

**MEMORANDUM OF UNDERSTANDING BETWEEN**  
**THE UNITED STATES FEDERAL AVIATION ADMINISTRATION**  
**AND THE**  
**TOWN OF PAHRUMP, NYE COUNTY, NEVADA**

**I. INTRODUCTION AND PURPOSE**

A. This Memorandum of Understanding (MOU) provides a framework in which the United States Department of Transportation, Federal Aviation Administration (FAA), will prepare a National Environmental Policy Act (NEPA), Environmental Impact Statement (EIS) for proposed development of a new general aviation airport serving the Town of Pahrump, Nye County, Nevada, and the surrounding area. The Town of Pahrump (Sponsor) is an unincorporated town governed by the Pahrump Town Board, in accordance with Nevada Revised Statute 269.016. The Pahrump Town Board has adopted the Pahrump Valley Airport Master Plan dated July 2008 (Airport Master Plan) and proposes the following actions to develop a new general aviation airport to serve the Town of Pahrump and the surrounding area including:

- Acquisition by conveyance or lease of approximately 650 acres federal land currently administered by the Bureau of Land Management (BLM) to construct a new general aviation airport.
- Construction of a new, public-use general aviation airport within the approximately 650 acre site.
- Acquisition of rights-of-way for access roads and utilities to serve the proposed airport.

- Construction of access road and utilities to serve the proposed airport.

The FAA's federal actions regarding the Sponsor's proposed airport project may include one or more of the following:

- Conditional, unconditional, or mixed approval of a location for a new, public use airport.
- FAA recommendation regarding Bureau of Land Management (BLM) approval of a lease of federal land for use as a public airport in accordance with 43 United State Code (U.S.C.) 1441 et seq. and BLM Regulation 43 C.F.R. 2911
- Conditional, unconditional, or mixed approval of an airport sponsor's request in accordance with 49 U.S.C. 47125 and BLM Regulation 43 C.F.R. 2640, to use or transfer Federally-owned land to carry out an action under 49 U.S.C. Chapter 471, Subchapter I, at a public-use airport or to support the airport's operation.
- Conditional, unconditional, or mixed approval of a first-time or changed airport layout plan (ALP)
- Conditional, unconditional, or mixed approval of Federal funding for airport planning and development projects, including separate funding of plans and specifications for those projects.

The EIS would evaluate the environmental impacts of the Sponsor's proposed airport development project, as well as consider reasonable and practicable alternative projects that meet the purpose and need for the proposed project as required by NEPA.

Subject to completion of the EIS, the FAA will determine whether to approve one or more of the FAA actions listed above and will set forth its determinations in a Record of Decision (ROD).

In addition to the FAA's determinations, the Town and the FAA recognize that the BLM has independent authority to determine whether to approve one or more of the Federal actions listed below:

- Conditional, unconditional, or mixed approval of an airport sponsor's request under the 49 U.S.C. 47125 and BLM Regulation 43 C.F.R. 2640, to use or transfer Federally-owned land administered by the BLM to carry out an action under 49 U.S.C. Chapter 471, Subchapter I, at a public-use airport or to support the airport's operation.
- BLM approval for a lease of federal land for use as a public airport in accordance with 43 U.S.C. 1441 et seq. and BLM Regulation 43 C.F.R. 2911.
- BLM issuance of rights-of-way agreements for access roads and utilities across BLM-administered federal lands to serve the proposed airport.

The FAA and the Sponsor anticipate that BLM will participate in the preparation of the EIS as a cooperating agency pursuant to 40 C.F.R. 1501.6.

B. As the lead federal agency, the FAA will independently select a contractor to prepare the EIS. The Sponsor shall be the party responsible for engaging and retaining a contractor with funds provided by the Sponsor.

C. The EIS and any related documents shall comply with the provisions of NEPA and appropriate Council on Environmental Quality (CEQ), United States Department of Transportation (DOT), and FAA environmental regulations and guidance, as well as all applicable laws, as appropriate.

D. It is the purpose of this MOU to establish an understanding between the Sponsor and the FAA regarding the responsibilities of the parties and the conditions and procedures to be followed in the development and preparation of the EIS.

E. The parties hereto intend that development and preparation of the EIS as provided in this MOU will satisfy the pertinent environmental requirements of the FAA.

