

DATE: July 2, 2013
STAFF: Mike Beckstead
Jason Licon

AGENDA ITEM SUMMARY
FORT COLLINS CITY COUNCIL

17

SUBJECT

Resolution 2013-056 Authorizing the City Manager to Execute the 2013 Grant Agreement (AIP Project No. 3-08-0023-32-2013) with the Federal Aviation Administration for Improvements at the Fort Collins-Loveland Municipal Airport.

EXECUTIVE SUMMARY

This Resolution authorizes the City Manager to execute a Grant Agreement from the Federal Aviation Administration (FAA) for up to \$1,536,295. This FAA Grant will be used to for a capital construction project that includes the rehabilitation and repair of the Airport's primary aircraft apron and perimeter fence completion.

BACKGROUND / DISCUSSION

This Resolution is an annual entitlement grant that is given each year to the airport from the FAA for being a primary commercial service airport.

FINANCIAL / ECONOMIC IMPACTS

The \$1,536,295 FAA Entitlement Grant requires a 10% match that is split 5% by the State of Colorado and 5% from the airport reserves, or \$85,349.70 each. This project has been appropriated and budgeted for in 2013.

STAFF RECOMMENDATION

Staff recommends adoption of the Resolution.

ATTACHMENTS

1. FAA 3-08-0023-32-2013 Grant Agreement

GRANT AGREEMENT

Federal Aviation
Administration

Part I - Offer

Date of Offer: [REDACTED]

Airport: Ft. Collins- Loveland Municipal
Airport

Project Number: 3-08-0023-32

Contract Number: DOT-FA13NM-XXXX

DUNS #: 07-648-1407

To: City of Ft. Collins, Colorado and City of Loveland, Colorado
(herein called the "Sponsor")

From: The United States of America (acting through the Federal Aviation Administration, herein called the "FAA")

Whereas, the Sponsor has submitted to the FAA a Project Application dated February 28, 2013 for a grant of Federal funds for a project at or associated with the Ft. Collins-Loveland Municipal Airport, which Project Application, as approved by the FAA, is hereby incorporated herein and made a part hereof; and

Whereas, the FAA has approved a project for the Airport (herein called the "Project") consisting of the following:

Rehabilitate Apron, install perimeter fence

all as more particularly described in the Project Application.

NOW THEREFORE, pursuant to and for the purpose of carrying out the provisions of Title 49, United States Code, as amended, herein called "the Act", and in consideration of (a) the Sponsor's adoption and ratification of the representations and assurances contained in said Project Application and its acceptance of this offer as hereinafter provided, and (b) the benefits to accrue to the United States and the public from the accomplishment of the Project and compliance with the assurances and conditions as herein provided, **THE FEDERAL AVIATION ADMINISTRATION, FOR AND ON BEHALF OF THE UNITED STATES, HEREBY OFFERS AND AGREES** to pay, as the United States share of the allowable costs incurred in accomplishing the Project, 90.00 per centum thereof.

This Offer is made on and **SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:**

Conditions

1. The maximum obligation of the United States payable under this offer shall be \$_____. For the purpose of any future grant amendments, which may increase the foregoing maximum obligation of the United States under the provisions of Section 47108(b) of the Act, the following amounts are being specified for this purpose:

\$-0- for planning

\$----- for airport development.

2. The allowable costs of the project shall not include any costs determined by the FAA to be ineligible for consideration as to allowability under the Act.

3. Payment of the United States share of the allowable project costs will be made pursuant to and in accordance with the provisions of such regulations and procedures as the Secretary shall prescribe. Final determination of the United States share will be based upon the final audit of the total amount of allowable project costs and settlement will be made for any upward or downward adjustments to the Federal share of costs.

4. The sponsor shall carry out and complete the Project without undue delay and in accordance with the terms hereof, and such regulations and procedures as the Secretary shall prescribe, and agrees to comply with the assurances which were made part of the project application.

5. The FAA reserves the right to amend or withdraw this offer at any time prior to its acceptance by the sponsor.

6. This offer shall expire and the United States shall not be obligated to pay any part of the costs of the project unless this offer has been accepted by the sponsor on or before _____, or such subsequent date as may be prescribed in writing by the FAA.

