# City of Benson
# City Council Communication

**Regular Meeting** **November 25, 2013**

To: Mayor and Council Agenda Item # 6

From: Bradley J. Hamilton, P.E. Interim City Manager/Director of Public Works/City Engineer

Subject:

Resolution 31-2013 of the Mayor and Council of the City of Benson, Arizona, to accept the State of Arizona Department of Transportation Aeronautics Division Grant for Improvements at the Benson Municipal Airport (E4S2V)

Discussion:

This grant is to upgrade the Runway end identifier lights (REILS). The REILS currently installed at the airport are no longer manufactured and replacement parts are unavailable.

Staff Recommendation:

Approval of Resolution 31-2013

**RESOLUTION 31-2013**

**A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, TO ACCEPT THE STATE OF ARIZONA DEPARTMENT OF TRANSPORTATION AERONAUTICS DIVISION GRANT FOR IMPROVEMENTS AT THE BENSON MUNICIPAL AIRPORT (E4S2V)**

WHEREAS, the City of Benson has submitted to the Arizona Department of Transportation for a grant of state funds for a project at or associated with the Benson Municipal Airport/Planning Area for the upgrade of REILS in the amount of $54,000.00;

WHEREAS, the City of Benson has been awarded a grant in the amount of $54,000.00 by the Arizona Department of Transportation for the upgrade of REILS:

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the City of Benson, Arizona, that the City hereby accepts the Arizona Department of Transportation grant in the amount of $54,000.00, a copy of which is attached hereto as Exhibit "A," for the upgrade of REILS; and the City Engineer is hereby directed to execute said agreement on behalf of the City of Benson

PASSED AND ADOPTED BY THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, this 25th day of November, 2013.

_____
TONEY D. KING, SR., Mayor

ATTEST:

_____
VICKI L. VIVIAN, CMC, City Clerk

APPROVED AS TO FORM:

_____
MICHAEL J. MASSEE, City Attorney

Exhibit “A”
Airport Development Reimbursable Grant Agreement
Grant Number E4S2V

**Grant Number E4S2V**
City of Benson
Benson Municipal Airport

# Arizona Department of Transportation
# Multimodal Planning Division
# Aeronautics Group

# Airport Development Reimbursable Grant Agreement

## Part I

THIS AGREEMENT is entered into _____, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION, through its Multimodal Planning Division (the "State") and the City of Benson, a political subdivision of the State of Arizona (the "Sponsor"), for a grant of State funds for the purpose of aiding in financing a Project of Upgrade REILS (the "Project"), for the improvement of the Benson Municipal Airport (the "Airport").

WITNESSETH

**Recitals:**

1) The Sponsor desires, in accordance with the authority granted by Arizona Revised Statutes (A.R.S.) Section 28-8413, funds from the State for the purpose of airport planning and/or development.

2) The Arizona State Transportation Board, as approved on June 25, 2013 and the Director of the Arizona Department of Transportation, in accordance with the authority granted by A.R.S. Sections 28-304, 28-363, and 28-401 and Title 28, Chapter 25, A.R.S., have authorized reimbursement to the Sponsor of funds expended for airport planning and/or development.

Now, therefore, in consideration of the foregoing recitals and of the covenants and agreements made by the parties herein to be kept and performed, the parties agree as follows:

**Sponsor's Responsibility**

1) The Sponsor shall accept this Agreement within 4 months of the date of the grant offer cover letter: September 19, 2013. This Grant offer, if not accepted by the Sponsor, shall expire at the end of the 4-month period.

2) The Sponsor shall commence the Project within 6 months of the date the grant was executed by the State. This Project will consist of the airport improvements as described in Exhibit C. The Sponsor shall proceed with due diligence and complete the Project in accordance with the provisions of this Agreement. The Sponsor shall provide and maintain competent supervision to complete the Project in conformance with the plans, specifications and work completion schedule incorporated as part of this Agreement.

3) The Sponsor shall submit completed Project Reimbursement and Milestone schedules, which shall be attached hereto, as Exhibit C, Schedules Two and Three respectively and shall complete the Project within that schedule. Any change

to the schedule shall be submitted in writing and be approved by the State. A time extension beyond the State's obligation to provide funds herein must be reflected by formal Amendment to this Agreement.

4) The Sponsor shall comply with the Sponsor Assurances and abide by and enforce the General Provisions and Specific Provisions incorporated herein as Exhibits A, B and C respectively.

**Obligations**

1) The minimum funding participation from the Sponsor shall be ten per cent (10.0%) as determined by the State.

2) The maximum reimbursement available from the State to the Sponsor for this Agreement shall be fifty four thousand dollars ($54,000).

3) Except as otherwise provided herein, the State's obligation to provide funds hereunder expires upon completion of the efforts required herein or September 19, 2017, whichever is earlier.

4) The State may, after agreeing to provide said funds to the Sponsor, withdraw/terminate the grant if the Project has not been initiated as evidenced by a Notice to Proceed within 6 months of the date the grant was executed by the State or has not progressed as scheduled over a period of 12 months. If it becomes necessary to terminate a grant at any time, the State will reimburse expenses of the Sponsor, approved by the State, up to the time of notification of cancellation.