## **II. GENERAL PROVISIONS**

A. As the lead agency, the FAA will be responsible for assuring compliance with all the requirements of NEPA (42 U.S.C. 4321 et seq.), CEQ Regulations (40 C.F.R. Parts 1500- 1508), and appropriate DOT and FAA environmental orders. The FAA shall assure that all pertinent

environmental issues and impacts, and reasonable alternatives and their impacts are treated in the EIS, and shall be responsible for the scope and content of the EIS.

B. The Sponsor will engage and retain a Contractor, selected by the FAA, for the preparation of the EIS. The Contractor, with the approval of the FAA and Sponsor, may employ such other contractors and experts (collectively referred to as "Subcontractors"), as are required for the adequate development and preparation of the EIS.

C. The Contractor will provide, through its staff or by Subcontractor, the expertise, staffing, and technical capabilities required for the preparation of the EIS. The FAA will direct the scope of the EIS and will independently evaluate all information, environmental data and analyses submitted by the Contractor, or others, and revise or cause additional study and analyses to be performed as necessary.

D. The contracts between the Sponsor and Contractor and between the Contractor and Subcontractors (collectively the "Contract") shall be consistent with the provisions of this MOU and shall specifically incorporate those provisions herein which address the conduct of the Contractor. The Contract shall provide, and the Sponsor hereby represents, consistent with FAA Order 1050.1E, Paragraph 204d, and FAA Order 5050.4B, Paragraph 1003.d., that the Contractor and any Subcontractors has not entered into and, during the lifetime of the EIS preparation, will not enter into any agreement affording the Contractor and any Subcontractors with any direct or indirect financial interest in the planning, design, construction or operation of the Project except with regard to the preparation of the EIS. Further, the Sponsor shall ensure that the Contract shall specifically limit any remedies available to the Contractor and any Subcontractors, so as to affirmatively relieve the United States of America, the FAA, and any officer, agent or employee of same, from any liability arising out of the performance or termination of the contract for preparation of the EIS, or out of this MOU.

1. Prior to beginning work on the EIS, the Contractor and any Subcontractors shall sign a "Disclosure Statement" provided by the FAA per the requirements of FAA Order 5050.4B

and 40 C.F.R. 1506.6(c), specifying they have no financial or other interest in the outcome of the project.

2. The FAA shall evaluate the Disclosure Statement prior to its approval.

E. The Sponsor shall facilitate the coordination of effort and the exchange of information related to the planning, design, and construction of the Project, as these activities relate to the preparation of the EIS among and between the Contractor and its Subcontractors and the FAA. The Sponsor shall make all reasonable efforts to assure the satisfactory and timely performance of the duties of the Contractor as specified in this MOU.

F. The Sponsor and FAA shall:

1. Appoint such representatives as necessary to accomplish the coordination necessary for the satisfactory preparation of the EIS. Notice to any such representative shall constitute notice to that party.
2. Review substantive phases of preparation of the EIS as each deems necessary.
3. Have their respective representatives attend meetings with other Federal, state, regional, and local agencies for the purpose of increasing communications and receiving comments, as the same may be necessary, desirable, or required by law in preparation of the EIS.

G. All costs incurred in connection with the employment of the Contractor and any and all Subcontractors, or other persons retained or employed by the Sponsor, shall be the sole responsibility of the Sponsor and the Sponsor agrees to hold harmless and indemnify the FAA, its officers, agents, and employees, with respect to any and all judgments or settlements arising from claims, demands, causes of action, and the like, in connection with the Sponsor's employment of the Contractor and any and all Subcontractors which may arise from the termination or performance of the Contract or any other services, or purchase of materials utilized for the development and preparation of the EIS, or from termination of this MOU. This indemnification by the Sponsor does not extend to administrative or legal costs of the FAA, including suits by third parties (other than the Contractor or its Subcontractors) against the FAA, involving the legality or

adequacy of the FAA's compliance with NEPA and other laws and regulations, to the extent of the FAA's liabilities on those issues. The Sponsor shall cooperate and shall ensure that the Contractor cooperates in defense of any such suit.

