



Consideration of Lea County Resolution 21-DEC-289R Approving a Reimbursable Agreement with the Federal Aviation Administration (FAA) for Flight Check of E06 Zip Franklin Memorial Airport PAPI System

Lea County Zip Franklin Memorial Airport currently had a nonfunctional Pulse Light Approach Slope Indicator (PLASI) and would like to replace it with a precision approach path indicator (PAPI) is a visual aid that provides guidance information to help a pilot acquire and maintain the correct approach (in the vertical plane) to an airport or an aerodrome.

Lea County and its contractors have completed the installation of the PAPIs. Lea County would like to have the FAA fly the approaches and verify operation and angle of these systems prior to turning them on and bringing them in service.

The FAA has proposed the performing a flight check utilizing their Lear aircraft to complete this. The proposed cost is an estimate and actual cost will not be determined until date of flight.

Estimate cost: \$27,238





**LEA COUNTY BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY FORM**

LCBCC Meeting Date: Thursday, December 9, 2021

Submit this summary form & all attachments to the Finance Director clow@leacounty.net & cc the Executive Coordinator ssout@leacounty.net by: **Monday, November 22, 2021**

County Manager Approval mgallagher@leacounty.net required for all time sensitive issues that do not meet the above deadline.

DATE SUBMITTED mm-dd-yyyy: 11/30/2021	SUBMITTED BY Name, Title, Dept: Corey Needham, ACM
SUBJECT: FAA Reimbursable Agreement for flight check of Zip Franklin Memorial Airport PAPI	ATTACHMENT(S): FAA reimbursable agreement
NO. OF ORIGINALS FOR SIGNATURE: 0	ACTION REQUESTED: Action Item
BUDGET LINE ITEM NUMBER: 455-18-4495	FISCAL BUDGET YEAR: FY 21/22

STRATEGIC PLAN Implementation of 5 Year Strategic Plan:
Airports that are maintained and improved with new facilities (goal: increase capacity for changing commercial aircraft)

SUMMARY:
Lea County Zip Franklin Memorial Airport currently had a nonfunctional Pulse Light Approach Slope Indicator (PLASI) and would like to replace it with a precision approach path indicator (PAPI) is a visual aid that provides guidance information to help a pilot acquire and maintain the correct approach (in the vertical plane) to an airport or an aerodrome.
Lea County and its contractors have completed the installation of the PAPIs. Lea County would like to have the FAA fly the approaches and verify operation and angle of these systems prior to turning them on and bringing them in service.
The FAA has proposed the performing a flight check utilizing their Lear aircraft to complete this. The proposed cost is an estimate and actual cost will not be determined until date of flight.
Estimate cost: \$27,238

Requested Items Needed for Presentation Easels/Laptop/Projector/Etc.: Easel <input type="checkbox"/> Laptop <input checked="" type="checkbox"/> Projector <input checked="" type="checkbox"/> Other: _____ <small>If checked; how many:</small>	See Additional Summary Attached <input type="checkbox"/>
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SUBMITTER'S RECOMMENDATION(S): approval	Submitter's Signature Department Director, Etc.
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FINANCE REVIEW Fiscal Impact/Cost: The financial impact to Lea County will be expenditures from the Zip Franklin Airport Fund estimated to be \$27,238. The expenditures will be paid for by an FAA grant. Funds are budgeted and available in 455-18-4495.	Reviewed by Finance Director Henry C Low Jr <small>Digitally signed by Henry C Low Jr Date: 2021.12.01 14:26:58 -07'00'</small>
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LEGAL REVIEW: (Note: Travel does not need legal review)	Reviewed by County Attorney
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COUNTY MANAGER REVIEW:	Approved by County Manager to be Placed on Agenda
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Item No. <u>0309</u> RECORDING SECRETARY'S USE ONLY ~ COMMISSION ACTION TAKEN		
Approved: _____	Denied: _____	Other: _____
Resolution No. <u>21-DEC-289R</u>	Policy No. _____	Ordinance No. _____
Continued To: _____	Referred To: _____	Comments: _____

STATE OF NEW MEXICO
COUNTY OF LEA
RESOLUTION NO. 21-DEC-289R

A RESOLUTION APPROVING A REIMBURSABLE AGREEMENT WITH THE FEDERAL AVIATION
ADMINISTRATION (FAA) FOR FLIGHT CHECK OF E06 ZIP FRANKLIN MEMORIAL AIRPORT
PAPI SYSTEM

WHEREAS, Lea County Zip Franklin Memorial Airport plays an essential role within the Lea County transportation system for economic development, connectivity, and emergency services. The separation between aircraft and vehicles are becoming a priority; *and*

WHEREAS, Lea County Zip Franklin Memorial Airport has replaced a nonfunctional Pulse Light Approach Slope Indicator (PLASI) and would like to replace it with a precision approach path indicator (PAPI) is a visual aid that provides guidance information to help a pilot acquire and maintain the correct approach (in the vertical plane) to an airport or an aerodrome; *and*

WHEREAS, Lea County staff recommends that the system be flight checked by the FAA prior to bringing the system into service; *and*

WHEREAS, staff recommend entering into an agreement with the FAA to complete the flight check of the PAPI system.