5) Sponsor acknowledges that in the event of a late payment or reimbursement by the State, the State shall have no obligation to pay a late payment fee or interest and shall not otherwise be penalized.

6) In the case where funds are no longer available or have been withdrawn or not appropriated, or the Project is no longer in the State's best interest, the State shall have the right of termination at its sole option. The State shall not reimburse any costs incurred after receipt of the notice of termination. The Governor pursuant to A.R.S. Section 38-511 hereby puts all parties on notice that this Agreement is subject to cancellation.

**Preliminary Work Provision**

Any preliminary work, for which costs for this Project were incurred after June 25, 2013 shall be considered eligible for reimbursement provided that said costs are directly related to the Project on which this Agreement is written. The State shall review related records and determine eligibility at its sole discretion.

## Part II

The Sponsor shall approve and attach to this agreement a resolution by its governing body that certifies as follows:

1) The Sponsor has the legal power and authority:

   a) to do all things necessary, in order to undertake and carry out the Project;

   b) to accept, receive and disburse grant funds from the State in aid of the Project.

2) The Sponsor now has on deposit, or is in a position to secure _____ dollars ($_____), or an equivalent amount represented by Sponsor's proposed labor and equipment costs, for use in defraying Sponsor's share of the costs of the Project. The present status of these funds is as follows:

   _____
   (Enter local funding type and location)

3) The Sponsor hereby designates _____, _____
   Name Title

   to receive payments representing the State's share of project costs.

   _____ _____
   Signature of Sponsor's Representative Title of Representative

4) The Sponsor has on file with ADOT the following vendor identification and address for project payments:

   Sponsor Vendor ID No. : **866000234 01**

   Sponsor Vendor Address: **City of Benson**
   **P.O. Box 2223**
   **Benson, AZ 85602**

Exhibits

The following Exhibits are incorporated herewith and form a part of this Agreement.

Exhibit A - Sponsor Assurances

Exhibit B - General Provisions

Exhibit C - Specific Provisions and Project Schedules

STATE:

State of Arizona
Department of Transportation
Multimodal Planning Division

By: _____

Title: Joseph S. Omer, Director

Date: _____

SPONSOR:

City of Benson
Benson Municipal Airport

By: _____

Title: _____

Date: _____

WITNESSED BY:

Signature: _____

Print Name: _____

Date: _____

WITNESSED BY:

Signature: _____

Print Name: _____

Date: _____

# EXHIBIT A

## Sponsor Assurances

Upon acceptance of the grant offer by the Sponsor, these assurances will become a part of this Agreement. The Sponsor hereby covenants and agrees with the State as follows:

**General**

1) That the Project is consistent with plans (existing at the time of approval of the Project) of political jurisdictions authorized by the State to plan for the development of the area surrounding the Airport and has given fair consideration to the interest of communities in or near where the Project is to be located. In making a decision to undertake any airport development Project under this Agreement the Sponsor insures that it has undertaken reasonable consultation with affected parties using the Airport at which the Project is proposed. All appropriate development standards of Federal Aviation Administration (FAA) Advisory Circulars, Orders, or Federal Regulations shall be complied with. All related state and federal laws shall be complied with.

2) That these covenants shall become effective upon execution of this Agreement for the Project or any portion thereof, made by the State and shall remain in full force and effect throughout the useful life of the facilities or the planning project's duration developed under the grant, but in any event, not less than twenty (20) years from the date of acceptance of the grant offer by the Sponsor.

3) The Sponsor certifies in this Agreement that it is a political subdivision of the State and is the public agency with control over a public-use Airport and/or on behalf of the possible future development of an Airport and is eligible to receive grant funds for the development or possible development of an Airport under its jurisdiction.

4) The Sponsor further agrees it holds good title, satisfactory to the State, to the landing area of the Airport or site thereof, or will give assurance satisfactory to the State that good title will be acquired.

5) That the Sponsor is the owner or lessee of the property or properties on which the Airport is located and that the lease guarantees that the Sponsor has full control of the use of the property for a period of not less than twenty (20) years from the date of this Agreement. All changes in airport ownership or to an airport lease shall be approved by the State.

6) The Sponsor agrees that it has sufficient funds available for that portion of the project costs which are not to be paid by the State (or the United States).

7) The Sponsor agrees to provide and maintain competent supervision to complete the Project in conformance with this Agreement.

8) Preserving Rights and Powers: The Sponsor agrees it shall not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions and assurances in this Agreement without written permission from the State, and shall act promptly to acquire, extinguish or modify any outstanding rights or claims of right by others which would interfere with such performance by the Sponsor. This will be done in a manner acceptable to the State. The Sponsor shall not sell, lease, encumber or otherwise transfer or dispose of any part of its title or other interests in the property shown on the airport property map included in the most recent FAA-approved Airport Layout Plan, or to that portion of the property upon which State funds have been expended, for the duration of the terms, conditions and assurances in this Agreement without approval by the State. If the transferee is found by the State to be eligible under Title 49, United States Code, to assume the obligations of this Agreement and to have the power, authority and financial resources to carry out such obligations, the Sponsor shall

insert in the contract or document transferring or disposing of Sponsor's interest and make binding upon the transferee all the terms, conditions and assurances contained in this Agreement.

