

**CITY OF EL PASO, TEXAS
REQUEST FOR COUNCIL ACTION (RCA)**

DEPARTMENT: Aviation
AGENDA DATE: June 14, 2011
CONTACT PERSON/PHONE: Monica Lombraña, A.A.E. – Director of Aviation – 780-4793
DISTRICT(S) AFFECTED: All

SUBJECT:

Approval of a resolution to authorize the City Manager to sign a Non-Federal Reimbursable Agreement (AJW-FN-CSA-10-2028) between the City of El Paso, on behalf of the El Paso International Airport, and the Federal Aviation Administration (FAA) whereby the FAA will furnish directly or by contract, supplies, equipment and services necessary to replace aging FAA equipment and relocate infrastructure related to this equipment as part of the Runway 8R-26L Project.

BACKGROUND / DISCUSSION:

The Department of Aviation is extending Runway 8R-26L by 1,100 feet on the eastern end, alleviating FAR Part 77 surface penetration issues in the area of the terminal ramp and Concourse B gates west of the runway. It includes the extension of its parallel Taxiway "L". The FAA has determined that the Runway 8R-26L Project is a "Target of Opportunity" to replace aging FAA Equipment and to relocate its related infrastructure which serves Runway 8R-26L.

PRIOR COUNCIL ACTION:

City Council approved a resolution on June 30, 2010 whereas the City of El Paso, on behalf of El Paso International Airport, and the FAA entered into a Preliminary Design Reimbursable Agreement whereby the FAA provided engineering services associated with the Runway 8R-26L Project.

AMOUNT AND SOURCE OF FUNDING:

Federal Aviation Administration Airport Improvement Program Grants - \$2,721,466
Airport Passenger Facility Charges - \$7,599,040

BOARD / COMMISSION ACTION:

N/A

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: Monica Lombraña

(Example: if RCA is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

RESOLUTION

WHEREAS, on June 30, 2010, the City of El Paso, on behalf of the El Paso International Airport, and the Federal Aviation Administration ("FAA") entered into a Preliminary Design Reimbursable Agreement whereby the FAA provided engineering services associated with the Runway 08R-26L Extension Project;

WHEREAS, the Runway 08R-26L Extension Project involves relocating the threshold of Runway 08R and extending Runway 26L; and

WHEREAS, the FAA has determined that the Runway 08R-26L Project is a "Target of Opportunity" to replace aging FAA equipment and to relocate its related infrastructure which serves Runway 08R and Runway 26L.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a Non-Federal Reimbursable Agreement (AJW-FN-CSA-10-2028) between the City of El Paso, on behalf of the El Paso International Airport, and the Federal Aviation Administration ("FAA") whereby the FAA will furnish directly or by contract, supplies, equipment and services necessary to replace aging FAA equipment and relocate infrastructure related to this equipment as part of the Runway 08R-26L Project.

ADOPTED this the _____ day of _____, 2011.

THE CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Theresa Cullen

Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:

Monica Lombraña

Monica Lombraña, A.A.E.
Director of Aviation

NON-FEDERAL REIMBURSABLE AGREEMENT

BETWEEN

**DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION**

AND

**CITY OF EL PASO, TEXAS
EL PASO INTERNATIONAL AIRPORT (ELP),
EL PASO, TEXAS**

WHEREAS, the Federal Aviation Administration (FAA) can furnish directly or by contract material, supplies, equipment, and services which the City of El Paso, Texas (Sponsor) for its El Paso International Airport 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 and **the City of El Paso, Texas**.

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 Sponsor has a project to extend Runway 08R-26L approximately 1100 feet in an easterly direction at El Paso International Airport, El Paso, Texas, hereinafter referred to as the "project". The project's objective is to relocate the threshold of Runway 08R by 1100 feet and to extend Runway 26L by 1100 feet. The relocation of the threshold for Runway 08R will necessitate the relocation of

FAA-owned equipment and its related infrastructure (a Runway End Identifier Lights (REIL) and a Precision Approach Path Indicator (PAPI)) to a new location. The FAA considers the relocation of the REIL serving Runway 08R to be an opportunity to replace the aging Runway 08R REIL with new REIL equipment. The FAA will provide a replacement REIL system to be designed and installed by the Sponsor at its expense. The system may or may not meet the Sponsor's construction schedule.

