

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

GRANT AGREEMENT

Part 1-Offer

Date of Offer **SEP 26 1977**

Boulder Municipal

Airport

Project No. 5-08-0004-01

Contract No. DOT-FA77RM-0060

TO: City of Boulder, Colorado
(herein referred to as the "Sponsor")

FROM: The United States of America (acting through the Federal Aviation Administration, herein referred to as the "FAA")

WHEREAS, the Sponsor has submitted to the FAA a Project Application dated September 16, 1977, for a grant of Federal funds for a project for development of the Boulder Municipal Airport (herein called "Airport"), together with plans and specifications for such project, which Project Application, approved by the FAA is hereby incorporated herein and made a part hereof; and

WHEREAS, the FAA has approved a project for development of the Airport (herein called the "Project") consisting of the following-described airport development:

Acquire land for approach protection, Parcel 1, (approximately 8.45 acres).

all as more particularly described in the property map and plans and specifications incorporated in said Project Application;

NOW THEREFORE, pursuant to and for the purpose of carrying out the provisions of the Airport and Airway Development Act of 1970, as amended (49 U.S.C. 1701), and in consideration of (a) the Sponsor's adoption and ratification of the representations and assurances contained in said Project Application, and its acceptance of this Offer as hereinafter provided, and (b) the benefits to accrue to the United States and the public from the accomplishment of the Project and the operation and maintenance of the Airport as herein provided, THE FEDERAL AVIATION ADMINISTRATION, FOR AND ON BEHALF OF THE UNITED STATES, HEREBY OFFERS AND AGREES to pay, as the United States share of the allowable costs incurred in accomplishing the Project, **90 percent**

This Offer is made on and subject to the following terms and conditions:

1. The maximum obligation of the United States payable under this Offer shall be **\$106,592**
2. The Sponsor shall:
 - (a) begin accomplishment of the Project within **sixty** days after acceptance of this Offer or such longer time as may be prescribed by the FAA, with failure to do so constituting just cause for termination of the obligations of the United States hereunder by the FAA;
 - (b) carry out and complete the Project without undue delay and in accordance with the terms hereof, the Airport and Airway Development Act of 1970, and Sections 152.51-152.63 of the Regulations of the Federal Aviation Administration (14 CFR 152) in effect as of the date of acceptance of this Offer; which Regulations are hereinafter referred to as the "Regulations";
 - (c) carry out and complete the Project in accordance with the plans and specifications and property map, incorporated herein, as they may be revised or modified with the approval of the FAA.
3. The allowable costs of the project shall not include any costs determined by the FAA to be ineligible for consideration as to allowability under Section 152.47 (b) of the Regulations.
4. Payment of the United States share of the allowable project costs will be made pursuant to and in accordance with the provisions of Sections 152.65 - 152.71 of the Regulations. Final determination as to the allowability of the costs of the project will be made at the time of the final grant payment pursuant to Section 152.71 of the Regulations: Provided, that, in the event a semi-final grant payment is made pursuant to Section 152.71 of the Regulations, final determination as to the allowability of those costs to which such semi-final payment relates will be made at the time of such semi-final payment.

5. The Sponsor shall operate and maintain the airport as provided in the Project Application incorporated herein and specifically covenants and agrees, in accordance with its Assurance 20 in Part V of said Project Application, that in its operation and the operation of all facilities thereof, neither it nor any person or organization occupying space or facilities thereon will discriminate against any person or class of persons by reasons of race, color, creed or national origin in the use of any of the facilities provided for the public on the airport.
6. The FAA reserves the right to amend or withdraw this Offer at any time prior to its acceptance by the Sponsor.
7. This Offer shall expire and the United States shall not be obligated to pay any part of the costs of the Project unless this Offer has been accepted by the Sponsor on or before Sept. 30, 1977, or such subsequent date as may be prescribed in writing by the FAA.
8. The Sponsor hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any federal program involving such grant, contract, loan, insurance, or guarantee the following Equal Opportunity Clause.

During the performance of this contract, the contractor agrees as follows:

- a. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, sex, or national origin. Such actions shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- b. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- c. The contractor shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising

the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- d. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- e. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- f. In the event of the contractor's noncompliance with the non-discrimination clauses of this contract or with any of the said rules, regulations, or order, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further government contracts of federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rules, regulations, or order of the Secretary of Labor, or as otherwise provided by law.
- g. The contractor will include the portion of the sentence immediately preceding paragraph a. and the provisions of paragraph a. through g. in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The Sponsor further agrees that it will be bound by the above Equal Opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or local government,

the above Equal Opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The Sponsor agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the Equal Opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor that it will furnish the administering agency with the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The Sponsor further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of 24 September 1965, with a contractor debarred from, or who has not demonstrated eligibility for, government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the Equal Opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part III, Subpart D, of the Executive Order. In addition, the Sponsor agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the Sponsor under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from the Sponsor; or refer the case to the Department of Justice for appropriate legal proceedings.

