

**MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED STATES
FEDERAL AVIATION ADMINISTRATION AND
CITY OF SAN ANTONIO,
SAN ANTONIO, TEXAS**

I. INTRODUCTION AND PURPOSE

- a. This Memorandum of Understanding (MOU) provides a framework in which the United States Federal Aviation Administration (FAA) will prepare an Environmental Impact Statement (EIS) for the City of San Antonio's ("Sponsor") proposal to construct an Airfield Safety Enhancement and Improvement Project at the San Antonio International Airport (SAT), San Antonio, Texas, which consists of the major components of reconstructing Runway 13R/31L, constructing a 1,585-foot runway extension to Runway 13R, widening and extending Runway 13L/31R to 8,500 feet by 150 feet, and converting Runway 4/22 into a taxiway. This MOU describes the relationship of the above-named parties in preparing the EIS. Upon completion of the EIS, FAA will determine whether to proceed with the proposed project. This determination will be set forth in a Record of Decision.
- b. As lead agency, FAA will select an independent contractor ("Contractor") to prepare the EIS. The Sponsor shall be the party responsible for engaging and retaining a contractor with funds provided by the Sponsor.
- c. The EIS and any related documents shall comply with the provisions of the National Environmental Policy Act of 1969 (NEPA), United States Department of Transportation (DOT) and FAA environmental regulations and guidance, as well as all applicable local, State and Federal laws, as appropriate.
- d. It is the purpose of this MOU to establish an understanding between the Sponsor and FAA regarding the responsibilities of the parties and the conditions and procedures to be followed in the development and preparation of the EIS.
- e. FAA and Sponsor (collectively the "parties") hereto intend that development and preparation of the EIS as provided in this MOU will satisfy the pertinent environmental requirements of FAA.

II. GENERAL PROVISIONS

- a. As the lead agency, FAA will be responsible for assuring compliance with all the requirements of NEPA (42 U.S.C. 4321 et seq.) and appropriate DOT and FAA environmental orders. FAA shall assure that all pertinent environmental issues and impacts and reasonable alternatives and their impacts are treated in the EIS and shall be responsible for the scope and content of the EIS.
- b. The Sponsor will engage and retain a Contractor, selected by FAA, for the preparation of the EIS. The Contractor, with the approval of FAA and Sponsor, may employ such other contractors and experts (collectively referred to as "Subcontractors"), as are required for the adequate development and preparation of the EIS.

- c. The Contractor will provide, through its staff or by Subcontractor, the expertise, staffing, and technical capabilities required for the preparation of the EIS. FAA will direct the scope of the EIS and will independently evaluate all information environmental data, and analyses submitted by the Contractor, or others, and will revise or cause additional study and analyses to be performed as necessary.
- d. The contracts between the Sponsor and Contractor and between the Contractor and Subcontractors (collectively the "Contract") shall be consistent with the provisions of this MOU and shall specifically incorporate those provisions herein that address the conduct of the Contractor. The Contract shall provide, and the Sponsor hereby represents, consistent with FAA Order 5050.4B, Paragraph 1003(d), that the Contractor and any Subcontractor has not entered into and, during the lifetime of the EIS preparation, will not enter into any agreement affording the Contractor and any Subcontractors with any direct or indirect financial interest in the planning, design, construction or operation of the project, except with regard to the preparation of the EIS. Further, the Sponsor shall ensure that the Contract shall specifically limit any remedies available to the Contractor and any Subcontractors, so as to affirmatively relieve the United States of America, FAA, and any officer, agent or employee of same, from any liability arising out of the performance or termination of the contract for preparation of the EIS, or out of this MOU.
 - i. Prior to beginning work on the EIS, the Contractor and any Subcontractors shall sign a "Disclosure Statement" provided by FAA per the requirements of FAA Orders 1050.1F and 5050.4B, specifying they have no financial or other interest in the outcome of the project.
 - ii. FAA shall evaluate the Disclosure Statement prior to its approval.
- e. The Sponsor shall facilitate the coordination of effort, and the exchange of information related to the planning, design, and construction of the Project, as these activities relate to the preparation of the EIS among and between the Contractor and its Subcontractors and FAA. The Sponsor shall make all reasonable efforts to assure the satisfactory and timely performance of the duties of the Contractor as specified in this MOU.
- f. The Sponsor and FAA shall:
 - i. Appoint such representatives as necessary to accomplish the coordination necessary for the satisfactory preparation of the EIS. Notice to any such representative shall constitute notice to that party.
 - ii. Review substantive phases of preparation of the EIS as FAA deems necessary.
 - iii. Have their respective representatives attend meetings with other Federal, State, regional, and local agencies for the purpose of increasing communications and receiving comments, as the same may be necessary, desirable, or required by law in preparation of the EIS.
- g. All costs incurred in connection with the employment of the Contractor and any and all Subcontractors, or other persons retained or employed by the Sponsor, shall be the sole responsibility of the Sponsor, and, to the extent permissible by any applicable state or federal law, the Sponsor agrees to hold