BE IT HEREBY RESOLVED by the Board of County Commissioners of Lea County that Lea County has the necessary funds to complete this project;

BE IT FURTHER RESOLVED that the County Manager may finalize this request with the terms of this resolution and in the best interests of Lea County and that the Chair of the Board of County Commissioners may sign the request on behalf of the Board of County Commissioners of Lea County.

PASSED, APPROVED, AND ADOPTED on this 9th day of December 2021, by the Lea County Board of County Commissioners in an open meeting in Lovington, New Mexico.

LEA COUNTY BOARD OF COUNTY COMMISSIONERS

Rebecca Long (District 2), Chair
Voted: Yes No Abstain

Dean Jackson (District 1), Vice Chair
Voted: Yes No Abstain

Gary G. Eidson (District 3), Member
Voted: Yes No Abstain

Jonathan Sena (District 4), Member
Voted: Yes No Abstain

Pat Sims (District 5), Member
Voted: Yes No Abstain

ATTEST: Keith Manes
Lea County Clerk

**APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:**

By: _____
Teri Davis, Deputy Clerk

John W. Caldwell, County Attorney

NON-FEDERAL REIMBURSABLE AGREEMENT

BETWEEN

**DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION**

AND

**LEA COUNTY
LOVINGTON, NM**

WHEREAS, the Federal Aviation Administration (FAA) can furnish directly or by contract, material, supplies, equipment, and services which the **Lea County** (Sponsor) requires, has funds available for, and has determined should be obtained from the FAA;

WHEREAS, it has been determined that competition with the private sector for provision of such material, supplies, equipment, and services is minimal; the proposed activity will advance the FAA's mission; and the FAA has a unique capability that will be of benefit to the Sponsor while helping to advance the FAA's mission;

NOW THEREFORE, the FAA and the Sponsor mutually agree as follows:

ARTICLE 1. Parties

The Parties to this Agreement are the FAA-Flight Program Operations and **Lea County**.

ARTICLE 2. Type of Agreement

This Agreement is an "other transaction" authorized under 49 U.S.C. § 106(l)(6). It is not intended to be, nor will it be construed as, a partnership, corporation, joint venture or other business organization.

ARTICLE 3. Scope

- A. The purpose of this Agreement between the FAA and the Sponsor is to **provide a commissioning flight inspection of the PAPIs/MIRLs on Rwy 03/21 & Rwy 12/30 at Lea County-Zip Franklin Memorial Airport (KE06) Lovington, NM.** This Agreement provides funding for the FAA to establish these services. Therefore, this Agreement is titled:

Lea County, Lovington, NM

- B. The FAA will **perform a commissioning flight inspection of the PAPIs/MIRLs on Rwy 03/21 & Rwy 12/30 at Lea County-Zip Franklin Memorial Airport (KE06) Lovington, NM.**
- C. The Sponsor will perform the following activities:
1. Provide funding as estimated in Article 7.
 2. Upon signature and payment of agreement, contact Randall Peterson at 405-954-1602 or randall.w.peterson@faa.gov once the site is ready for inspection. You may also call the Oklahoma City Service Center if you have any questions at 405-954-9780.
- D. This agreement is in whole or in part funded with funding from an AIP grant Yes No. If Yes, the grant date is: **TBD** and the grant number is: **3-35-0027-012-2020**. If the grant information is not available at the time of agreement execution, the Sponsor will provide the grant information to the FAA when it becomes available.

ARTICLE 4. Points of Contact

A. FAA:

1. The FAA, Flight Program Operations, Program Support Group, will provide administrative oversight of this Agreement. Shelley Ochs is the Agreement Coordinator and liaison with the Sponsor and can be reached at 405-954-5757 or via email at shelley.d.ochs@faa.gov. This liaison is not authorized to make any commitment, or otherwise obligate the FAA, or authorize any changes which affect the estimated cost, period of performance, or other terms and conditions of this Agreement.
2. The FAA, Flight Program Operations, Flight Management Group will perform the scope of work included in this Agreement. Henry Frakes is the Manager, Flight Management Group and liaison with the Sponsor and can be reached at 405-954-3955 or via email at henry.frakes@faa.gov. This liaison is not authorized to make any commitment, or otherwise obligate the FAA, or authorize any changes which affect the estimated cost, period of performance, or other terms and conditions of this Agreement.
3. FAA Contracting Officer: The execution, amendment, and administration of this Agreement must be authorized and accomplished by the Contracting Officer, Michele Mustin who can be reached at 405-954-7879 or via email at michele.d.mustin@faa.gov.

