

FAA CONTRACT TOWER OPERATIONS AGREEMENT (TOA) BETWEEN

FEDERAL AVIATION ADMINISTRATION (FAA)

AND

The City of Loveland and the City of Fort Collins

I. PARTIES

This FAA Contract Tower Operations Agreement (TOA) (hereinafter “Agreement”) is hereby made and entered into this _____ day of _____, 20____ by and between the Federal Aviation Administration (“FAA”) and the City of Loveland and the City of Fort Collins (jointly, “Airport Sponsor”) (collectively known as the “Parties”).

II. SCOPE

The purpose of this Memorandum of Understanding (MOU) between the FAA and the Airport Sponsor is to set forth the terms under which Northern Colorado Regional Airport (FNL) will participate in the FAA Contract Tower (FCT) program temporarily using a Mobile Airport Traffic Control Tower (MATCT). This Agreement replaces and supersedes any prior Tower Operations Agreement signed by the parties. This Agreement is not intended to reduce or limit the Airport’s rights under the FCT Program except as expressly set forth herein regarding the use of the MATCT.

III. ROLES AND RESPONSIBILITIES OF THE PARTIES

A. Roles and responsibilities of the FAA.

The FAA shall fund air traffic control services at the Airport using the MATCT, by way of a contractual agreement between the FAA and an air traffic control (ATC) services provider of the FAA’s choice, in accordance with standards established by the FAA until the new brick and mortar tower is commissioned, subject to the availability of funds.

The MATCT hours of operation will be 0800-1800 Local. The FAA reserves the right to adjust those hours in accordance with applicable FAA standards, regulations, and policy.

The ATC services provider will collect hourly and daily traffic count data during tower operating hours.

The FAA will maintain all FAA-owned equipment installed in MATCT and at FNL.

The FAA will conduct annual occupational safety and health inspections, for any FCT that is an FAA employee’s duty station.

The FAA will conduct periodic security inspections based upon the criteria identified in FAA Order 1600.69C, as may be amended. Relevant portions of the Order will be provided to Airport Sponsors. (A Signed Non-Disclosure Agreement (NDA) will be required to receive a copy of the Order.)

B. Roles and responsibilities of the Airport Sponsor.

The Airport Sponsor shall provide and maintain, at no expense to the FAA, a temporary MATCT that meets all applicable Federal, state, and local codes, standards and regulations.

The Airport Sponsor shall provide, maintain, and replace for the temporary MATCT, at no expense to the FAA, all non-FAA-owned tower equipment required by the Minimum Equipment and Facilities List (MEL) attached hereto as Appendix A (*FAA Order JO 7210.78*), with the following modification to Section 1 (*Communications Equipment*) paragraph (g):

(g) Telecommunication requirements to sustain high speed internet communication, to include the following:

- 1) FTI Mission Support connection and Router;
- 2) Local Area Network consisting of a network switch, an Uninterruptible Power Supply (UPS), a rack with patch panel, and network cabling to the wall jacks.

is replaced by:

(g) Telecommunication requirements to sustain high speed internet communication available to the controller workforce in (locations to be determined).

Note: This adjustment to the MEL is only applicable to the MATCT, and the upcoming brick-and-mortar tower will be required to fulfill the requirements of FAA Order JO 7210.78.

The Airport Sponsor shall provide and continually maintain all utilities and services, including but not limited to: heating, air conditioning, electrical, water, gas and sewer, to the temporary MATCT.

The Airport Sponsor shall maintain janitorial services (to include washing tower cab windows and shades, interior and exterior, when necessary) at no expense to the FAA for the temporary MATCT.

The Airport Sponsor shall be responsible for the proper and continued

functioning of all equipment that the FAA determines is necessary for temporary MATCT operations, including that which cannot be placed in operation or otherwise controlled from the MATCT building or that is not otherwise within the control of the FAA, its agents, representatives, or contractors. Examples include, but are not limited to airport lighting, windsock, obstruction lights, rotating beacon, etc.