harmless FAA, its officers, agents, and employees, with respect to any and all judgments or settlements arising from claims, demands, causes of action, and the like, in connection with the Sponsor's employment of the Contractor and any and all Subcontractors which may arise from the termination or performance of the Contract or any other services, or purchase of materials utilized for the development and preparation of the EIS, or from termination of this MOU. In the event of suits by third parties (other than the Contractor or its Subcontractors) against FAA, involving the legality or adequacy of FAA's compliance with NEPA and other laws and regulations, the Sponsor shall cooperate and shall ensure that the Contractor and applicable Subcontractors cooperate in defense of any such suit.

III. PROCEDURES

- a. Under the direction of FAA, the Contractor shall develop and submit a Plan of Study to FAA for approval. The Plan of Study shall include detailed descriptions of all work to be performed, the methodologies proposed to perform the work, the name and qualifications of the person performing each aspect of the work, estimated man-hours required for completion of each aspect, the schedule for performing each aspect and a description of the internal and external review procedures to assure quality control. The Plan of Study shall include a provision for a thorough literature search, bibliography of references, and the methodologies to be used in the acquisition of the environmental data and analyses and the development and preparation of the EIS. The Plan of Study will also take into account, if appropriate, material previously prepared to support the analysis of environmental effects of the Proposed Action.
- b. FAA will forward the Plan of Study to the Sponsor for review and comment. After receiving comments from the Sponsor, and any required scoping for the EIS, FAA will finalize and approve the Plan of Study. The Plan of Study shall establish the Scope of Services required of the Contractor in the development and preparation of the EIS.
- c. The Plan of Study may be amended by FAA from time to time as the work of the Contractor or its Subcontractors proceeds, but any amendments or changes which require the expenditure of additional funds by the Sponsor must be agreed to by the Sponsor. The Sponsor will be consulted prior to any significant amendments or modifications to the Plan of Study.
- d. Unless otherwise directed by FAA, any and all work performed by the Contractor or its Subcontractors in preparation of the EIS shall be submitted directly to FAA, and upon request of FAA, to the Sponsor. The Sponsor may communicate with the Contractor and its Subcontractors during the development of the EIS relative to contractual matters; however, no prior review or discussion of data or analyses developed by the Contractor or Subcontractor as related to the EIS shall be afforded the Sponsor. In no case will the Sponsor discuss, review, modify, or edit the Contractor's work or the work of its Subcontractors prior to submission to FAA, or be provided the opportunity to do so. All suggestions for modifications or changes to documents prepared by the Contractor and Subcontractors recommended by the Sponsor shall only be made to FAA, who will then determine the appropriate direction for resolution.
- e. FAA reserves the right to review periodically and modify the work of the

Contractor to ensure that requirements under NEPA and other applicable laws and regulations are satisfied. The Contractor shall submit monthly written reports on the progress of its work to FAA, with a concurrent copy to the Sponsor. This report shall describe the present status of each aspect of the work, any problems encountered, and recommendations for modifications to the Plan of Study and any changes in personnel, methodology or schedules for completion.