9) Public Hearings: In Projects involving the location of an Airport, an airport runway or a major runway extension, the Sponsor has afforded the opportunity for public hearings for the purpose of considering the economic, social and environmental impacts of the Airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the State, submit a copy of such hearings to the State.

**Financial**

Pursuant to A.R.S. 35-326, the Sponsor may elect to utilize the Local Government Investment Pool ("LGIP") maintained by the state treasurer. The Sponsor shall request written approval from the State to use the LGIP. Thereafter, the State may deposit the funds authorized by the grant into the Sponsor's account. After approval of the reimbursements by the state, the funds shall be disbursed through the LGIP account to the Sponsor. The disbursements shall be made pursuant to the applicable laws and regulations.

The Sponsor shall establish and maintain for each Project governed by this Agreement, an adequate accounting record to allow State personnel to determine all funds received (including funds of the Sponsor and funds received from the United States or other sources) and to determine the eligibility of all incurred costs of the Project. The Sponsor shall segregate and group project costs into cost classifications as listed in the Specific Provisions of Exhibit C.

**Record Keeping**

The Sponsor shall maintain accurate records of all labor, equipment and materials used in this Project and that upon reasonable notice, shall make available to the State, or any of their authorized representatives, for the purpose of audit and examination all records, books, papers or documents of the recipient relating to work performed under this Agreement. For airport development Projects, make the Airport and all airport records and documents affecting the Airport, including deeds, leases, operation and use agreements, regulations and other instruments, available for inspection by any duly authorized agent of the State upon reasonable request.

**Airport Based Aircraft Reporting**

The Sponsor shall furnish to the State on a quarterly basis, a current detailed listing (including: Registration/N Number, Name, Address and Phone Number of Owner) of all based aircraft on the Airport in a form approved by the State.

**Airport Layout Plan**

1) The Sponsor shall maintain a current signed/approved Airport Layout Plan (ALP) of the Airport, which shows building areas and landing areas, indicating present and planned development and to furnish the State an updated ALP of the Airport as changes are made.

2) The Sponsor shall be required to prepare an ALP for update or revalidation in accordance with current FAA and State standard guidelines. The ALP will indicate any deviations from FAA design standards as outlined in current FAA Advisory Circulars, orders or regulations. A copy of the signed/approved ALP in electronic format shall be forwarded to the State after authentication by FAA or the State.

3) The Sponsor shall assure that there are no changes to the airport property boundaries, together with any off-site areas owned or controlled by the Sponsor which support the Airport or its operations as a part of this project.

4) If a change or alteration is made at the Airport which the State determines adversely affects the safety, utility or efficiency of the Airport, or any State funded property on or off Airport which is not in conformity with the ALP as approved by the State, the Sponsor will, if requested by the State, eliminate such adverse affect in a manner approved by the State.

**Immediate Vicinity Land Use Restriction**

The Sponsor shall restrict the use of land, adjacent to or in the immediate vicinity of the Airport, to activities and purposes compatible with normal airport operations and to take appropriate action including the adoption of appropriate zoning laws. In addition, if the Project is for noise compatibility or to protect the 14 CFR Part 77 imaginary surfaces of the Airport, the Sponsor will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the Airport, of the noise compatibility program measures or the imaginary surfaces of the Airport upon which State funds have been expended.

**Airport Operation**

1) The Sponsor shall promote safe airport operations by clearing and protecting the approaches to the Airport by removing, lowering, relocating, marking and/or lighting existing airport hazards and to prevent, to the extent possible, establishment or creation of future airport hazards. The Sponsor shall take appropriate action to assure such terminal airspace as is required to protect instrument and visual operations to the Airport (including established minimum flight altitudes) will be adequately cleared and protected by preventing the establishment or creation of future airport hazards. The Sponsor shall promptly notify airmen of any condition affecting aeronautical use of the Airport.

2) The Sponsor further agrees to operate the Airport for the use and benefit of the public and to keep the Airport open to all types, kinds and classes of aeronautical use without discrimination between such types, kinds and classes; provided that the Sponsor shall establish such fair, equal and nondiscriminatory conditions to be met by all users of the Airport as may be necessary for the safe and efficient operation of the Airport; and provided further, that the Sponsor may prohibit any given type, kind or class of aeronautical use of the Airport if such use would create unsafe conditions, interfere with normal operation of aircraft, or cause damage or lead to the deterioration of the runway or other airport facilities.

3) In any agreement, contract, lease or other arrangement under which a right or privilege at the Airport is granted to any person, firm or corporation to conduct or engage in any aeronautical activity for furnishing services to the public at the Airport, the Sponsor shall insert and enforce provisions requiring said person, firm or corporation:

   a) to furnish services on a reasonable and not unjustly discriminatory basis to all users thereof and charge reasonable and not unjustly discriminatory prices for each unit or service;

   b) and be allowed to make reasonable and nondiscriminatory discounts, rebates or similar types of price reductions to volume purchasers;

   c) each Fixed Based Operator (FBO) and Air Carrier at the Airport shall be subject to the same rates, fees, rentals and other charges as are uniformly applicable to all other FBOs and Air Carriers making the same or similar uses of the Airport and utilizing the same or similar facilities;

   d) each Air Carrier using such Airport shall have the right to service itself or to use any FBO that is authorized or permitted by the Airport to serve any Air Carrier at the Airport.

