

NON-FEDERAL REIMBURSABLE AGREEMENT

BETWEEN

**DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION**

AND

**CITY OF SAN ANTONIO
SAN ANTONIO INTERNATIONAL AIRPORT
SAN ANTONIO, TEXAS**

WHEREAS, the Federal Aviation Administration (FAA) can furnish directly or by contract, material, supplies, equipment, and services which the City of San Antonio (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;

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

ARTICLE 1. Parties

The Parties to this Agreement are the FAA and City of San Antonio.

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 San Antonio International Airport (SAT) located in San Antonio, Texas has future development plans in support of the Airport Terminal Development Program (TDP) and airfield runway reconstruction, relocation, and expansion as part of the Airfield Safety Enhancement and Improvements Program (ASEIP). The current Airport Traffic Control Tower (ATCT) at SAT is an FAA owned and maintained facility and will continue under FAA ownership and maintenance. The purpose of this Agreement between the FAA and the Sponsor is to support and complete the line-of-sight study. This will be done in accordance with FAA draft Order 6480.4C (approved by FAA for use in this agreement), Siting of Airport Traffic Control

Towers. This Agreement provides funding for the FAA to establish these services. Therefore, this Agreement is titled:

San Antonio, TX (SAT) - FAA support for the Line-of-Sight Study at San Antonio International Airport due to Airport Improvements

B. The FAA will perform the following activities:

1. Participate in planning and site visit(s) for a line-of-sight study per draft Order 6480.4C (approved by FAA for use in this agreement).
2. Develop cost estimates for any required amendments to this Agreement for the continued support of the Sponsor's project.
3. Obtain any available photogrammetry data or master planning data, the latest approved Airport Layout Plan (ALP), and elevation data for future structures, and other data as required, and provide a 3-D model of the airfield for use during the line-of-sight study.
4. Facilitate the line-of-sight study per the current version of draft Order 6480.4C (approved by FAA for use in this agreement).
5. Issue a Memo of Record documenting the results of the line-of-sight study.
6. Develop budget estimates to design and install equipment and service requirements. These estimates may include the cost of removing FAA assets from the existing tower if necessary.
7. Comply with airport badging and access requirements.

C. The Sponsor will perform the following activities:

1. Provide any available photogrammetry data or master planning data, the latest approved Airport Layout Plan (ALP), and elevation data for future structures, and other data as required by draft Order 6480.4C (approved by FAA for use in this agreement).
2. Participate in the line-of-sight study in accordance with draft Order 6480.4C (approved by FAA for use in this agreement).

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: TBD and the grant number is: TBD. 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 Central Service Area, Planning and Requirements Group will provide administrative oversight of this Agreement. Miguel Negrete is the Lead Planner and liaison with the Sponsor and can be reached at (817) 222-4619 or via email at miguel.negrete@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 Central Service Area Terminal Engineering Center will support the scope of work included in this Agreement. Kevin Miles is the Terminal Engineering Center Manager and liaison with the Sponsor and can be reached at 817-222-4982 or via email at kevin.d.miles@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. Daniel McCormick is the FAA Central Service Center Planning Lead and he can be reached at 412-302-4471 or via email at daniel.mccormick@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.
4. The execution, amendment, and administration of this Agreement must be authorized and accomplished by the FAA's Contracting Officer, Brad Logan who can be reached at (817) 222-4395 or via email at brad.logan@faa.gov.

B. Sponsor:

City of San Antonio
Susan St. Cyr, P.E., Special Projects Manager
10100 Reunion Place, Suite 300
San Antonio, Texas 78216
Telephone: (210) 207-3559
Email: susan.stcyr@sanantonio.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. Property Transfer

- A. To the extent that the Sponsor provides any material associated with the Project, and to the extent that performance of the requirements of this Project results in the creation of assets constructed, emplaced, or installed by the Sponsor, all such material (buildings, equipment, systems, components, cable enclosures, etc.) and assets will be transferred to and become the property of the FAA upon project completion. For purposes of this Article 6, "project completion" means that FAA has inspected the specific equipment or construction, and has accepted it as substantially complete and ready for use. The creation of an additional agreement will not be required, unless such other agreement is required by the laws of the state in which the subject property is located. The Sponsor and FAA acknowledge by execution of this agreement the FAA will accept the fundamental responsibilities of ownership by assuming all operations and maintenance requirements for all property transferred to the FAA. The transfer of asset(s) will occur on the date the asset(s) is placed in service. It has been determined the subject transfer(s) to FAA is in the best interest of both the Sponsor and FAA.
- B. In order to ensure that the assets and materials subject to this Article remain fully accounted-for and operational, the Sponsor will provide the FAA any additional documents and publications that will enhance the FAA's ability to manage, maintain and track the assets being transferred. Examples may include, but are not limited to, operator manuals, maintenance publications, warranties, inspection reports, etc. These documents will be considered required hand-off items upon Project completion.