B. Sponsor:

Sponsor: Lea County
ATTN: Corey Needham, PE, Assistant County Manager
Address: 100 N. Main
 Lovington, NM 88260-4030
Phone: 575-605-3497
E-mail: cneedham@leacounty.net

ARTICLE 5. Non-Interference with Operations [RESERVED]

ARTICLE 6. Property Transfer [RESERVED]

ARTICLE 7. Estimated Costs

A. The estimated FAA costs associated with this Agreement are as follows:

DESCRIPTION OF REIMBURSABLE ITEM	ESTIMATED COST
LABOR	
NA	\$0
NON-LABOR	
Flight Inspection	\$25,221.00
Non-Labor Overhead (8%)	<u>\$ 2,017.68</u>
Total Non-Labor	<u>\$27,238.68</u>
TOTAL ESTIMATED COST	\$27,238.68

Detailed Estimate:

Flight Inspection Estimated Cost

<i>Lear Rate \$3,603/hr</i>	Type	Hours	Inspections	Estimated Cost
PAPIs/MIRLs on Rwys 03/21				
PAPIs/MIRLs on Rwys 12/30				
at KE06	Commissioning	7	1	\$25,221.00
	8% Administrative Overhead			<u>\$ 2,017.68</u>
	Total Estimated Cost			\$27,238.68

B. FAA reserves the right to determine which aircraft will be used for flight inspections. Flight hour rates will be adjusted automatically according to FAA Order 2500.36 (current edition), Application of Flight Hour Rates, or as approved by the Flight Program Executive. The estimate is based on rates in effect at the time this Agreement is signed.

- C. Estimated costs contained herein are for planning purposes only and can vary depending on the actual aircraft used, and actual flight hours expended to reach the facility and to accomplish the inspection. As required by regulation, the final bill submitted to the Sponsor will reflect actual hours and costs to Flight Program Operations.
- D. Sponsor will be notified of any necessary deviations or changes to the instrument flight procedure and agrees to negotiate with the FAA to resolve additional reimbursement issues exceeding 10% of the cost estimate, in accordance with Article 9.
- E. FAA flight inspection aircraft may be delayed from scheduled itineraries for unanticipated reasons such as a National Airspace System priority, weather, or unscheduled aircraft maintenance. FAA is not responsible for any additional cost the Sponsor may incur if an inspection must be rescheduled.

ARTICLE 8. Period of Agreement and Effective Date

The effective date of this Agreement is the date of the last signature. This Agreement is considered complete when the final invoice is provided to the Sponsor and a refund is sent or payment is received as provided for in Article 9, Section D of this Agreement. This Agreement will not extend more than five years beyond its effective date.

ARTICLE 9. Reimbursement and Accounting Arrangements

- A. The Sponsor agrees to prepay the entire estimated cost of the Agreement. The Sponsor will send an electronic copy of the Agreement to the FAA Agreement Coordinator for FAA signature. The Sponsor will also send a copy of the executed Agreement and submit full advance payment in the amount stated in Article 7 to the Reimbursable Receipts Team listed in Section C of this Article. The advance payment will be held as a non-interest bearing deposit. Such advance payment by the Sponsor must be received before the FAA incurs any obligation to implement this Agreement. Upon completion of this Agreement, the final costs will be netted against the advance payment and, as appropriate, a refund or final bill will be sent to the sponsor. Per U.S. Treasury guidelines, refunds under \$1.00 will not be processed. Additionally, FAA will not bill the sponsor for amounts less than \$1.00.
- B. The Sponsor certifies that arrangements for sufficient funding have been made to cover the estimated costs of the Agreement.

- C. The Reimbursable Receipts Team is identified by the FAA as the billing office for this Agreement. The preferred method of payment for this agreement is via Pay.Gov. The sponsor can use a check or credit card to provide funding in this manner and receipt-processing time is typically within 3 working days. Alternatively, the sponsor can mail the payment to the address shown below. When submitting funding by mail, the Sponsor must include a copy of the executed Agreement and the full advance payment. All payments mailed to the FAA must include the Agreement number, Agreement name, Sponsor name, and project location. Payments submitted by mail are subject to receipt-processing delay of up to 10 working days.

