

NON-FEDERAL REIMBURSABLE AGREEMENT

BETWEEN

**DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION**

AND

**FULTON COUNTY,
ATLANTA, GEORGIA**

WHEREAS, the Federal Aviation Administration (FAA) can furnish directly or by contract, material, supplies, equipment, and services which the Fulton County (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 Fulton County.

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 Project Sponsor is undertaking a runway construction project to place Engineered Material Arresting Systems (EMASs) at each end of runway 8/26. This will require removal and re-installation of the Medium-intensity Approach Lighting System with Runway Alignment Indicator Light (MALSR) light bar stations at the southwest end of the runway and removal and re-installation of the runway 8 Mark 1F localizer located on the northeast end. The MALSR will have to be disassembled before the EMAS is installed and re-assembled after. The localizer will also need to be disassembled and re-assembled. The new location of the localizer is not specified and will need to be sited in consideration of the new arresting system. This agreement is for a siting study and design review of the Runway 08 Localizer, and a design review of the Runway 08 MALSR system. This Agreement provides funding for FAA services limited to labor, travel, and expenses required to perform review of the

Sponsor provided design package, including drawings and specifications, for modification, relocation, or establishment of FAA facilities in support of the Sponsor's project. Review will be to ensure conformance to FAA design standards. No government furnished equipment or implementation services will be provided under this Agreement. If required, the FAA and the Sponsor will enter into a separate agreement to cover the implementation of the project. Therefore, this Agreement is titled:

Design review and Siting Study for relocation of Runway 08 Mark 1F Localizer, and Design Review for Removal/relocation of Runway 08 MALSR at Fulton County Airport (FTY), Atlanta, Georgia

B. The FAA will perform the following activities:

1. Complete a siting study to determine location of the Runway 08 Localizer within the context of the sponsor's overall construction design.
2. Provide guidance, technical assistance and review the Sponsor's design drawings and specifications for relocation of the Runway 08 Localizer and Runway 08 MALSR light stations.
3. Provide guidance, technical assistance and review the Sponsor's design drawings and specifications for cabling of power and communications to the relocated MALSR and 08 Localizer.

C. The Sponsor will perform the following activities:

1. Provide construction drawings and specifications that comply with the FAA CAEG Standards and current FAA design criteria.

D. This agreement is in whole or in part funded with funding from an AIP grant ☐ Yes ☐ No. If Yes, the grant date is: _____ and the grant number is: _____. 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 Eastern Service Area, Planning and Requirements will provide administrative oversight of this Agreement. Timothy Arch is the Lead Planner and liaison with the Sponsor and can be reached at (404) 305-7181 or via email at timothy.arch@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 Eastern Service Area, NAVAIDS Engineering Center will perform the scope of work included in this Agreement. Matthew Herlihy is the NAVAIDS Engineering Center Manager and liaison with the Sponsor and can be reached at (404) 305-7264 or via email at matthew.herlihy@faa.gov. This liaison is not authorized to make any commitment, or otherwise obligate the FAA, or authorize any changes which affect the estimated cost, period of performance, or other terms and conditions of this Agreement.
3. FAA Contracting Officer: The execution, amendment, and administration of this Agreement must be authorized and accomplished by the Contracting Officer, Brad Logan who can be reached at (817) 222-4395 or via email at brad.logan@faa.gov.

B. Sponsor:

David E. Clark, P.E.
Director of Public Works
Fulton County
141 Pryor Street, SW Suite 6001
Atlanta, GA 30303
david.clark@fultoncountyga.gov
404-612-2804

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 Engineering	\$72,320.00
Labor Subtotal	\$72,320.00
Labor Overhead	\$14,377.22
Total Labor	\$86,697.22
Non-Labor	
WB4020 Engineering	\$448.80
Non-Labor Subtotal	\$448.80
Non-Labor Overhead	\$35.90
Total Non-Labor	\$484.70
TOTAL ESTIMATED COST	\$87,181.92

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. 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 or overnight method is:

Federal Aviation Administration
Reimbursable Receipts Team
800 Independence Ave S.W.
Attn: Rm 612A
Washington D.C. 20591
Telephone: (202) 267-1307

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

David E. Clark, P.E.
Director of Public Works
Fulton County
141 Pryor Street, SW Suite 6001
Atlanta, GA 30303
David.Clark@fultoncountygga.gov
404.612.2804

- D. The FAA will provide a quarterly Statement of Account of costs incurred against the advance payment.
- E. 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. In addition, in the event that a contractor performing work pursuant to the scope of this Agreement brings a claim against the FAA or sponsor that results in additional costs as a result of the claim, each party shall only be liable for payment of that portion of the costs that result from the negligent actions or omissions of their own agents, officers, and employees, whether or not a final bill or a refund has been sent.

ARTICLE 10. Changes and Amendments

Changes and/or amendments to this Agreement will be formalized by a written amendment that will outline in detail the exact nature of the change. Any amendment to this Agreement will be executed in writing and signed by the authorized representative of each party. The parties signing this Agreement and any subsequent amendment(s) represent that each has the authority to execute the same on behalf of their respective organizations. No oral statement by any person will be interpreted as 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. Under these authorities, the Administrator of the FAA is authorized to enter into and perform such contracts, leases, cooperative agreements and other transactions as necessary to carry out the functions of the Administrator and the Administration on such terms and conditions as the Administrator considers 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. Sponsor may self-fund its insurance obligations. 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

It is hereby stipulated and agreed between the parties that, with respect to any claim or action brought by a third party arising out of the activities described in this Agreement or that stems from any matter arising out of any act or omission by the parties in connection to the performance of this Agreement, each party shall only be liable for payment of that portion of any and all liability, costs, expenses, demands, settlements, or judgments

resulting from the negligent actions or omissions of its own agents, officers, and employees. However, nothing herein shall be construed as a waiver of any party's sovereign immunity or the immunities available to the officials, officers, and employees of any party. 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. Neither the FAA nor the sponsor assume liability for any losses arising out of any action or inaction by the other party, its employees, or contractors, or any third party acting on the other party's behalf. In no event will the FAA or sponsor 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. 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**

SIGNATURE _____

NAME _____

TITLE Contracting Officer

DATE _____

FULTON COUNTY

By: _____
Robert L. Pitts, Chairman
Fulton County Board of Commissioners

ATTEST:

By: _____
Tonya R. Grier
Clerk of the Commission

Approved as to Form:

By: _____
Office of the Fulton County Attorney