4) The Sponsor shall not exercise or grant any right or privilege which operates to prevent any person, firm or corporation operating aircraft on the Airport from performing any services on its own aircraft with its own employees (including but not limited to maintenance, repair and fueling) that it may choose to perform. In the event the Sponsor

itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by a commercial aeronautical operator authorized by the Sponsor under these provisions.

5) The Sponsor shall suitably operate and maintain the Airport and all facilities thereon or connected therewith which are necessary for airport purposes and to prohibit any activity thereon which would interfere with its use for aeronautical purposes and to operate essential facilities, including night lighting systems, when installed, in such manner as to assure their availability to all users of the Airport; provided that nothing contained herein shall be construed to require that the Airport be operated and maintained for aeronautical uses during temporary periods when snow, flood or other climatic conditions interfere substantially with such operation and maintenance.

6) The Sponsor shall not permit an exclusive right for the use of the Airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, providing services at an Airport by a single FBO shall not be construed as an "exclusive right" if:

   a) it would be unreasonably costly, burdensome or impractical for more than one FBO; and

   b) if allowing more than one FBO to provide such services would require a reduction of space leased pursuant to an existing agreement between a single FBO and the Airport.

Note: Aeronautical activities that are covered by this paragraph include, but are not limited to: charter flights, pilot training, aircraft rental, sightseeing, air carrier operations, aircraft sales and services, aerial photography, agricultural spraying, aerial advertising and surveying, sale of aviation petroleum products whether or not conducted in conjunction with any other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity.

7) The Sponsor shall terminate any exclusive right to conduct an aeronautical activity now existing at the Airport before any grant of assistance from the State. However, there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the Airport is used as an Airport. There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with State funds.

8) Airport Pavement Preservation Program: The Sponsor certifies that they have implemented an effective pavement preservation management program at the Airport in accordance with Public Law 103-305 and with the most current associated FAA policies and guidance for the replacement, reconstruction or maintenance of pavement at the Airport. The Sponsor assures that it shall use and follow this program for the useful life of the pavement constructed, reconstructed or repaired with financial assistance from the State and that it will provide such reports on pavement condition and pavement management programs as may be required by the State.

**Sponsor Transactions**

The Sponsor shall refrain from entering into any transaction which would deprive the Sponsor of any of the rights and powers necessary to perform any or all of the covenants made herein, unless by such transaction the obligation to perform all such covenants is assumed by another public agency eligible to assume such obligations and having the power, authority and financial resources to carry out such obligations; and, if an arrangement is made for management or operation of the Airport by an agency or person other than the Sponsor, the Sponsor shall reserve sufficient powers and authority to insure that the Airport will be operated and maintained in accordance with these covenants or insure that such an arrangement also requires compliance therewith.

**Airport Revenues**

The Sponsor shall maintain a fee and rental structure for the facilities and services at the Airport which will make the Airport as self-sustaining as possible under the circumstances existing at the particular Airport, taking into account such factors as the volume of traffic and economy of collection. All revenues generated by the Airport (and any local taxes established after Dec 30, 1987), will be expended by it for the capital or operating costs of the Airport; the local airport system; or the local facilities which are owned or operated by the owner or operator of the Airport and which are directly or substantially related to the actual air transportation of passengers or property, on or off the Airport.

**Disposal of Land**

1) For land purchased under a grant for airport development purposes (it is needed for aeronautical purposes, including runway protection zones, or serve as noise buffer land; and revenue from the interim use of the land contributed to the financial self-sufficiency of the Airport), the Sponsor shall apply to the State and FAA for permission to dispose of such land. If agreed to by the State and/or FAA, the Sponsor shall dispose of such land at fair market value and make available to the State and FAA an amount that is proportionate to the State and FAA's share of the cost of the land acquisition. That portion of the proceeds of such disposition, which is proportionate to the share of the cost of acquisition of such land, shall be (a) reinvested in another eligible airport development Project or Projects approved by the State and FAA or (b) be deposited to the Aviation Trust Fund if no eligible Project exists.

2) Disposition of such land shall be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with operation of the Airport.

# EXHIBIT B

## General Provisions

**Employment of Consultants**

The term consultant, as used herein, includes planners, architects and/or engineers. If a consultant is to be used for this Project, the Sponsor agrees to consider at least three (3) consultant firms. If the Sponsor has contracted with or will contract with a consultant on a retainer basis, the Sponsor assures to the State that prior to entering such a contract, at least three (3) consultants were or will be considered. The Sponsor shall submit to the State, for review and approval, a copy of the request for proposals and/or request for qualifications, and the proposed consultant contract prior to its execution and upon award of the contract, a fully executed copy. All requests for qualifications and requests for proposals shall be in accordance with A.R.S. 34, Chapters 1, 2 and 6, and shall include a list of projects and project locations to be awarded project contracts.