9. The Sponsor hereby further covenants that it will not permit any permanent-type structures, other than structures required for aids to air navigation and such other structures as may be specifically excepted in writing by the FAA, to be erected on, and that it will cause any existing structures to be removed from, each area identified on the Exhibit "A" as "clear zone" or any portions thereof, concerning which the Sponsor has acquired a fee interest with federal financial assistance, irrespective of whether such structures constitute an obstruction to air navigation.
10. By its acceptance hereof, the Sponsor hereby covenants that to the extent it has or may have either present or future control over each area identified on the Exhibit "A" as "clear zone", and unless exceptions to or deviations from the following obligations have been granted to the Sponsor in writing by the FAA, it will clear said area or areas of any existing structure or any natural growth which constitutes an obstruction to air navigation with the standards established by Section 77.23 as applied to Section 77.25, Part 77, of the Federal Aviation Regulations; and the Sponsor further covenants that it will control the subsequent erection of structures and control natural growth to the extent necessary to prevent creation of obstructions within said standards.

11. Assurance Number 18 of Part V of the project application incorporated herein is amended by including at the end of the second sentence the following language:

"including the requirement that (A) each air carrier, authorized to engage directly in air transportation pursuant to Section 401 or 402 of the Federal Aviation Act of 1958, using such airport shall be subject to nondiscriminatory and substantially comparable rates, fees, rentals, and other charges and nondiscriminatory conditions as are applicable to all such air carriers which make similar use of such airport and which utilize similar facilities, subject to reasonable classifications such as tenants or nontenants, and combined passenger and cargo flights or all cargo flights, and such classification or status as tenant shall not be unreasonably withheld by any sponsor provided an air carrier assumes obligations substantially similar to those already imposed on tenant air carriers, and (B) each fixed base operator using a general aviation airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed base operators making the same or similar uses of such airport utilizing the same or similar facilities; provision (A) above, shall not require the reformation of any lease or other contract entered into by a sponsor before July 12, 1976. Provision B above shall not require the reformation of any lease or other contract entered into by a sponsor before July 1, 1975."

It is understood and agreed that no part of the Federal share of an airport development project for which a grant is made under the Airport and Airway Development Act of 1970, as amended (49 U.S.C. 1701 et seq.), or under the Federal Airport Act, as amended (49 U.S.C. 1101 et seq.), shall be included in the rate base in establishing fees, rates, and charges for users of the airport.

13. This project and all work performed thereunder is subject to the Clean Air Act and the Federal Water Pollution Control Act. Accordingly,
- a. The sponsor hereby stipulates that any facility to be utilized in performance under the grant or to benefit from the grant is not listed on the EPA List of Violating Facilities.
 - b. The sponsor agrees to comply with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations issued thereunder.
 - c. The sponsor shall notify the FAA of the receipt of any communication from the EPA indicating that a facility to be utilized for performance of or benefit from the grant is under consideration to be listed on the EPA list of Violating Facilities.
 - d. The sponsor agrees that he will include or cause to be included in any contract or subcontract under the grant which exceeds \$100,000 the criteria and requirements in these subparagraphs a through d.

14. The sponsor will send a copy of all invitations for bids, advertised or negotiated, for concessions or other businesses at the airport to the Director, Dallas Regional Office of Minority Business Enterprise (OMBE), 1412 Main Street, Dallas, Texas 75202. The sponsor will disclose and make information about the contracts, contracting procedures and requirements available to the designated OMBE representative and minority firms on the same basis that such information is disclosed and made available to other organizations or firms. Responses by minority firms to invitations for bids shall be treated in the same manner as all other responses to the invitations for bids. Compliance with the foregoing will be deemed to constitute compliance by the sponsor with requirements of 49 CFR 21 Appendix C(a)(1)(x), Regulations of the Office of the Secretary of Transportation.
15. The grantee agrees to effectuate the purposes of Section 30 of the Airport and Airway Development Act of 1970, as amended, by assuring that minority business enterprises shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds provided under this Agreement. For the purposes of this provision, "Minority Business Enterprise" means a business enterprise that is owned by, or is controlled by, a socially or economically disadvantaged person or persons. Such disadvantage may arise from cultural, racial, religious, sex, national origin, chronic economic circumstances or background or other similar cause. Such persons may include, but are not limited to, blacks not of Hispanic origin; persons of Hispanic origin; Asians or Pacific Islanders; American Indians; and Alaskan natives. Grantee further agrees to comply with such regulations as may be issued by the Federal Aviation Administration to implement Section 30 of the Act.
16. It is hereby understood and agreed by and between the parties hereto that the sponsor will acquire a fee title or such lesser property interest as may be found satisfactory to the FAA in Parcel 1 as shown on the property map attached hereto and identified on Exhibit "A"; and that the United States will not make nor be obligated to make any payments involving said parcel until the sponsor has submitted evidence that it has acquired a fee title or such lesser property interest as may be found satisfactory to the FAA in and to said parcel (or any portion thereof for which grant payment is sought) subject to no liens, encumbrances, reservations, or exceptions which in the opinion of the FAA might create an undue risk of interference with the use and operation of the airport.
17. It is understood and agreed by and between the parties hereto that the United States shall not make nor be obligated to make final grant payment hereunder until the Sponsor has furnished a current Airport Layout Plan and said plan has been approved by the FAA.

