



AIRPORT

DATE: May 9, 2018
FROM: Gregory B. Haug, Airport Director
ITEM: Agenda Item for May 22, 2018

REQUEST

Consider a Reimbursable Agreement with Federal Aviation Administration (FAA) for navigation aid flight checks associated with Runway 13/31 reconstruction (Phase 4).

BACKGROUND INFORMATION

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

The Reimbursable Agreement will be funded by the approved project budget which includes reimbursement in Passenger Facility Charge (PFC) #7.

RECOMMENDED CITY COMMISSION ACTION

1. Approve reimbursable agreement AJW-ON-AAC-18-AC-002188 with FAA for \$13,301.82 at enclosure 1.

STAFF CONTACT INFORMATION

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

Enclosure:

1. Reimbursable agreement AJW-ON-AAC-18-AC-002188

CONTRACT REVIEW FORM

DEPARTMENT

Contract between the City of Bismarck and FAA

Purpose of Contract: REIMBURSABLE AGREEMENT ASW-ON-AAC-18-002188 FOR

Contract Amount: FLIGHT CHECK OF TEMPORARY PAPI'S & FEES (3rd year of construction)
\$13,301.82

Contract Period: 59AS From signing

Funding Source: FINANCE PLAN FOR RWY 13-31 RECONSTRUCTION (INCLUDES APL 7 REIMBURSEMENT)

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

Comments: PART OF RWY 13-31 RECONSTRUCTION PHASE 4. WILL NOT BE IN AIA 59 GRANT

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.



U.S. Department
of Transportation
**Federal Aviation
Administration**

Federal Aviation Administration
Mike Monroney Aeronautical Center

6500 South MacArthur Boulevard
Oklahoma City, OK 73169-6901

May 2, 2018

Bismarck Airport
Attn: Tim Thorsen, Assistant Airport Director
P O Box 991
Bismarck, ND 58502

Dear Mr. Thorsen:

You'll find attached a copy of our agreement between the City of Bismarck and the FAA. To expedite the process, please print, request Mr. Seminary sign and date on the last page, then scan and return to me via e-mail at kadi.d.barrett@faa.gov. I'll request FAA signatures then return a fully signed copy to you. If you prefer a hard copy original, just let me know and I'll be glad to mail one to you.

Per the agreement, payment is required in advance of services being rendered, so please provide payment of \$13,301.82, which will fund your flight inspection. The FAA prefers electronic payment using electronic check or credit card via pay.gov. Please reference the attached instructions. Just contact me if you have any questions and I'll help navigate you through the proper screens.

If unable to provide electronic payment, you may provide a check payment, made out to 'FAA', to the following address:

DOT/FAA/Mike Monroney Aeronautical Center
ATTN: AMK-322 Reimbursable Receipt Team
6500 S. MacArthur Blvd.
Oklahoma City OK 73169
Telephone: (405) 954-3771

Your agreement number, AJW-ON-AAC-18-AC-002188, must be included on your electronic payment or check to ensure your account is credited properly. Thank you for your attention to this matter. Please contact me at (405) 954-7568 if you have any questions.

Sincerely,

Kadi Barrett

Kadi Barrett
Acquisition & Contract Support Subteam
Flight Program Operations

Attachment:
Agreement
Electronic Payment Instructions

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 **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 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 a special flight inspection of the temporary PAPIs and REILs on Runway 13 at Bismarck Municipal Airport (KBIS) Bismarck, ND**. This Agreement provides funding for the FAA to establish these services.

Therefore, this Agreement is titled:

City of Bismarck, Bismarck, ND

- B. The FAA will **perform a special flight inspection of the temporary PAPIs and REILs on Runway 13 at Bismarck Municipal Airport (KBIS) Bismarck, ND. Note: This is for after the airport relocates the Runway 13 threshold some distance South to allow safe operations over the top of the construction activities. These PAPIs and REILs will be temporary during the 4-5 months of 2019 construction.**
- C. The Sponsor will perform the following activities:
1. Provide funding as estimated in Article 7.
 2. Upon signature and payment of agreement, contact David Sinning at 405-954-0792 or david.a.sinning@faa.gov and inform him when the site is ready for inspection. You may call 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. The FAA, Flight Program Operations, Acquisition and Contract Support will provide administrative oversight of this Agreement. Kadi Barrett is the Agreement Coordinator and liaison with the Sponsor and can be reached at 405-954-7568 or via email at kadi.d.barrett@faa.gov. This liaison is 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. The FAA, Flight Program Operations, Flight Inspection Scheduling will perform the scope of work included in this Agreement. Robert Loveland is the Manager, Flight Inspection Scheduling and liaison with the Sponsor and can be reached at 405-954-3955 or via email at robert.a.loveland@faa.gov. This liaison is 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.

3. FAA Contracting Officer: The execution, amendment, and administration of this Agreement must be authorized and accomplished by the Contracting Officer, Michele Mustin who can be reached at 405-954-7879 or via email at michele.d.mustin@faa.gov.

B. Sponsor:

Sponsor: City of Bismarck
Attention: Tim Thorsen, Assistant Airport Director
Address: P O Box 991
 Bismarck, ND 58502
Phone: (701) 355-1808
Fax: (701) 221-6886
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	\$12,316.50
Non-Labor Overhead (8%)	\$985.32
Total Non-Labor	\$13,301.82
TOTAL ESTIMATED COST	\$13,301.82

Detailed Estimate:

Flight Inspection Estimated Cost

<i>Challenger Rate \$3,519/hr</i>	Type	Hours	Inspections	Estimated Cost
Temporary PAPIs/REILs on Rwy 13 at KBIS	Special	3.5	1	\$12,316.50
			8% Administrative Overhead	<u>\$ 985.32</u>
			Total Estimated Cost	\$13,301.82

- B. The FAA reserves the right to determine which aircraft will be used for flight validation. Flight hour rates will be adjusted automatically according to FAA Order 2500.36 (current edition), Application of Flight Hour Rates, or equivalent FAA Flight Program Operations document. The **estimate** is 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 Sponsor 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. This Agreement will not extend more than 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 submit full advance payment in the amount stated in Article 7 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 mailed to the FAA must include the Agreement number, Agreement name, Sponsor name, and project location.

The mailing address is:

FAA Mike Monroney Aeronautical Center
Attn: AMK-322, Reimbursable Receipt Team
P.O. Box 25770
Oklahoma City, OK 73125

The overnight mailing address is:

FAA Mike Monroney Aeronautical Center
Attn: AMK-322, Reimbursable Receipt Team
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: 405-954-3771

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

Bismarck Airport
Attn: Tim Thorsen, Assistant Airport Director
P O Box 991
Bismarck, ND 58502
(701) 355-1808 (ofc)
(701) 221-6886 (fax)
tthorsen@bismarcknd.gov

- D. The cost estimates contained in Article 7 are expected to be the maximum costs associated with this Agreement, but may be modified to recover the FAA's actual costs. 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 an amendment to the Agreement which includes the FAA's additional costs. The Sponsor agrees to prepay the entire estimated cost of the amendment. The Sponsor will send a copy of the executed amendment 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 Amendments

Changes and/or amendments to this Agreement will be formalized by a written amendment that will outline in detail the exact nature of the change. Any amendment 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 amendment(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 amendments.

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(1)(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 amendment to this Agreement, the terms of such amendment 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 amendments 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 120 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 _____
NAME Michele Mustin
TITLE Contracting Officer
DATE _____

SIGNATURE _____
NAME Michael C. Seminary
TITLE President, Board of City
Commissioners
DATE _____