7. The Sponsor shall take all steps, including litigation if necessary, to recover Federal funds spent fraudulently, wastefully, or in violation of Federal antitrust statutes, or misused in any other manner in any project upon which Federal funds have been expended. For the purposes of this grant agreement, the term "Federal funds" means funds however used or disbursed by the Sponsor that were originally paid pursuant to this or any other Federal grant agreement. It shall obtain the approval of the Secretary as to any determination of the amount of the Federal share of such funds. It shall return the recovered Federal share, including funds recovered by settlement, order or judgment, to the Secretary. It shall furnish to the Secretary, upon request, all documents and records pertaining to the determination of the amount of the Federal share or to any settlement, litigation, negotiation, or other efforts taken to recover such funds. All settlements or other final positions of the Sponsor, in court or otherwise, involving the recovery of such Federal share shall be approved in advance by the Secretary.

8. The United States shall not be responsible or liable for damage to property or injury to persons, who may arise from, or be incident to, compliance with this grant agreement.

Special Conditions

9. The sponsor will carry out the project in accordance with policies, standards, and specifications approved by the Secretary including but not limited to the advisory circulars listed in the "Current FAA Advisory Circulars Required for use in AIP Funded and PFC Approved Projects," dated April 16, 2013, and included in this grant, and in accordance with applicable state policies, standards, and specifications approved by the Secretary.

10. It is mutually understood and agreed that if, during the life of the project, the FAA determines that the maximum grant obligation of the United States exceeds the expected needs of the Sponsor by \$25,000.00 or five percent (5%), whichever is greater, the maximum obligation of the United States can be unilaterally reduced by letter from the FAA advising of the budget change. Conversely, if there is an overrun in the total actual eligible and allowable project costs, FAA may increase the maximum grant obligation of the United States to cover the amount of the overrun not to exceed the statutory percent limitation and will advise the Sponsor by letter of the increase. It is further understood and agreed that if, during the life of the project, the FAA determines that a change in the grant description is advantageous and in the best interests of the United States, a letter from the FAA will unilaterally amend the change in grant description. Upon issuance of the aforementioned letter, either the grant obligation of the United States is adjusted to the amount specified or the grant description is amended to the description specified.

11. For a project to replace or reconstruct pavement at the airport, the Sponsor shall implement an effective airport pavement maintenance management program as is required by Airport Sponsor Assurance Number C-11. The Sponsor shall use such program for the useful life of any pavement constructed, reconstructed, or repaired with federal financial assistance at the airport. As a minimum, the program must conform with the provisions outlined below:

PAVEMENT MAINTENANCE MANAGEMENT PROGRAM

An effective pavement maintenance management program is one that details the procedures to be followed to assure that proper pavement maintenance, both preventive and repair, is performed. An airport sponsor may use any form of inspection program it deems appropriate. The program must, as a minimum, include the following:

a. Pavement Inventory. The following must be depicted in an appropriate form and level of detail:

- (1) location of all runways, taxiways, and aprons;
- (2) dimensions;
- (3) type of pavement, and;
- (4) year of construction or most recent major rehabilitation.

For compliance with the Airport Improvement Program (AIP) assurances, pavements that have been constructed, reconstructed, or repaired with federal financial assistance shall be so depicted.

b. Inspection Schedule.

(1) **Detailed Inspection.** A detailed inspection must be performed at least once a year. If a history of recorded pavement deterioration is available, i.e., Pavement Condition Index (PCI) survey as set forth in Advisory Circular 150/5380-6, "Guidelines and Procedures for Maintenance of Airport Pavements," the frequency of inspections may be extended to three years.

(2) Drive-By Inspection. A drive-by inspection must be performed a minimum of once per month to detect unexpected changes in the pavement condition.

c. Record Keeping. Complete information on the findings of all detailed inspections and on the maintenance performed must be recorded and kept on file for a minimum of five years. The types of distress, their locations, and remedial action, scheduled or performed, must be documented. The minimum information to be recorded is listed below:

- (1)** inspection date,
- (2)** location,
- (3)** distress types, and
- (4)** maintenance scheduled or performed.

