responsible for any additional cost the Sponsor may incur if an inspection must be rescheduled.

ARTICLE 8. Period of Agreement and Effective Date

The effective date of this Agreement is the date of the last signature. This Agreement is considered complete when the final invoice is provided to the Sponsor and a refund is sent or payment is received as provided for in Article 9, Section D of this Agreement. Under no circumstances will this Agreement extend five years beyond its effective date.

ARTICLE 9. Reimbursement and Accounting Arrangements

A. The Sponsor agrees to prepay the entire estimated cost of the Agreement. The Sponsor will send the Agreement to the FAA Agreement Coordinator for FAA signature and advance payment to the Accounting Division listed in Section C of this Article. The advance payment will be held as a non-interest bearing deposit. Such advance payment by the Sponsor must be received before the FAA incurs any obligation to implement this Agreement. Upon completion of this Agreement, the final costs will be netted against the advance payment and, as appropriate, a refund or final bill will be sent to the sponsor. Per U.S. Treasury guidelines, refunds under $1.00 will not be processed. Additionally, FAA will not bill the sponsor for amounts less than $1.00.

B. The Sponsor certifies that arrangements for sufficient funding have been made to cover the estimated costs of the Agreement.

C. The Accounting Division is identified by the FAA as the billing office for this Agreement. The Sponsor will send a copy of the executed Agreement to the Agreement Coordinator and submit the full advance payment to the Accounting Division. The sponsor can either mail the payment to the address shown below or submit payment (via check or credit card) electronically via pay.gov. All payments must include the Agreement number, Agreement name, Sponsor name, and project location.

The mailing address is:
FAA – Mike Monroney Aeronautical Center
ATTN: AMK-323, Reimbursable Project Team
P.O. Box 25082
Oklahoma City OK 73125

The overnight mailing, address is:
DOT/FAA/Mike Monroney Aeronautical Center
AMK-323 Reimbursable Project Team
6500 S. MacArthur Blvd.
Oklahoma City OK 73169
Telephone: (405) 954-7849

The Sponsor hereby identifies the office to which the FAA will render bills for the project costs incurred as:

City of Bismarck
Attn: **Mr. Tim Thorsen, Assistant Airport Director**
Bismarck Airport
PO Box 991
Bismarck, ND 58502
(701) 355-1808
tthorsen@bismarcknd.gov

D. The cost estimates contained in Article 7 are expected to be the maximum cost associated with this Agreement, but may be modified to recover the FAA's actual cost. If during the course of this Agreement, actual costs are expected to exceed the estimated costs, the FAA will notify the Sponsor immediately. The FAA will also provide the Sponsor a modification to the Agreement which includes the FAA's additional costs. The Sponsor agrees to prepay the entire estimated cost of the modification. The Sponsor will send a copy of the executed modification to the Agreement to the FAA-Mike Monroney Aeronautical Center with the additional advance payment. Work identified in the amendment cannot start until receipt of the additional advance payment. In addition, in the event that a contractor performing work pursuant to the scope of this Agreement brings a claim against the FAA and the FAA incurs additional costs as a result of the claim, the Sponsor agrees to reimburse the FAA for the additional costs incurred whether or not a final bill or a refund has been sent.

ARTICLE 10. Changes and Modifications

Changes and/or modifications to this Agreement will be formalized by a written modification that will outline in detail the exact nature of the change. Any modification to this Agreement will be executed in writing and signed by the authorized representative

of each party. The parties signing this Agreement and any subsequent modification(s) represent that each has the authority to execute the same on behalf of their respective organizations. No oral statement by any person will be interpreted as modifying or otherwise affecting the terms of the Agreement. Any party to this Agreement may request that it be modified, whereupon the parties will consult to consider such modifications.