**Contracts**

1) The Sponsor as an independent entity and not as an agent of the State may obtain the services required in order to fulfill the work outlined in the Project Description as approved by the State for funding in the Airport Capital Improvement Program. All contracts awarded to accomplish the project work described in this Agreement shall state:

   a) The name of the consultant authorized to perform the work and to communicate on behalf of the Sponsor;

   b) The Sponsor must insure that contracts issued under this Agreement comply with the provisions of Arizona Executive Order 75-5 as amended by Arizona Executive Order 99-4, relating to equal opportunity;

   c) The terms for termination of the contract either for failure to perform or in the best interest of the Sponsor;

   d) The duly authorized representatives of the State shall have access to any books, documents, papers and records of the consultant and/or contractor which are in any way pertinent to the contract for a period of five years, in accordance with A.R.S. 35-214, for the purpose of making inspections, audits, examinations, excerpts and transcriptions.

2) All contracts shall stipulate and make clear:

   a) The responsibilities of the consultant to gain authorization for changes on the Project which may have an affect on the contract price, scope, or schedule;

   b) That all construction contractors and sub-contractors hired to perform services, shall be in compliance with A.R.S. 32, Chapter 10.

   c) That any materials, including reports, computer programs or files and other deliverables created under this Agreement are the sole property of the Sponsor. That these items shall be made available to the public. The Contractor/Consultant is not entitled to a patent or copyright on these materials and may not transfer the patent or copyright to anyone else.

   d) That any travel shall be reimbursable by the State only within the rules and costs in accordance with the State of Arizona Travel Policy.

**Conflict of Interest**

Each consultant submitting a proposal shall certify that it shall comply with, in all respects, the rules of professional conduct set forth in Arizona Administrative Code R4-30-301. In addition, a conflict of interest shall be cause for disqualifying a consultant from consideration; or terminating a contract if the conflict should occur after the contract is made. A potential conflict of interest includes, but is not limited to:

1) Accepting an assignment where duty to the client would conflict with the consultant's personal interest, or interest of another client.

2) Performing work for a client or having an interest which conflicts with this contract.

**Reports**

The Sponsor shall submit monthly status reports during planning, shall submit monthly status reports during design, and shall submit weekly reports during construction. All reports shall reflect, at a minimum, the progress accomplished in relation to the Grant and Project schedules and milestones, the reasons for any changes, and the recommended corrections of problems encountered. Upon completion of the Project, the Sponsor shall submit a letter to the State specifying that the Project has been completed to their satisfaction and that the consultant and the contractor have completed their contractual responsibilities.

**Changes**

**Any changes to the consultant contract, authorized by the Sponsor, that include additional funds, time and/or scope, shall be by amendment and shall be approved by the State prior to being made in order to be eligible for reimbursement.** Approval of a change by the State shall not obligate the State to provide reimbursement beyond the maximum funds obligated by this Agreement. Any increase to the amount of funds authorized hereunder, to the expiration date of this agreement, or to the scope of work included in this agreement must be by formal amendment, and signed by all parties.

Any changes to the contract documents, authorized by the Sponsor, must be approved by the State prior to any changes being made in order to be eligible for reimbursement.

**Audit**

Upon completion of the Project, the Sponsor agrees to have an audit performed. The audit examination may be a separate project audit or in accordance with the Single Audit Act of 1984 (Single Audit). If the Sponsor is required under law to have a Single Audit, this Project shall be considered for inclusion in the scope of examination.

The Sponsor shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of the grant, the total cost of the Project in connection with which the grant is given or used, and the amount or nature of that portion of the cost of the Project supplied by other sources, and such other financial records pertinent to the Project. The accounts and records will be kept in accordance with A.R.S. 35-214.

In any case in which an independent audit is made of the accounts of a Sponsor relating to the disposition of the proceeds of a grant relating to the Project in connection with which the grant was given or used, it shall file a certified copied of such audit with the State not later than six (6) months following the close of the fiscal year in which the audit was made.

The Sponsor shall make available to the State or any of their other duly authorized representatives, for the purpose of audit and examination, any books, documents, papers and records of the recipient that are pertinent to the grant. The

Sponsor further agrees to provide the State a certified copy of the audit report. The State is to determine the acceptability of this audit.

**Suspension**

If the Sponsor fails to comply with any conditions of this Agreement, the State, by written notice to the Sponsor, may suspend participation and withhold payments until appropriate corrective action has been taken by the Sponsor. Costs incurred during a period of suspension may not be eligible for reimbursement by the State.

**Failure to Perform**

If the Sponsor fails to comply with the conditions of this Agreement the State, may by written notice to the Sponsor, terminate this Agreement in whole or in part. The notice of termination will contain the reasons for termination, the effective date, and the eligibility of costs incurred prior to termination. The State shall not reimburse any costs incurred after the date of termination.

**Termination for Convenience**

When the continuation of the Project will not produce beneficial results commensurate with the further expenditure of funds or when funds are not appropriated or are withdrawn for use hereunder, the State may terminate this Agreement. In the case where continuation of the Project will not produce beneficial results, the State and the Sponsor shall mutually agree upon the termination either in whole or in part. In the case where funds are no longer available or have been withdrawn or not appropriated, or the Project is no longer in the State's best interest, the State shall have the right of termination as its sole option. The State shall not reimburse any costs incurred after receipt of the notice of termination. The Governor pursuant to A.R.S. Section 38-511 hereby puts all parties on notice that this Agreement is subject to cancellation.