### **III. PROCEDURES**

- A. Under the direction of the FAA, the Contractor shall develop and submit a Plan of Study to the FAA for approval. The Plan of Study shall include detailed descriptions of all work to be performed, the methodologies proposed to perform the work, the name and qualifications of the person performing each aspect of the work, estimated man-hours required for completion of each aspect, the schedule for performing each aspect and a description of the internal and external review procedures to assure quality control. Also, the Plan of Study shall include a provision for a thorough literature search and bibliography of references and methodologies to be used in the acquisition of the environmental data and analyses and the development and preparation of the EIS.
- B. The FAA will forward the Plan of Study to the Sponsor for review and comment. FAA will consider the Sponsor's comments as well as any comment received during the public scoping period for the Environmental Assessment in March and April 2009 when finalizing and approving the Plan of Study. The Plan of Study and this MOU shall establish the scope of work required of the Contractor in the development and preparation of the EIS.
- C. The Plan of Study may be amended by the FAA from time to time as the work of the Contractor or its Subcontractors proceeds, but any amendments or changes which require the expenditure of additional funds by the Sponsor must be agreed to by the Sponsor. The Sponsor will be notified and consulted prior to any significant amendments or modifications to the Plan of Study.
- D. Unless otherwise directed by the FAA, any and all work performed by the Contractor and its Subcontractors in preparation of the EIS shall be submitted directly to the FAA, and upon request of the FAA, to the Sponsor. The Sponsor may communicate with the Contractor and its Subcontractors during the development of the EIS, but no prior review or discussion of data or

analyses developed by the Contractor or Subcontractor as related to the EIS shall be afforded the Sponsor. In no case will the Sponsor discuss, review, modify, or edit the Contractor's work or the work of its Subcontractors prior to submission to the FAA, or be provided the opportunity to do so. All suggestions for modifications or changes to such sections recommended by the Sponsor shall only be made to the FAA.

- E. The FAA reserves the right to review periodically and modify the work of the Contractor to ensure that requirements under NEPA and other applicable laws and regulations are satisfied. The Contractor shall submit monthly written reports on the progress of its work to the FAA, with a concurrent copy to the sponsor. This report shall describe the present status of each aspect of the work, any problems encountered, and recommendations for modifications to the Plan of Study and any changes in personnel, methodology or schedules for completion.
- F. As each portion of any draft or final document is completed, the FAA shall review each portion and those tasks completed thereunder and, after consultation with the Sponsor, shall approve, modify, comment thereon and/or direct further work with regard to such portion or tasks as necessary. Said directions and/or comments shall be made by the FAA in a timely manner, and the Contractor shall ensure incorporation of such comments into any editorial changes to the satisfaction of the FAA. Final drafts of any documents will require FAA approval. Prior to approval, the FAA will forward final drafts to the Sponsor for review and comment. Comments from the Sponsor shall be sent to the FAA. The Contractor will only make modifications as the FAA directs regarding these comments.
- G. If requested, the Contractor will provide the FAA access to and review of all procedures and underlying data used by the Contractor in developing submitted sections of the EIS, including, but not limited to, field reports, Subcontractor reports, and interviews with concerned private and public parties, whether or not such information may be contained in a draft or final EIS. The Sponsor will also have access to such procedures and underlying data. Such access by the FAA and Sponsor shall be governed by paragraph III.T hereunder.

- H. To facilitate the development and preparation of the EIS, joint meetings among the FAA, Sponsor, and Contractor may be held. However, the FAA reserves the right to work directly with the Contractor for purposes of assuring objectivity in preparing reports and/or for assuring expeditious communications. The Contractor will notify the FAA and Sponsor of any substantive meetings that are scheduled and of their purpose and will provide an opportunity for the parties to attend if desired. No meeting will be held between the Contractor or Sponsor without prior notification to and approval of the FAA. A summary of all matters relating to EIS discussions in any meetings or communications between the Contractor and a party hereto without the participation of the other said party will be included in each formal monthly report submitted by the Contractor to the FAA and Sponsor. The FAA reserves the right to consult directly with other Federal, state, and local officials and agencies during the preparation of the EIS to assure compliance with NEPA and other applicable laws and regulations.
- I. The Sponsor shall assure the full cooperation of the Contractor and its Subcontractors with respect to participating in any public workshops, hearings, or meetings as required by the FAA to foster public familiarity and participation with respect to the assessment of impacts related to the Project.
- J. The Contractor shall be responsible for the costs associated with the printing and publication of the draft and final copies of the EIS. The Contractor shall be responsible for all costs associated with the publication of notices announcing public workshops, meetings, hearings, and the like. The Contractor shall also be responsible for costs of stenographic and clerical services, preparation of graphics and visual aids associated with any public workshops, meetings, and hearings.
- K. At such time as the FAA, after consultation with the Sponsor, has approved the Draft EIS developed and prepared by the Contractor and its Subcontractors, the Contractor shall print the contracted quantity of Draft EIS and submit same to the FAA. The FAA shall submit an appropriate number of copies of the Draft EIS to the Sponsor. The FAA shall proceed expeditiously to comply with the provisions of NEPA.