For drive-by inspections, the date of inspection and any maintenance performed must be recorded.

d. Information Retrieval. An airport sponsor may use any form of record keeping it deems appropriate, so long as the information and records produced by the pavement survey can be retrieved to provide a report to the FAA as may be required.

e. Reference. Refer to Advisory Circular 150/5380-6, "Guidelines and Procedures for Maintenance of Airport Pavements," for specific guidelines and procedures for maintaining airport pavements and establishing an effective maintenance program. Specific types of distress, their probable causes, inspection guidelines, and recommended methods of repair are presented.

12. The Sponsor agrees to perform the following:

a. Furnish a construction management program to FAA prior to the start of construction which shall detail the measures and procedures to be used to comply with the quality control provisions of the construction contract, including, but not limited to, all quality control provisions and tests required by the Federal specifications. The program shall include as a minimum:

- (1)** The name of the person representing the Sponsor who has overall responsibility for contract administration for the project and the authority to take necessary actions to comply with the contract.
- (2)** Names of testing laboratories and consulting engineer firms with quality control responsibilities on the project, together with a description of the services to be provided.
- (3)** Procedures for determining that testing laboratories meet the requirements of the American Society of Testing and Materials standards on laboratory evaluation, referenced in the contract specifications (D 3666, C 1077).
- (4)** Qualifications of engineering supervision and construction inspection personnel.
- (5)** A listing of all tests required by the contract specifications, including the type and frequency of tests to be taken, the method of sampling, the applicable test standard, and the acceptance criteria or tolerances permitted for each type of test.

- (6) Procedures for ensuring that the tests are taken in accordance with the program, that they are documented daily, and that the proper corrective actions, where necessary, are undertaken.
- b. Submit at completion of the project, a final test and quality control report documenting the results of all tests performed, highlighting those tests that failed or that did not meet the applicable test standard. The report shall include the pay reductions applied and the reasons for accepting any out-of-tolerance material. An interim test and quality control report shall be submitted, if requested by the FAA.
 - c. Failure to provide a complete report as described in paragraph b, or failure to perform such tests, shall, absent any compelling justification, result in a reduction in Federal participation for costs incurred in connection with construction of the applicable pavement. Such reduction shall be at the discretion of the FAA and will be based on the type or types of required tests not performed or not documented and will be commensurate with the proportion of applicable pavement with respect to the total pavement constructed under the grant agreement.
 - d. The FAA, at its discretion, reserves the right to conduct independent tests and to reduce grant payments accordingly if such independent tests determine that sponsor test results are inaccurate.
13. Unless otherwise approved by the FAA, the Sponsor will not acquire or permit any contractor or subcontractor to acquire any steel or manufactured products produced outside the United States to be used for any project for airport development or noise compatibility for which funds are provided under this grant. The Sponsor will include in every contract a provision implementing this special condition.
14. In accordance with Section 47108(b) of the Act, as amended, the maximum obligation of the United States, as stated in Condition No. 1 of this Grant Offer:
- a. may not be increased for a planning project;
 - b. may be increased by not more than 15 percent for development projects;
 - c. may be increased by not more than 15 percent for land projects.
15. The Sponsor agrees to comply with the Assurances attached to this offer, which replaces the assurances that accompanied the Application for Federal Assistance.
16. It is understood and agreed by and between the parties hereto that the United States shall not be obligated to make any payments under this agreement until the Airport Layout Plan required for this project has been approved by the FAA.
17. **TRAFFICKING IN PERSONS**
- a. **Provisions applicable to a recipient that is a private entity.**
 - 1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—

- i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 - ii. Procure a commercial sex act during the period of time that the award is in effect; or
 - iii. Use forced labor in the performance of the award or subawards under the award.
- 2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity –
 - i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or
 - ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—
 - A. Associated with performance under this award; or
 - B. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 49 CFR Part 29.

b. Provision applicable to a recipient other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity--

- 1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
- 2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either--
 - i. Associated with performance under this award; or
 - ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 49 CFR Part 29.

c. Provisions applicable to any recipient.