The Airport Sponsor is responsible for establishing and maintaining security and controlled access to the temporary MATCT in accordance with FAA Order 1600.69C, as may be amended. Relevant portions of the Order will be provided to the Airport Sponsor. (A Signed NDA will be required to receive a copy of the Order).

The Airport Sponsor agrees to enter into a Letter of Agreement (LOA) with the ATC service provider's local representative specifically for the purpose of providing an airport point of contact and procedures to follow to ensure a timely response to requests concerning equipment, security or building problems.

In accordance with FAA Order JO 7210.3, as revised, other Letters of Agreement may be necessary to comply with other requirements such as airport emergency service, control of vehicular traffic on airport movement areas, operation of airport lighting, local procedures and reporting airport conditions. However, the terms and conditions set forth in this Agreement or the FCT contract cannot be waived or superseded by such local agreements.

The Airport Sponsor shall, at no cost to the FAA, complete all necessary actions to construct a brick-and-mortar Airport Traffic Control Tower (ATCT) that meets FAA requirements in FAA Order 7210.78. Except as agreed between the parties or as otherwise permitted under the FCT Program, the Airport Sponsor must meet the following milestones to remain in the FCT program:

- Complete the FAA Airport Traffic Control Tower Siting Process for the permanent tower no later than two years from the date of signature of this Agreement.
- Commence construction of the permanent tower no later than 30 months from the date of signature of this Agreement.
- Complete construction of the brick-and-mortar tower no later than 5 years from the date of signature of this Agreement.

The Airport Sponsor shall sign a new/modified Tower Operations Agreement for the permanent brick-and-mortar ATCT no later than 60 days before the anticipated commissioning of the permanent tower.

IV. BENEFIT/COST RATIOS CONSIDERATION

Statute dictates how often and under what conditions FAA recalculates benefit/cost ratios to determine the percentage of funds for which the FAA and the airport are responsible. The FAA currently provides full funding for sites with a benefit/cost ratio of 1.0 or greater. Fully funded sites at which the FAA has determined that the benefit/cost ratio decreases to less than 1.0 will be offered the opportunity to participate in the FCT Cost Share Program.

V. SUPPLEMENTAL HOURS

If the Airport Sponsor requests MATCT services outside of FAA approved tower hours of operation, the provision of such additional services shall be at the expense of the Airport Sponsor, unless otherwise agreed to. These supplemental hours of operation may be achieved through an agreement with the air traffic control services provider, supplemental agreement with the FAA, or by other authorized means.

VI. POINTS OF CONTACT

Airport Sponsor

David Ruppel
Airport Director
Northern Colorado Regional Airport
(970) 962-2852

FAA Implementation Manager

Dan Sherren
Terminal Program Implementation Team, AJV-W37
Western Service Area
206 231-2765

FAA Program Manager

Lisa Bush-Caudle
FAA Contract Tower (FCT), Program Manager
Program Management Office, Enterprise Services, AJM-3
800 Independence Ave., SW, Washington, DC 20591
(202) 267-0849

VII. CHANGES AND/OR MODIFICATIONS

Changes and/or modifications to this Agreement shall be in writing and signed by both parties. The modification shall cite the subject Agreement and shall state the exact nature of the modification. No oral statement by any person shall be interpreted as modifying or otherwise affecting the terms of this Agreement.

VIII. TERMINATION

In addition to any other termination rights provided by this Agreement, either party may terminate this Agreement at any time prior to its expiration date, with or without cause, and without incurring any liability or obligation to the terminated party by giving the other party at least Ninety (90) days prior written notice of termination. Upon receipt of a notice of termination, the receiving party shall take immediate steps to stop the accrual of any additional obligations, which might require payment. Termination of this Agreement is without prejudice to the airport sponsor's ability to continue to construct a brick-and-mortar tower as part of the FCT Program if it is otherwise in compliance with its obligations under the FCT Program.

IX. TERM OF THE AGREEMENT

This Agreement is applicable for one year from the date of signature and may be renewed annually based on the FAA's assessment of Airport Sponsor's progress in building a permanent brick-and-mortar ATCT and meeting the milestones described in Section III. B above, unless terminated by either of the parties in writing, as provided herein.