- f. As each portion of any draft or final document is completed, FAA shall review each portion and those tasks completed thereunder and, after consultation with the Sponsor, shall approve, modify, comment on or direct further work with regard to such portion or tasks as necessary. Said directions or comments shall be made by FAA in a timely manner, and the Contractor shall ensure incorporation of such comments into any editorial changes to the satisfaction of FAA. Final drafts of any documents will require FAA approval. Prior to approval, FAA will forward final drafts to the Sponsor for review and comment. Comments from the Sponsor shall be sent to FAA. The Contractor will only make modifications as FAA directs regarding these comments.
- g. If requested, the Contractor will provide FAA access to and review of all procedures and underlying data used by the Contractor in developing submitted sections of the EIS, including, but not limited to, field reports, Subcontractor reports, and interviews with concerned private and public parties, whether such information may be contained in a draft or final EIS.
- h. To facilitate the development and preparation of the EIS, joint meetings among FAA, Sponsor, and Contractor may be held. However, FAA reserves the right to work directly with the Contractor for purposes of assuring objectivity in preparing reports or for assuring expeditious communications. No meeting will be held between the Contractor or Sponsor without prior notification to and approval of FAA. FAA reserves the right to consult directly with other Federal, State, and local officials and agencies during the preparation of the EIS, with the assistance of the Contractor and Subcontractors, to assure compliance with NEPA and other applicable laws and regulations.
- i. FAA, with assistance from the Contractor, will prepare and publish the Notice of Intent to Prepare an EIS in the Federal Register.
- j. The Contractor and its Subcontractors will participate in any public workshops, hearings, or meetings in accordance with the Scope of Services to foster public familiarity and participation with respect to the assessment of impacts related to the Project.
- k. The Contractor shall be responsible for the costs associated with the printing and publication of the draft and final copies of the EIS. The Contractor shall be responsible for all costs associated with the publication of notices announcing public comment periods, public workshops, meetings, hearings, and the like. The Contractor shall also be responsible for costs of stenographic and clerical services, preparation of graphics and visual aids associated with any public workshops, meetings, and hearings. The Contractor shall also ensure that any document prepared for public posting in an electronic format shall be compatible with the requirements of Section 508 of the Rehabilitation Act. All costs required by this clause shall be accounted for in any cost estimates prepared by the Contractor in accordance with the Scope of Services and provided to the Sponsor prior to execution of the

contract or any change orders incorporating such work.

- l. When FAA, after consultation with the Sponsor, has approved the Draft EIS developed and prepared by the Contractor and its Subcontractors, the Contractor shall print the contracted quantity of Draft EISs and submit same to FAA. FAA shall submit an appropriate number of copies of the Draft EIS to the Sponsor. FAA shall proceed expeditiously to comply with the provisions of NEPA.
- m. In all instances involving questions as to the content or relevance of the environmental data and analyses, and evaluations and wording prepared by the Contractor, FAA, with appropriate advice and consultation, where deemed necessary by FAA, will make the final determination on the inclusion, deletion, or modification of the same in the Draft or Final EIS.
- n. Upon completion of the Draft EIS, FAA, with the Contractor's assistance, shall be responsible for organizing and conducting any public meetings/hearings.
- o. FAA will receive all comments during the Draft EIS review and comment period. This period (at least 45 days) will be initiated when the United States Environmental Protection Agency (EPA) publishes the "Draft EIS Notice of Availability" in the Federal Register. The FAA will issue any applicable press releases or other public notices associated with the release of the Draft EIS. This does not preclude the Sponsor from issuing their own press releases or notices.
- p. At the close of the Draft EIS review and comment period, FAA, with the aid of the Contractor and Subcontractors, shall identify the issues and comments submitted that will require response in the Final EIS. FAA will direct those comments to the Contractor for preparation of proposed responses and shall furnish the Sponsor with copies of all comments received. The Contractor will furnish proposed responses to FAA for review and comment. FAA, with appropriate advice and consultation from the Sponsor, shall modify the proposed responses as it deems necessary.
- q. After receipt of comments and preparation of responses, FAA, after appropriate advice and consultation, may direct the Contractor to make changes to the text of the Draft EIS as necessary.
- r. When FAA has approved the Final EIS, FAA, with assistance from the Contractor, will prepare FAA Record of Decision (ROD), to assemble the combined Final EIS/ROD.
- s. The Contractor shall print the contracted quantity of the combined Final EIS/ROD. FAA shall provide the contracted quantity of the Final EIS/ROD to the Sponsor.
- t. FAA will prepare, with assistance from the Contractor, the "Final EIS Notice of Availability", and submit the Notice to the EPA for publishing in the Federal Register.
- u. Information developed under this MOU is disclosable to the public to the extent required by law. FAA will maintain the confidentiality of any information, documents or materials which in its opinion are validly