- L. In all instances involving questions as to the content or relevance of the environmental data and analyses, and evaluations and wording prepared by the Contractor, the FAA, with appropriate advice and consultation where deemed necessary by the FAA, will make the final determination on the inclusion, deletion or modification of the same in the Draft or Final EIS.
- M. Upon completion of the Draft EIS, the FAA, with the Contractor's assistance, shall be responsible for organizing and conducting any public hearings.
- N. The FAA will receive all comments during the Draft EIS review and comment period. This period (at least 45 days) will be initiated when the Environmental Protection Agency (EPA) publishes the "Draft EIS Notice of Availability" in the Federal Register.
- O. At the close of the Draft EIS review and comment period, the FAA shall identify the issues and comments submitted which will require response in the Final EIS. The FAA will direct those comments to the Contractor for preparation of proposed responses, and shall furnish the Sponsor with copies of all comments received. The Contractor will furnish proposed responses to the FAA and Sponsor for review and comment. The FAA, with appropriate advice and consultation, shall modify the proposed responses as it deems necessary.
- P. After receipt of comments and preparation of responses, the FAA, after appropriate advice and consultation, may direct the Contractor to make changes to the text of the Draft EIS as necessary.
- Q. At such time as the FAA has approved the Final EIS, the Contractor shall print the contracted quantity of Final EIS. The FAA shall submit an appropriate number of copies of the Final EIS to the Sponsor. The FAA shall proceed expeditiously to comply with the provisions of NEPA.
- R. The FAA will receive all comments on the Final EIS during the mandatory "hold period" per 40 C.F.R. 1506.10(b)(2). This period (at least 30 days) will be initiated when the EPA publishes the "Final EIS Notice of Availability" in the Federal Register.
- S. The FAA, with assistance from the Contractor, will prepare and issue the FAA Record of Decision.

T. The FAA will maintain the confidentiality of, and will not release or allow access to, any information, documents or materials which in its opinion are validly designated as confidential by the Sponsor or Contractor and which contain trade secrets, proprietary data, or commercial or financial information. Information developed under this MOU is disclosable to the public to the extent required by law. In any instance where the FAA proposes to release to the public or allow access to any information, documents or materials which the Sponsor or Contractor has designated as confidential, it shall notify the Sponsor or Contractor of its intention to do so and provide the Sponsor or Contractor the opportunity to appeal the decision in accordance with applicable regulations on such release or access prior to any such release or access.

#### **IV. CESSATION AND TERMINATION**

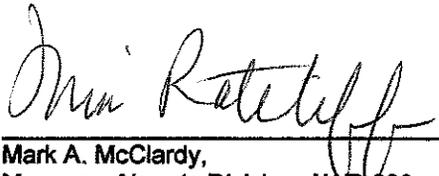
- A. Any of the parties to this MOU may withdraw from the terms of this MOU for good cause upon 30 days written notice to the other party. During this period, the parties will actively attempt to resolve any disagreement.
- B. In the event of a termination of this MOU, and if the preparation of an EIS by the FAA is still required, it is agreed as follows:
1. The FAA shall have access to all documentation, reports, analyses and data by the Contractor and Subcontractors with confidentiality governed by paragraph III.T.
  2. The FAA shall assume the responsibility for preparing the EIS. The Sponsor shall no longer be responsible for the payment of costs associated with preparation of the EIS under the terminated MOU, apart from costs already incurred under the Sponsor's contract with the Contractor.
  3. Liability for termination shall be in accordance with paragraph II.G. hereof.
- C. In entering into this MOU, the FAA and the Sponsor recognize that it is impracticable to make provisions for every contingency, which may arise during the life of the MOU. The FAA and the Sponsor concur in the principle that their relationship within the framework of the MOU shall be

characterized by fairness and shall be managed without detriment to the interest of either the FAA or the Sponsor. If, during the term of this MOU, either party has reason to believe that this principle has been or will be compromised, the parties promptly shall consult with each other in a good faith endeavor to agree upon such action(s) as may be necessary to eliminate the cause or causes therefore.

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

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

**United States Federal Aviation Administration**

*for*   
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Mark A. McClardy,  
Manager, Airports Division, AWP-600

3/15/10  
[DATE]

**Town of Pahrump, Nevada**

  
\_\_\_\_\_  
[SPONSOR SIGNATORY AND TITLE]  
Nicole Shupp  
Town of Pahrump Board Chairman

26 Jan 2010  
[DATE]