X. DISPUTES

Where possible, disputes will be resolved by informal discussion between the parties. In the event the parties are unable to resolve any disagreement through good faith negotiations, the Director of Operations- Headquarters (AJT-2) will resolve the dispute after direct consultation with Airport Director. The decision of the Director of Operations- Headquarters is not subject to further administrative review and, to the extent permitted by law, is final and binding.

XI. INSURANCE

The Airport Sponsor shall arrange by insurance or otherwise for the full protection of the Airport Sponsor from and against all liability to third parties arising out of, or related to, the performance of this Agreement to the extent permitted by law. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the notices, requirements, immunities, rights, benefits, protections, limitations of liability, and other provisions of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., and under any other applicable law.

XII. LIABILITY

The FAA assumes no liability under this Agreement for any losses arising out of any action or inaction by the Airport Sponsor, its employees or contractors, or any third party acting on its behalf. The Airport Sponsor agrees to hold the FAA harmless against any claim by third persons for injury, death, or property damage arising out of or in connection with the Airport Sponsor's performance under this Agreement.

XIII. LEGAL AUTHORITY

This “other transaction” MOU is entered into under the authority of 49 U.S.C. §§ 106 (f)(2)(A) and 106(l) and (m), which authorizes agreements and other transactions on such terms and conditions as the Administrator determines necessary. This MOU is not a Memorandum of Agreement, procurement contract, grant or cooperative agreement. Nothing in this Agreement shall be construed as incorporating by reference or implication any provision of Federal acquisition law or regulation.

XIV. CIVIL RIGHTS ACT

The Airport Sponsor shall comply with Title VI of the Civil Rights Act of 1964 relating to nondiscrimination in federally assisted programs and, if requested, provide a certification to that effect.

XV. PROTECTION OF INFORMATION

The parties agree that they shall take appropriate measures to protect proprietary, privileged, or otherwise confidential information that may come into their possession as a result of this MOU. The Airport Sponsor’s obligations under this paragraph are expressly subject to all requirements of the Colorado Open Records Act.

XVI. FUNDING

No funds are obligated under this MOU. Each party shall bear the full cost it incurs in performing, managing, and administering its responsibilities under this MOU.

With respect to the City of Fort Collins, to the extent this Agreement or any provision in it constitutes a multiple fiscal year debt or financial obligation of the City, it shall be subject to annual appropriation by City Council as required in Article V, Section 8(b) of the City Charter, City Code Section 8-186, and Article X, Section 20 of the Colorado Constitution. The City of Fort Collins shall have no obligation to continue this Agreement in any fiscal year for which no supporting appropriation has been made.

With respect to the City of Loveland, to the extent this Agreement constitutes a multiple fiscal year debt or financial obligation of the City of Loveland, it shall be subject to annual appropriation pursuant to the City of Loveland Municipal Charter Section 11-6 and Article X, Section 20 of the Colorado Constitution. The City of Loveland shall have no obligation to continue this Agreement in any fiscal year in which no such appropriation is made.

XVII. CONSTRUCTION

Parties agree to exercise good faith in achieving the goals of this MOU; this means that the Government will adopt and perform the above delineated roles and responsibilities and will provide MATCT services to the above designated Airport Sponsor at the designated location. The Airport Sponsor also agrees to adopt and perform the above delineated roles and responsibilities. Neither party is authorized or empowered to act on

behalf of the other with regard to any matter, and neither party shall be bound by the acts or conduct of the other in connection with any activity under this MOU. This provision shall survive termination of this MOU. The undersigned Agreement holder affirms that this MOU is entered knowingly and voluntarily.

The FAA reserves the right to withdraw the MATCT services from the Airport Sponsor if it does not comply with the terms of this agreement.

AGREED:

Airport Sponsor – City of Loveland

Federal Aviation Administration

BY: _____

BY: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

ATTEST:

Federal Aviation Administration

City Clerk

BY: _____

APPROVED AS TO FORM:

TITLE: _____

Senior Assistant City Attorney

DATE: _____

Airport Sponsor – City of Fort Collins

BY: _____

TITLE: _____

DATE: _____

ATTEST:

City Clerk

Assistant City Attorney