- . A. Pursuant to Section 305 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646); Part 25, Regulations of the Secretary of Transportation, "Relocation Assistance and Land Acquisition under Federal and Federally Assisted Programs" (49 CFR Part 25, 36 Fed. Reg 9178); the Regulations; and other applicable provisions of law--the terms used in this paragraph to have the meanings assigned to them under such Act and regulations;
 - 1. Sponsor will fully comply with Subpart I of said Part 25,
 - 2. Sponsor will adequately inform the public of the acquisition policies, requirements, and payments which will apply to the project with respect to any acquisition of real property to which said Part 25 and this agreement apply.

With respect to every person from whom real property was acquired after 1 January 1971 and who would have been entitled to any payments pursuant to the assurances of this agreement had this agreement been in effect at the time of such acquisition, Sponsor represents and undertakes as the case may be: (1) That such person has received or will receive all the payments and has timely been or will be timely afforded all the advantages that would have accrued to him under the provisions of this agreement; and (2) that Sponsor has timely performed or will timely perform all acts that would have been or would still be required of the sponsor had the assurances of this paragraph been applicable at the times identified in this paragraph.

B. It is understood and agreed by and between the parties hereto that the United States shall not make nor be obligated to make any payment hereunder for land acquisition, or reimbursement for land acquisition, until the sponsor has complied with the requirements of this condition.

C. The obligation of the United States under any part of this agreement to share in the allowable costs incurred by the Sponsor under this paragraph shall be subject to all the pertinent and applicable provisions, limitations, and conditions contained in the laws and regulations of the United States.

The Sponsor's acceptance of this Offer and ratification and adoption of the Project Application incorporated herein shall be evidenced by execution of this instrument by the Sponsor, as herein-after provided, and said Offer and Acceptance shall comprise a Grant Agreement, as provided by the Airport and Airway Development Act of 1970, constituting the obligations and rights of the United States and the Sponsor with respect to the accomplishment of the Project and the operation and maintenance of the Airport. Such Grant Agreement shall become effective upon the Sponsor's acceptance of this Offer and shall remain in full force and effect throughout the useful life of the facilities developed under the Project but in any event not to exceed twenty years from the date of said acceptance.

UNITED STATES OF AMERICA
FEDERAL AVIATION ADMINISTRATION

By *J. P. Manning*
Chief, Engineering and Development Branch
(TITLE)

Part II-Acceptance

The _____ does hereby ratify and adopt all statements, representations, warranties, covenants, and agreements contained in the Project Application and incorporated materials referred to in the foregoing Offer and does hereby accept said Offer and by such acceptance agrees to all of the terms and conditions thereof.

Executed this 27th day of September, 1977.

City of Boulder, Colorado
(Name of Sponsor)

By *Harold A. Buchanan*
Title Mayor

(SEAL)

Attest: *Burt T. Chapel*
Title: City Clerk

CERTIFICATE OF SPONSOR'S ATTORNEY

I, *WALTER L. WAGENHALLS*, acting as Attorney for the City of Boulder, Colorado, (herein referred to as the "Sponsor") do hereby certify:

That I have examined the foregoing Grant Agreement and the proceedings taken by said Sponsor relating thereto, and find that the Acceptance thereof by said Sponsor has been duly authorized and that the execution thereof is in all respects due and proper and in accordance with the laws of the State of Colorado, and further that, in my opinion, said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Dated at Boulder, Colorado this 27th day of September, 1977.
Walter L. Wagenhalls
Title City Attorney