ARTICLE 7. Estimated Costs

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

DESCRIPTION OF REIMBURSABLE ITEM	ESTIMATED COST
Labor	
WB4020 - Line-of-Sight Study	\$80,000.00
Labor Subtotal	\$80,000.00
Labor Overhead	\$15,904.00
Total Labor	\$95,904.00
Non-Labor	
WB4020 - Siting Support Travel	\$7,000.00
Non-Labor Subtotal	\$7,000.00
Non-Labor Overhead	\$560.00
Total Non-Labor	\$7,560.00
TOTAL ESTIMATED COST	\$103,464.00

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 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 a copy of the executed Agreement and submit full advance payment in the amount stated in Article 7 to the Reimbursable Receipts Team 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, except as described in section D of this Article. 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 Reimbursable Receipts team is identified by the FAA as the billing office for this Agreement. The preferred method of payment for this agreement is via Pay.Gov. The sponsor can use a check or credit card to provide funding in this manner and receipt-processing time is typically within 3 working days. Alternatively, the sponsor can mail the payment to the address shown below. When submitting funding by mail, the Sponsor must include a copy of the executed Agreement and the full advance payment. All payments mailed to the FAA must include the Agreement number, Agreement name, Sponsor name, and project location. Payments submitted by mail are subject to receipt-processing delay of up to 10 working days.

FAA payment remittance address using USPS is:

DOT/FAA/ESC
P.O. Box 25770
AMK-322 – MPB 328
Oklahoma City, OK 73125

FAA payment remittance address using Fed Ex (overnight) is:

DOT/FAA/ESC
AMK-322 – MPB328
6500 S. MacArthur Blvd.
Oklahoma City, OK 73125

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

City of San Antonio
Attn: Susan St. Cyr, P.E., Special Projects Manager
10100 Reunion Place, Suite 300
San Antonio, Texas 78216
Telephone: (210) 207-3559
Email: Susan.StCyr@sanantonio.gov

- D. The FAA will accept payments under this Article from only one of two sources: either (1) the Sponsor or (2) a Third Party on behalf of the Sponsor, and the same source must make all required payments. If a Third Party makes the payments, then any refund due from FAA upon completion of the Agreement will be returned to that Third Party.
- E. The FAA will provide the Sponsor a quarterly Statement of Account of costs incurred against the advance payment.

- F. The cost estimates contained in Article 7 are expected to be the maximum costs associated with this Agreement, but may be amended 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 Reimbursable Receipts Team with the additional advance payment. Work identified in the amendment cannot start until receipt of the additional advance payment. The Sponsor's maximum liability for contractor claims is the same amount as the total estimated cost of the Agreement, including modifications. For example, if the total estimated cost of a reimbursable agreement, including modifications was \$100,000.00, the sponsor's liability for contractor's claims would be limited to \$100,000.00. Thus, in the example, the sponsor's total maximum liability under the reimbursable agreement would be \$200,000.00.

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 amending or otherwise affecting the terms of the Agreement. Any party to this Agreement may request that it be amended, 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

If attachments are included in this Agreement and in the event of any inconsistency between the attachments and the terms of this Agreement, the inconsistency will be resolved by giving preference in the following order:

- A. This Agreement
- B. The attachments

ARTICLE 13. Legal Authority

This Agreement is entered into under one or more of the following authorities: 49 U.S.C. § 106(l), 31 U.S. Code 6505 Intergovernmental Cooperation Act. 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

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 3.14.2.1, Contractor Personnel Suitability Requirements 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 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. Additionally, the FAA expects this agreement to be funded within 120 days of execution, if funding is not received by that date; the FAA may exercise the right to renegotiate estimated costs.

AGREED:

**FEDERAL AVIATION
ADMINISTRATION**

CITY OF SAN ANTONIO

SIGNATURE _____
NAME _____
TITLE Contracting Officer
DATE _____

SIGNATURE _____
NAME _____
TITLE _____
DATE _____