designated as confidential by the Sponsor or Contractor and which contain trade secrets, proprietary data, or commercial or financial information. FAA will not release or allow access to such documents to the extent allowable by law. In any instance where FAA proposes to release to the public or allow access to any information, documents, or materials that the Sponsor or Contractor has designated as confidential, it shall notify the Sponsor or Contractor of its intention to do so and provide the Sponsor or Contractor the opportunity to appeal the decision in accordance with applicable regulations on such release or access prior to any such release or access.

- v. Following completion of the EIS process and issuance of the ROD, the Contractor will prepare the Project File for submission to FAA and Sponsor. In the event of legal challenge, FAA reserves the right to request continuation of the contract between the Sponsor and Contractor to assist in preparation of the Administrative Record related to the litigation.

IV. CESSATION AND TERMINATION

- a. Any of the parties to this MOU may withdraw from the terms of this MOU for good cause upon 30 days written notice to the other party. During this period, the parties will actively attempt to resolve any disagreement.
- b. In the event of a termination of this MOU, and if the preparation of an EIS by FAA is still required, it is agreed as follows:
 - i. FAA shall have access and permission to use all documentation, reports, analyses and data by the Contractor and Subcontractors with confidentiality governed by paragraph III.u.
 - ii. FAA shall assume the responsibility for preparing the EIS. The Sponsor shall no longer be responsible for the payment of costs associated with preparation of the EIS under the terminated MOU, apart from costs already incurred under the Sponsor's contract with the Contractor.
 - iii. Liability for termination shall be in accordance with paragraph II.g. hereof.

V. NO RIGHTS FOR NON-PARTIES No rights or privileges are created or intended to be created by this MOU in anyone not a signatory to this MOU.

VI. COMPLIANCE WITH LAWS The parties must comply with all applicable federal, state, and local laws (including Executive Orders).

VII. EFFECTIVE DATE AND TERM This MOU shall be effective on the date of the last signature of the parties and shall remain in force until terminated by mutual agreement or unilaterally by either party as provided under paragraph IV. a.

VIII. MODIFICATION This MOU represents the entire agreement and may be modified by the parties hereto only by written agreement by all the parties.

IX. AUTHORITY

- a. FAA enters into this MOU under the authority of 49 U.S.C. 106 (f)(2)(A) and 106(l) and (m).

- b. The signatories to this MOU covenant and warrant that they have the authority to execute this MOU on behalf of their respective party. By signing the below, the undersigned agree to and commit the party they represent to comply with and fulfill all of the terms and conditions set forth in this MOU.

United States Federal Aviation Administration

D. Cameron Bryan
Deputy Director
Office of Airports Southwest Region

Date

City of San Antonio

Jesus H. Saenz, Jr.
Director of Airports

Date