**Waiver by State**

No waiver of any condition, requirement or right expressed in this Agreement shall be implied by any forbearance of the State to declare a default, failure to perform or to take any other action on account of any violation that continues or repeats.

**Compliance with Laws**

The Sponsor shall comply with all Federal, State and Local laws, rules, regulations, ordinances, policies, advisory circulars, and decrees that are applicable to the performance hereunder.

**Arbitration**

In the event of a dispute, the parties agree to use arbitration to the extent required by A.R.S. Section 12-1518.

**Jurisdiction**

Any litigation between the Sponsor and the State shall be commenced and prosecuted in an appropriate State court of competent jurisdiction within Maricopa County, State of Arizona.

**Excess of Payments**

If it is found that the total payments to the Sponsor exceed the State's share of allowable project costs, the Sponsor shall promptly return the excess to the State. Final determination of the State's share of allowable costs shall rest solely with

the State. Any reimbursement to the Sponsor by the State not in accordance with this Agreement or unsubstantiated by project records will be considered ineligible for reimbursement and shall be returned promptly to the State.

**State Inspectors**

At any time and/or prior to final payment of funds for work performed under this Agreement, the State may perform an inspection of the work performed to assure compliance with the terms herein and to review the workmanship of the Sponsor's contractors and/or consultants. No inspector is authorized to change any provisions of this Agreement or any provisions of Agreements between the Sponsor and the Sponsor's contractor and/or consultant.

**Indemnification**

The State of Arizona, acting by and through the Arizona Department of Transportation, does not assume any liability to third persons nor will the Sponsor be reimbursed for the Sponsor's liability to third persons resulting from the performance of this Agreement or any subcontract hereunder.

The Sponsor shall indemnify and hold harmless the State, any of their departments, agencies, officers and employees from any and all liability, loss or damage the State may suffer as a result of claims, demands, costs or judgments of any character arising out of the performance or non-performance of the Sponsor or its independent contractors in carrying out any provisions of this Agreement. In the event of any action, this indemnification shall include, but not be limited to, court costs, expenses of litigation and reasonable attorney's fees.

**Required Provisions Deemed Inserted**

Each and every provision of law and clause required by law to be inserted in this Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, this Agreement shall forthwith be physically amended to make such insertion or correction.

**Property of the Sponsor and State**

Any materials, including reports, computer programs or files and other deliverables created under this Agreement are the sole property of the Sponsor. The Contractor/Consultant is not entitled to a patent or copyright on these materials and may not transfer the patent or copyright to anyone else. The Sponsor shall give the State unrestricted authority to publish, disclose, distribute and otherwise use at no cost to the State any of the material prepared in connection with this grant. At the completion of the project, the Sponsor shall provide the State with an electronic copy, in a format useable by the State, and one hard copy in a format useable by the State, of final plans, specifications, reports, planning documents, and/or other published materials as produced as a result of this project.

# EXHIBIT C

## Specific Provisions and Project Schedules

## Provisions for Design/Construction

**Financial Cost Categories**

The Sponsor shall segregate and group project costs in categories as follows:

1) "Design/Engineering Services" (as applicable), including topographic surveys/mapping, geometric design, plans preparation, geotechnical and pavement design, specifications, contract documents.

2) "Construction" (must be accounted for in accordance with approved work items as presented in the bid tabulation).

3) "Construction Engineering" (as applicable), including contract administration, inspection/field engineering, materials testing, construction staking/as-built plans and other.

4) "Sponsor Administration" directly associated with this Project (not to exceed 5% of project costs).

5) "Sponsor Force Account" contribution (if applicable).

6) "Contingencies" (not to exceed 5% of construction costs).

7) "Other" with prior approval of the State.

**Design Review – Plans, Specifications and Estimates**

Plans, specifications and estimates shall be accomplished by, or under the direct supervision of a qualified engineer registered by the State of Arizona. The Sponsor shall conduct a Concept Design Review meeting with the State and Sponsor's consultant at approximately the thirty percent (30%) completion point in the design of the Project, and a Final Design Review at one hundred percent (100%) plan completion.

These mandatory reviews shall be completed before the Sponsor will be permitted to proceed with the Project. The State shall issue an approval to proceed with final design upon satisfactory completion of the 30% review. The State shall issue an approval of the 100% plans, specifications and estimates upon satisfactory completion of the 100% review. Upon State approval, the Sponsor may proceed to advertising if construction is included in the scope of the Project, or must close the Project and submit a final grant reimbursement request if the grant is for design only.

Any modification to the approved plans, specifications and estimates authorized by the Sponsor shall also be subject to approval of the State. **Changes made to approved plans, specifications, and estimates at any time must be authorized by the State prior to executing the changes in order to be eligible for reimbursement by the State.**

The National Environmental Policy Act (NEPA) documentation must be complete and approved by the State and/or FAA prior to construction. The Sponsor shall submit a copy of the documentation to the State.