The extension of Runway 26L will impact FAA-owned equipment and its related infrastructure, necessitating the decommissioning and removal of an Omnidirectional Approach Lighting System (ODALS), the relocation of a Precision Approach Path Indicator (PAPI) to a new location, and the relocation of infrastructure consisting of the electrical and signal conductor paths serving the airport's Airport Surveillance Radar (ASR). The FAA has determined that due to its age and lack of available spare parts, the FAA-owned ODALS will not be supported for relocation. Therefore, the FAA considers the Runway 26L extension to be an opportunity to replace the aging Runway 26L ODALS with new Medium Intensity Approach Light System with Runway Alignment Indicator Lights (MALSR) equipment. If available, the FAA will provide a replacement MALSR electronics equipment system to be designed and installed by the Sponsor at its expense. In addition, using the Sponsor's funds, the FAA will procure an FAA-approved shelter to be used for housing the MALSR electronics equipment. The MALSR electronics equipment will be installed by the FAA in the new MALSR shelter. The system may or may not meet the Sponsor's construction schedule.

When completed, the work at El Paso International Airport will provide increased safety thereby benefitting the operators of the National Airspace System (NAS). This Agreement provides funding for the FAA to establish these services. Therefore, this Agreement is titled:

**RUNWAY 08R THRESHOLD, REIL, AND PAPI RELOCATION AND
RUNWAY 26L EXTENSION, RELOCATION OF PAPI AND
ESTABLISHMENT OF MALSR AT THE ELPASO INTERNATIONAL
AIRPORT, EL PASO, TEXAS.**

B. The FAA will perform the following activities:

1. Provide all technical assistance necessary to ensure the Sponsor's project meets all applicable FAA regulations, rules, orders, requirements, standards, and specifications.
2. Provide all applicable FAA directives, specifications, standard drawings, and other required information to assist the Sponsor in accomplishing its design of the project.
3. Electronically locate and physically mark all FAA power and control cables in the area affected by the Sponsor's project.

4. Perform engineering design reviews of the Sponsor's plans and specifications in support of the construction phase of the project. The FAA will provide two review cycles at 50% and 100% of the Sponsor's design plans and specifications. The 100% design plans and specifications are not final until the FAA has notified the Sponsor that all of the FAA's comments, suggestions, and/or requirements have been incorporated into the design plans and specifications.
5. Perform and develop an Environmental Due Diligence Audit (EDDA) evaluation and documentation as necessary, on the existing and future locations of all FAA facilities, systems, and/or equipment, including their infrastructures, required to be relocated and/or reinstalled because of the Sponsor's project.
6. Using the Sponsor's funds, procure an FAA-approved shelter to be used for housing the MALSR electronics equipment.
7. Install the MALSR electronics equipment in the new MALSR shelter.
8. Provide Resident Engineer (RE) oversight services during all construction phases of the project necessary to establish and/or restore service to affected FAA facilities, systems, and/or equipment. It is the RE's responsibility to protect the FAA's interests during the construction phases of the project that impact FAA, facilities, systems, equipment, and/or their infrastructures. In furtherance of these responsibilities the RE will:
 - a. Be the FAA's primary point of contact for the Sponsor during those phases of the project to ensure that all necessary information is coordinated with the appropriate FAA line of business;
 - b. Ensure all efforts are made to minimize the impact to FAA operations and existing facilities;
 - c. Notify the appropriate Sponsor and FAA personnel about and document significant discrepancies between the approved design plans and specifications and the actual work performed;
 - d. Notify the Sponsor of any failure of the work or materials to conform to the contract, the design plans and specifications, drawings, and/or of any delays in the schedule;
 - e. Keep a construction diary and weekly status reports on the FAA facilities, systems, and/or equipment affected by the project;
 - f. Ensure compliance with all FAA regulations, rules, orders, standards, requirements, and agreements; and
 - g. Witness key events in the project such as, but not limited to, the connecting and testing of all FAA power and control cables and the exothermic welding of grounding, bonding, and lightning protection connections.
9. As noted above, the duties and responsibilities of the RE are specifically delineated. The RE does not have the authority to:
 - a. Revoke, alter, or waive any requirement(s) of the design plans and specifications, drawings, and/or the construction project let by the Sponsor;
 - b. Act as the contractor's foreman, or perform any other duties for the contractor;