ARTICLE 11. Termination

In addition to any other termination rights provided by this Agreement, either party may terminate this Agreement at any time prior to its expiration date, with or without cause, and without incurring any liability or obligation to the terminated party other than payment of amounts due and owing and performance of obligations accrued, in each case on or prior to the termination date, by giving the other party at least thirty (30) days prior written notice of termination. Payment of amounts due and owing may include all costs reimbursable under this Agreement, not previously paid, for the performance of this Agreement before the effective date of the termination; the total cost of terminating and settling contracts entered into by the FAA for the purpose of this Agreement; and any other costs necessary to terminate this Agreement. Upon receipt of a notice of termination, the receiving party will take immediate steps to stop the accrual of any additional obligations which might require payment. All funds due after termination will be netted against the advance payment and, as appropriate, a refund or bill will be issued.

ARTICLE 12. Order of Precedence [RESERVED]

ARTICLE 13. Legal Authority

This Agreement is entered into under the authority of 49 U.S.C. § 106(l)(6), which authorizes the Administrator of the FAA to enter into and perform such contracts, leases, cooperative agreements and other transactions as may be necessary to carry out the functions of the Administrator and the Administration on such terms and conditions as the Administrator may consider appropriate. Nothing in this Agreement will be construed as incorporating by reference or implication any provision of Federal acquisition law or regulation.

ARTICLE 14. Disputes

Where possible, disputes will be resolved by informal discussion between the parties. In the event the parties are unable to resolve any dispute through good faith negotiations, the dispute will be resolved by alternative dispute resolution using a method to be agreed upon by the parties. The outcome of the alternative dispute resolution will be final unless it is timely appealed to the Administrator, whose decision is not subject to further administrative review and, to the extent permitted by law, is final and binding (see 49 U.S.C. § 46110).

ARTICLE 15. Warranties

The FAA makes no express or implied warranties as to any matter arising under this Agreement, or as to the ownership, merchantability, or fitness for a particular purpose of any property, including any equipment, device, or software that may be provided under this Agreement.

ARTICLE 16. Insurance

The Sponsor will arrange by insurance or otherwise for the full protection of itself from and against all liability to third parties arising out of, or related to, its performance of this Agreement. The FAA assumes no liability under this Agreement for any losses arising out of any action or inaction by the Sponsor, its employees, or contractors, or any third party acting on its behalf.

ARTICLE 17. Limitation of Liability

To the extent permitted by law, the Sponsor agrees to indemnify and hold harmless the FAA, its officers, agents and employees from all causes of action, suits or claims arising out of the work performed under this Agreement. However, to the extent that such claim is determined to have arisen from the act or omission by an officer, agent, or employee of the FAA acting within the scope of his or her employment, this hold harmless obligation will not apply and the provisions of the Federal Tort Claims Act, 28 U.S.C. § 2671, et seq., will control. The FAA assumes no liability for any losses arising out of any action or inaction by the Sponsor, its employees, or contractors, or any third party acting on its behalf. In no event will the FAA be liable for claims for consequential, punitive, special and incidental damages, claims for lost profits, or other indirect damages.

ARTICLE 18. Civil Rights Act

The Sponsor will comply with Title VI of the Civil Rights Act of 1964 relating to nondiscrimination in federally assisted programs.

ARTICLE 19. Protection of Information

The parties agree that they will take appropriate measures to identify and protect proprietary, privileged, or otherwise confidential information that may come into their possession as a result of this Agreement.

ARTICLE 20. Security [RESERVED]

ARTICLE 21. Entire Agreement

This document is the entire Agreement of the parties, who accept the terms of this Agreement as shown by their signatures below. In the event the parties duly execute any

modification to this Agreement, the terms of such modification will supersede the terms of this Agreement to the extent of any inconsistency. Each party acknowledges participation in the negotiations and drafting of this Agreement and any modifications thereto, and, accordingly that this Agreement will not be construed more stringently against one party than against the other. If this Agreement is not executed by the Sponsor within 100 calendar days after the FAA transmits it to the Sponsor, the terms contained and set forth in this Agreement shall be null and void.

AGREED:

FEDERAL AVIATION ADMINISTRATION		**CITY OF BISMARCK**	
SIGNATURE	_____	SIGNATURE	_____
NAME	Avis Franklin	NAME	Michael C. Seminary
TITLE	Contracting Officer	TITLE	President, Board of City Commissioners
DATE	_____	DATE	_____