**FAA Notice of Proposed Construction**

The Sponsor agrees to submit an FAA Form 7460-1, Notice of Proposed Construction or Alteration before construction, installation or alteration of any Project under this Agreement that falls under the requirements of Subpart B to Part 77, Objects Affecting Navigable Airspace.

**Bidding - Alternate Bidding Methods**

Design, Bid, Build is the standard and preferred method for project delivery for State airport development grant projects. Alternative contracting methods (Design Build, Construction Manager at Risk, Task Order Contract) may be used in accordance with A.R.S. Title 34, Chapters 1, 2 and 6. **Use of an alternative contracting method shall be reviewed and approved by the State prior to the Sponsor executing a contract for the work.** If a project is approved for an alternative contracting method, the Sponsor must comply with all Federal, State, and Local policies, regulations, rules, and laws, as well as all requirements of this grant agreement within that method.

**Based on Bids**

If a Sponsor has requested a match to a Federal construction grant that was based on bids (the project was already advertised by the Sponsor with no existing State airport development grant for the design work), then all design coordination with the State required by this agreement must have been met during the design process for any prior design work to be considered eligible for reimbursement by the State. The State shall review any documentation and work done prior to bidding and, at its sole discretion, determine the eligibility of the work. Only work items necessary to complete the Project as stated in Exhibit C, Schedule One, Project Description, may be considered eligible.

**Contractor Allowance**

This item may only be used to cover costs of unknown, unforeseen circumstances within the scope of the grant that are necessary for Project completion. (For example: if unknown underground utilities must be removed or relocated to accomplish the Project) **This item must have prior approval of the State for each use of the item during construction in order to be eligible for reimbursement by the State.** The bid item shall be clearly defined in the contract documents with concise language describing when it may be utilized. It shall also be specified that the item may not be used at all. The allowance may only be used for unforeseen items directly related to the Project.

**Contingencies**

Contingencies are to be used as an estimating tool during the preliminary phases of Project development. They are intended to allow room in the grant funding level for reasonable price increases or approved added items during design. Contingencies are not eligible for reimbursement by the State as bid items in a construction contract.

**Itemized Allowance**

Use of an itemized allowance items may only be included in a contract with prior approval of the State. Any use of an itemized allowance bid item as part of a grant must be for a clearly defined portion of the project. (For example: cabinet allowance – cabinets in terminal storage room as shown on plans to be selected by Sponsor, or carpet allowance – industrial Berber carpet for 200 SF lobby to be selected by Sponsor) Each contract allowance item must be approved by the State in order to be included in the bid package. The State will not approve use of an item to cover expenses not directly related to the item. (For example: Left over funds from cabinet allowance cannot be used to purchase light fixtures)

**Construction Inspection**

Airport planning, design, project estimates, bidding, and construction inspection are the direct responsibility of the Sponsor and may be accomplished by the Sponsor's staff or by a qualified consultant. The Sponsor shall provide and maintain competent technical supervision throughout the Project to assure that the work conforms to the plans, specifications and schedules approved by the State and the Sponsor.

Construction inspection shall be accomplished by, or under the direct supervision of a qualified engineer registered by the State of Arizona.

The Sponsor shall subject the construction work and any related documentation on any Project contained in an approved Project application to inspection and approval by the State and the FAA. The State shall, if in accordance with regulations and procedures, prescribe such work as needed for the Project.

**Change Orders**

The Sponsor shall notify the State in advance of the need for a change. Such notification shall clearly define the changed or added bid items, the locations of changed work, the quantities and costs of changed work, and the time required for the change. Justification for the change must be provided to the State by the Sponsor. Change orders may be approved by the State only if they are clearly necessary to accomplish the original grant scope. If approval is granted by the State, the Sponsor shall follow up with the written change order for the State's review and approval in a timely manner. The Sponsor may not request reimbursement for the work done under a change order until the change order is approved by the State.

**Construction Contract Documents**

**Any changes to the construction contract documents (including scope, time and amount), authorized by the Sponsor, must be approved by the State prior to being implemented by the Sponsor in order to be eligible for reimbursement under the grant.** All changes, as well as any notifications and approvals related to the changes, shall be documented in the final contract documents, change orders, and as built plans provided to the State at the end of the contract. Verbal requests and approvals are not sufficient as documentation for reimbursement. Final reimbursements will not be made until all documentation is received by the State.

## Design/Construction Project Schedules

The Schedule Forms are intended to identify and monitor project scope, costs, and basic milestones that will be encountered during various phases of the Project. The Sponsor shall complete these three schedules showing the project description and total costs, project reimbursements (cash flow) schedule and project milestones.

Schedule One shows the total Project estimated costs associated with each share - State and Federal and Local. Schedule Two shows a projected cash flow for State funds only. The Sponsor is to estimate requests to the State for Project reimbursement. Schedule Three shows anticipated dates of Project milestones. These schedules will be used to keep track of the Project's progress. Be sure to develop realistic schedules.

As the project progresses, and the original reimbursement schedule and or milestone dates change, the Sponsor must submit a revised Schedule to the State for approval.