- 1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
- 2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
 - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
 - ii. Is in addition to all other remedies for noncompliance that are available to us under this award.
- 3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

d. Definitions. For purposes of this award term:

- 1. “Employee” means either:
 - i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
 - ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
- 2. “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
- 3. “Private entity”:

- i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
 - ii. Includes:
 - A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
 - B. A for-profit organization.
4. “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

18. The Sponsor understands and agrees that in accordance with 49 USC 47111, and the Airport District Office's concurrence, that no payments totaling more than 97.5 percent of United States Government's share of the project's estimated allowable cost may be made before the project is determined to be satisfactorily completed. Satisfactorily complete means the following: (1) The project results in a complete, usable unit of work as defined in the grant agreement; and (2) The sponsor submits necessary documents showing that the project is substantially complete per the contract requirements, or has a plan (that FAA agrees with) that addresses all elements contained on the punch list.
19. The Sponsor shall provide for a Single Audit in accordance with Office of Management and Budget Circular A-133. The Sponsor shall submit the Single Audit reporting package to the Federal Audit Clearinghouse on the Federal Audit Clearinghouse's Internet Data Entry System at <http://harvester.census.gov/fac/collect/ddeindex.html>. The Sponsor shall also provide one copy of the completed A-133 Audit to the Denver Airports District Office.
20. The Sponsor agrees to submit a **Federal Financial Report** (FAA Form SF-425) for all open grants to the Airports District Office within 90 days following the end of each Federal fiscal year and with each Final Project Closeout Report.

The Sponsor further agrees to submit an **Outlay Report and Request for Reimbursement** (FAA Form SF-271 for construction projects) or **Request for Advance or Reimbursement** (FAA Form SF-270 for non-construction projects) to the Airports District Office within 90 days following the end of each Federal fiscal year and with each Final Project Closeout Report.

The Sponsor's acceptance of this Offer and ratification and adoption of the Project Application incorporated herein shall be evidenced by execution of this instrument by the Sponsor, as hereinafter provided, and this Offer and Acceptance shall comprise a Grant Agreement, as provided by Title 49, U.S.C., Subtitle VII, Part B, as amended constituting the contractual obligations and rights of the United States and the Sponsor with respect to the accomplishment of the Project and compliance with the assurances and conditions as provided herein. Such Grant Agreement shall become effective upon the Sponsor's acceptance of this Offer.

**UNITED STATES OF AMERICA
FEDERAL AVIATION ADMINISTRATION**

John P. Bauer
Manager, Denver Airports District Office

Part II - Acceptance

The Sponsor does hereby ratify and adopt all assurances, statements, representations, warranties, covenants, and agreements contained in the Project Application and incorporated materials referred to in the foregoing Offer and do hereby accept this Offer and by such acceptance agrees to comply with all of the terms and conditions in this Offer and in the Project Application.

Executed this _____ day of _____, 2013

CITY OF FT. COLLINS, COLORADO

(SEAL)

(Signature Sponsor's Designated Official Representative)

By: _____
Darin Atteberry

(Typed Name of Sponsor's Designated Representative)

Attest: _____

City Manager

(Typed Title of Sponsor's Designated Official Representative)

Certificate of Sponsor's Attorney

I, _____, acting as Attorney for the Sponsor do hereby certify:

That in my opinion the Sponsor is empowered to enter into the foregoing Grant Agreement under the laws of the State of COLORADO. Further, I have examined the foregoing Grant Agreement and the actions taken by said Sponsor and Sponsor's official representative has been duly authorized and that the execution thereof is in all respects due and proper and in accordance with the laws of the said State and the Act. In addition, for grants involving projects to be carried out on property not owned by the Sponsor, there are no legal impediments that will prevent full performance by the Sponsor. Further, it is my opinion that the said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Dated at _____ this ____ day of _____, 2013

Signature of Sponsor's Attorney

The Sponsor does hereby ratify and adopt all assurances, statements, representations, warranties, covenants, and agreements contained in the Project Application and incorporated materials referred to in the foregoing Offer and do hereby accept this Offer and by such acceptance agrees to comply with all of the terms and conditions in this Offer and in the Project Application.