- c. Enter into or take part in any labor dispute between the Sponsor and its construction contractor; and/or
 - d. Participate in, settle, or otherwise decide contractual matters in dispute between the Sponsor and its construction contractor.
10. Review and approve the "as-built" drawings of the Sponsor's construction contractor for that portion of the project that includes FAA facilities, systems, equipment, and/or infrastructure.
 11. Participate with the Sponsor in all contractor acceptance inspection(s) (CAI) for the purpose of identifying any deficiencies or corrections that need to be identified as exceptions.
 12. Participate in, coordinate with, and perform all activities associated with the restoration of all affected FAA facilities, systems, and/or equipment, including such activities as joint acceptance inspection(s) (JAI).
 13. Develop and publish new flight procedure charts as necessary.
 14. Flight inspect the relocated systems (REIL, PAPIs (2), and the newly established MALSR) and commission them in service and the NAS for Runway 08R – 26L.

C. The Sponsor will perform the following activities:

1. Provide all funding necessary for this Agreement.
2. Perform all site surveys, engineering design, and construction associated with the extension of Runway 08R-26L, including the construction and the removal, protection, relocation and establishment of the REIL, PAPIs (2), ODALS, and MALSR.
3. Provide a full time technical on-site representative during all construction phases of the Sponsor's project that affect any FAA facilities, systems, equipment, and/or infrastructures.
4. Provide the FAA the proposed schedule for the engineering and construction phases of the project within 60 days of the effective date of this Agreement. Additionally, the following delineated tasks shall be up-dated every three months or as soon as engineering and/or construction schedule changes occur:
 - a. Start of the project's design,
 - b. Completion of the project's design,
 - c. Date the Sponsor's construction project is submitted to the public for bid,
 - d. Award date and entity awarded construction of the Sponsor's project,
 - e. Date construction of the Sponsor's project is to start, and
 - f. Date construction of the Sponsor's project is to be completed.
5. Correct all deficiencies and/or exceptions that were identified during the CAI and JAI for all FAA facilities, systems, equipment, and/or infrastructures covered by this Agreement.

ARTICLE 4. Points of Contact

A. FAA:

1. The FAA Central Service Area, NAVAIDS Engineering Center, Fort Worth, Texas, will perform the scope of work included in this Agreement. Mr. Erbey Fernandez (erbey.fernandez@faa.gov) is the Engineer in the NAVAIDS Engineering Center, Fort Worth and liaison with the Sponsor and can be reached at (817) 222-4523. 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. FAA Contracting Officer: The execution, modification, and administration of this Agreement must be authorized and accomplished by the Contracting Officer, Bradley K. Logan (brad.logan@faa.gov) who can be reached at (817) 222-4395.

B. Sponsor:

Antonio Marmolejo, C.M.
Assistant Director of Aviation Development
El Paso International Airport
6701 Convair Road
El Paso, Texas 79925-1091
Tel: 915-780-4766
MarmolejoAX2@elpasotexas.gov

ARTICLE 5. Non-Interference with Operations

The Sponsor understands and hereby agrees that any relocation, replacement, or modification of any existing or future FAA facility, system, and/or equipment covered by this Agreement during its term or any renewal thereof made necessary by Sponsor improvements, changes, or other actions which in the FAA's opinion interfere with the technical and/or operations characteristics of an FAA facility, system, and/or piece of equipment will be at the expense of the Sponsor, except when such improvements or changes are made at the written request of the FAA. In the event such relocations, replacements, or modifications are necessitated due to causes not attributable to either the Sponsor or the FAA, the parties will determine funding responsibility.