### Schedule One
### Design/Construction Project Description and Funding Allocation

**Detailed Project Description:**

**Upgrade REILS**

| **Project Cost Category** | **Total Estimated Project Cost** | **Estimated Local Share** | **Estimated Federal Share** | **Estimated State Share*** |
|---|---|---|---|---|
| Design/Engineering Services | $ | $ | $ | $ |
| Construction | $ | $ | $ | $ |
| Construction Engineering | $ | $ | $ | $ |
| Sponsor Administration** | $ | $ | $ | $ |
| Sponsor Force Account Work*** | $ | $ | $ | $ |
| Contingencies | $ | $ | $ | $ |
| **Total Project Costs** | $ | $ | $ | $ |

*Total of this column to be used in Schedule Two.
** Sponsor Administration is not eligible for reimbursement above 5% of the project costs.
*** All force account work is to be approved by the State prior to the grant agreement being signed.

**NOTE: The Sponsor must attach a project plan based upon the ALP that clearly shows the scope and the limits of the work.**

## Schedule Two
## Design/Construction Project Reimbursement Schedule

The Sponsor must complete this Project Reimbursement Schedule showing the projected cash flow of State grant funds only for this Project. Projections must include all consultant and contractor services. The reimbursement schedule should be a realistic schedule and will be used to keep track of a project's progress. Reimbursement requests must be submitted regularly by the Sponsor while the grant is active. The cash flow should reflect when a request is submitted to the State, not when invoices are paid by the Sponsor.

**Instructions:**

1) For "Total State Funds" below, enter the Total Project Costs/Estimated State Share from Schedule One.

2) For each month/year, indicate the projected reimbursement request amount for **State Funds Only** (use whole dollars only, e.g. $540 or $1,300).

3) Continue the process by entering a Zero (Ø) in the month/year for which no reimbursement is anticipated and/or a dollar amount of the reimbursement, until the total State funds are accounted for in the cash flow.

**Total State Funds: $ 54,000**

**Projected Reimbursement Requests / State Cash Flow**

| ***Calendar Year*** | Jan | Feb | Mar | Apr | May | Jun |
|---|---|---|---|---|---|---|
| 2013 | $ | $ | $ | $ | $ | $ |
| 2014 | $ | $ | $ | $ | $ | $ |
| 2015 | $ | $ | $ | $ | $ | $ |
| 2016 | $ | $ | $ | $ | $ | $ |
| 2017 | $ | $ | $ | $ | $ | $ |
| ***Calendar Year*** | Jul | Aug | Sep | Oct | Nov | Dec |
| 2013 | $ | $ | $ | $ | $ | $ |
| 2014 | $ | $ | $ | $ | $ | $ |
| 2015 | $ | $ | $ | $ | $ | $ |
| 2016 | $ | $ | $ | $ | $ | $ |
| 2017 | $ | $ | $ | $ | $ | $ |

**Grants expire 4 years from the date of the grant offer. The Sponsor shall schedule the work to be completed within the 4 years.**

# Schedule Three
# Design/Construction Project Milestones

## Milestone Duration Guidelines

The below duration periods are intended to provide guidelines for you to consider. These are average time periods (in calendar days), but it is understood these periods may vary by Sponsor and Project, and are subject to modification. If an entry on the form is not applicable, write N/A.

1) The Consultant Selection Phase for all Projects, regardless of type, is approximately ninety (90) days but should not exceed one hundred eighty (180) days.
2) The Design/Engineering Phase is subject to the type and complexity of the Project, however, most designs can be accomplished within one hundred eighty (180) days to two hundred and seventy (270) days.
3) The Bidding Phase typically should be sixty (60) days or less.
4) The Construction Phase is dependent upon the type of Project, the airport traffic, and the available construction season, generally ninety (90) days to three hundred sixty (360) days.
5) The State review periods should be fifteen (15) days.

**Design/Construction Milestone Schedule**

| Milestones | Duration | Start Date | | Completion Date | |
|---|---|---|---|---|---|
| | # of Days | Proposed | Actual | Proposed | Actual |
| | | | | | |
| Submit Scope for State Review/Approval* | | | | | |
| Submit Contract for State Review/Approval | | | | | |
| Award Consultant Contract | | | | | |
| | | | | | |
| Sponsor Issue Notice to Proceed/Start Design | | | | | |
| Conduct 30% Design Review/Approval | | | | | |
| Conduct Final Design Review/Bid Set Submitted (100%) for Review/Approval | | | | | |
| | | | | | |
| Bid Set Submitted (100%) for Review/Approval | | | | | |
| Issue Invitation for Bids | | | | | |
| Submit Bid Tab for State Review/Approval | | | | | |
| Award Construction Contract/Submit to the State | | | | | |
| | | | | | |
| Pre-Construction Meeting | | | | | |
| Issue NTP – Begin Construction | | | | | |
| Final Inspection | | | | | |
| Submit As-Builts & Final Documentation | | | | | |
| Submit Final Reimbursement Request and Sponsor Closeout Letter | | | | | |

* The solicitation for qualifications and the service agreements must contain a list of projects, including this grant project, per A.R.S. 34-Chapter 6.