Executed this _____ day of _____, 2013

CITY OF LOVELAND, COLORADO

(SEAL)

(Signature Sponsor's Designated Official Representative)

By: William D. Cahill

(Typed Name of Sponsor's Designated Representative)

Attest: _____

City Manager

(Typed Title of Sponsor's Designated Official Representative)

Certificate of Sponsor's Attorney

I, _____, acting as Attorney for the Sponsor do hereby certify:

That in my opinion the Sponsor is empowered to enter into the foregoing Grant Agreement under the laws of the State of COLORADO. Further, I have examined the foregoing Grant Agreement and the actions taken by said Sponsor and Sponsor's official representative has been duly authorized and that the execution thereof is in all respects due and proper and in accordance with the laws of the said State and the Act. In addition, for grants involving projects to be carried out on property not owned by the Sponsor, there are no legal impediments that will prevent full performance by the Sponsor. Further, it is my opinion that the said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Dated at _____ this ____ day of _____, 2013

Signature of Sponsor's Attorney

RESOLUTION 2013-056
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE CITY MANAGER TO EXECUTE THE
2013 GRANT AGREEMENT (AIP PROJECT NO. 3-08-0023-32-2013)
WITH THE FEDERAL AVIATION ADMINISTRATION FOR IMPROVEMENTS
AT THE FORT COLLINS-LOVELAND MUNICIPAL AIRPORT

WHEREAS, the Cities of Fort Collins and Loveland (the “Cities”) jointly own and operate the Fort Collins-Loveland Municipal Airport (the “Airport”); and

WHEREAS, the Cities, by resolution, have adopted the Fort Collins-Loveland Municipal Airport Master Plan; and

WHEREAS, the Federal Aviation Administration (“FAA”) provides grant funding to eligible airports to enable those airports to pursue, in a timely manner, capital improvements included within an adopted Airport Master Plan; and

WHEREAS, the Cities have applied for \$1,900,000 in FAA capital grant funding (“2013 Grant Funding”) for the purpose of rehabilitating the north half of the general aviation apron and installing perimeter fencing around the airport (“AIP Project No. 3-08-0023-32-2013”); and

WHEREAS, the Cities have been offered \$1,536,295 of the 2013 Grant Funding and anticipate the FAA's offer of the balance of \$365,469 shortly; and

WHEREAS, any capital grants funds provided by the FAA will be subject to the Cities’ execution of the standard FAA grant agreement that will be in substantially the form of prior years’ FAA grant agreements modified to reflect the purpose of AIP Project No. 3-08-0023-32-2013 (“2013 Grant Agreement”); and

WHEREAS, projects listed in AIP Project No. 3-08-0023-32-2013 are identified in the Fort Collins-Loveland Municipal Airport Master Plan as first priority projects; and

WHEREAS, the matching local funds of ten percent necessary to accept the initial capital grant funding of \$1,536,295 from the FAA are divided equally between the State of Colorado and the Cities and have been previously appropriated as part of the Airport’s 2013 budget; and

WHEREAS, the State of Colorado's matching local funds of five percent necessary to accept the balance of the Grant Funding of \$365,469 from the FAA have been appropriated, and the Cities' required matching local funds of five percent are available in Airport Reserves and will be appropriated upon approval and receipt of the balance of the Grant Funding.

NOW THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS, COLORADO as follows:

Section 1. That the 2013 Grant Agreement is hereby approved.

Section 2. That the City Manager is hereby authorized, following consultation with the City Attorney, to modify the 2013 Grant Agreement in form or substance as deemed necessary to effectuate the purposes of this Resolution or to protect the interests of the City.

Section 3. That the City Manager and the City Clerk are hereby authorized and directed to execute the 2013 Grant Agreement on behalf of the City.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 2nd day of July A.D. 2013.

Mayor

ATTEST:

City Clerk