ARTICLE 6. Transfer Agreement

- A. To the extent allowed by law that the Sponsor provides any material associated with the project, all such material (buildings, equipment, systems, components, cable, enclosures, etc.) will become the property of the FAA. The Sponsor will enter into a transfer agreement with the FAA for all real and personal property being transferred to the FAA for conveyance of ownership. The Sponsor will provide a line item property listing in tabular format, consisting of all real and personal property that will

be included in the Project. Real property will be identified by each line item and cost (e.g., foundation size, building type and dimensions, systems, composition of access road and parking, linear feet of fencing and cabling, etc.). Personal property listing will include the bar code number (where applicable), manufacturer, full item description, part number and/or serial number, quantity, model number, cost, funding appropriation, etc. The cost data for each item will be supported by a copy of the original invoice or billing statement and a copy of the construction contract along with verification of the contract acceptance date.

- B. The itemized cost data will be compiled into FAA Form 4650-12(1/99), Material Transfer/Receipt Document. This completed document provides an opportunity for the FAA (whenever possible) to verify equipment accountability; to assign national or local stock numbers; to determine the breakout of installed facility equipment; to establish line item accountable property; and to assign bar codes to specific equipment prior to it being recorded in property records. Joint signatures are required from both the Sponsor and the FAA Property Custodian on the FAA Form 4650-12(1/99) prior to recordation of the assets in the FAA's property systems.

ARTICLE 7. Estimated Costs

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

Reimbursable Agreement Detailed Project Cost Estimate	
EI Paso, TX	
Description of Reimbursable Item	Estimated Cost
Labor (Includes Overhead)	
Engineering Support WB4020	\$ 41,400.00
Construction Support WB4050	\$ 104,000.00
Site Prep., Installation, & JAI/CAI WB4060, WB4070	\$ 64,600.00
Prelim. Engr. & Site Survey WB4010	\$ 19,800.00
Environmental Engineering WB4030	\$ 5,600.00
Total Labor	\$ 235,400.00
Other Objects	
Travel WB4010, WB4020, WB4050, WB4060, WB4070	\$ 14,940.00
EDDA WB4030	\$ 20,000.00
Flight Check + Procedures WB4070	\$ 56,910.00
General Supply Material & Transportation Services WB4050, WB4060	\$ 81,000.00
26.5% Overhead (Other Objects)	\$ 45,805.25
Total Other Objects	\$ 218,655.25
Grand Total	\$ 454,055.25

ARTICLE 8. Period of Agreement and Effective Date

This Agreement supersedes and nullifies any previous agreements between the parties on the subject matter. 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 E 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 a copy of the executed Agreement and 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.
- 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 and the full advance payment to the Accounting Division shown below. All payments must include the Agreement number, Agreement name, Sponsor name, and project location.

The mailing address is:

FAA Mike Monroney Aeronautical Center
Attn: AMZ-330, Reimbursable Project Team
P.O. Box 25082
Oklahoma City, OK 73125

The overnight mailing address is:

FAA Mike Monroney Aeronautical Center
Attn: AMZ-330, Reimbursable Project Team
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: (405) 954-6724

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

Antonio Marmolejo, C.M.
Assistant Director of Aviation Development
El Paso International Airport
6701 Convair Road
El Paso, Texas 79925-1091
Tel: 915-780-4766
marmolejoAX2@elpasotexas.gov

- D. The FAA will provide updates at least quarterly of costs incurred against the advance payment. A Reimbursable Bill Support List (a summary of cost by object class) will accompany all updates.
- E. 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 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 modification 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 (N/A)

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., Section 2671, et seq., if applicable, 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

In the event that the security office determines that the security requirements under FAA Order 1600.72A applies to work under this Agreement, the FAA is responsible for ensuring that security requirements, including compliance with AMS clause 3.14-2, Contractor Personnel Suitability Requirements (January 2011) are met.

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.

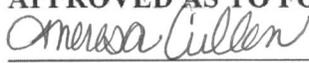
AGREED:

**FEDERAL AVIATION
ADMINISTRATION**

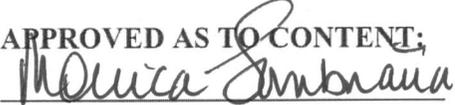
CITY OF EL PASO, TEXAS

SIGNATURE _____
NAME _____
TITLE Contracting Officer
DATE _____

SIGNATURE  _____
NAME Joyce A. Wilson
TITLE City Manager
DATE _____

APPROVED AS TO FORM:
 _____

Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:
 _____

Monica Lombraña, A.A.E.
Director of Aviation