FAA payment remittance address using USPS or overnight method is:

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

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

Lea County
Corey Needham, PE, Assistant County Manager
100 N. Main
Lovington, NM 88260-4030
575-605-3497
cneedham@leacounty.net

- D. The cost estimates contained in Article 7 are expected to be the maximum costs associated with this Agreement, but may be amended to recover the FAA's actual costs. If during the course of this Agreement actual costs are expected to exceed the estimated costs, the FAA will notify the Sponsor immediately. The FAA will also provide the Sponsor an amendment to the Agreement which includes the FAA's additional costs. The Sponsor agrees to prepay the entire estimated cost of the amendment. The Sponsor will send a copy of the executed amendment to the Agreement to the Reimbursable Receipts Team with the additional advance payment. Work identified in the amendment cannot start until receipt of the additional advance payment. In addition, in the event that a contractor performing work pursuant to the scope of this Agreement brings a claim against the FAA and the FAA incurs additional costs as a result of the claim, the Sponsor agrees to reimburse the FAA for the additional costs incurred whether or not a final bill or a refund has been sent.

ARTICLE 10. Changes and Amendments

Changes and/or amendments to this Agreement will be formalized by a written amendment that will outline in detail the exact nature of the change. Any amendment to this Agreement will be executed in writing and signed by the authorized representative of each party. The parties signing this Agreement and any subsequent amendment(s) represent that each has the authority to execute the same on behalf of their respective organizations. No oral statement by any person will be interpreted as amending or otherwise affecting the terms of the Agreement. Any party to this Agreement may request that it be amended, whereupon the parties will consult to consider such amendments.

ARTICLE 11. Termination

In addition to any other termination rights provided by this Agreement, either party may terminate this Agreement at any time prior to its expiration date, with or without cause, and without incurring any liability or obligation to the terminated party other than payment of amounts due and owing and performance of obligations accrued, in each case on or prior to the termination date, by giving the other party at least thirty (30) days prior written notice of termination. Payment of amounts due and owing may include all costs reimbursable under this Agreement, not previously paid, for the performance of this Agreement before the effective date of the termination; the total cost of terminating and settling contracts entered into by the FAA for the purpose of this Agreement; and any other costs necessary to terminate this Agreement. Upon receipt of a notice of termination, the receiving party will take immediate steps to stop the accrual of any additional obligations which might require payment. All funds due after termination will be netted against the advance payment and, as appropriate, a refund or bill will be issued.

ARTICLE 12. Order of Precedence [RESERVED]

ARTICLE 13. Legal Authority

This Agreement is entered into under one or more of the following authorities; 49 U.S.C. § 106(l), 31 U.S. Code 6505 Intergovernmental Cooperation Act. Each of which authorizes the Administrator of the FAA to enter into and perform such contracts, leases, cooperative agreements and other transactions as may be necessary to carry out the functions of the Administrator and the Administration on such terms and conditions as the Administrator may consider appropriate. Nothing in this Agreement will be construed as incorporating by reference or implication any provision of Federal acquisition law or regulation.

ARTICLE 14. Disputes

Where possible, disputes will be resolved by informal discussion between the parties. In the event the parties are unable to resolve any dispute through good faith negotiations, the dispute will be resolved by alternative dispute resolution using a method to be agreed upon by the parties. The outcome of the alternative dispute resolution will be final unless it is timely appealed to the Administrator, whose decision is not subject to further administrative review and, to the extent permitted by law, is final and binding (see 49 U.S.C. § 46110).

ARTICLE 15. Warranties

The FAA makes no express or implied warranties as to any matter arising under this Agreement, or as to the ownership, merchantability, or fitness for a particular purpose of any property, including any equipment, device, or software that may be provided under this Agreement.

ARTICLE 16. Insurance

The Sponsor will arrange by insurance or otherwise for the full protection of itself from and against all liability to third parties arising out of, or related to, its performance of this Agreement. The FAA assumes no liability under this Agreement for any losses arising out of any action or inaction by the Sponsor, its employees, or contractors, or any third party acting on its behalf.

ARTICLE 17. Limitation of Liability

To the extent permitted by law, the Sponsor agrees to indemnify and hold harmless the FAA, its officers, agents and employees from all causes of action, suits or claims arising out of the work performed under this Agreement. However, to the extent that such claim is determined to have arisen from the act or omission by an officer, agent, or employee of the FAA acting within the scope of his or her employment, this hold harmless obligation will not apply and the provisions of the Federal Tort Claims Act, 28 U.S.C. § 2671, et seq., will control. The FAA assumes no liability for any losses arising out of any action or inaction by the Sponsor, its employees, or contractors, or any third party acting on its behalf. In no event will the FAA be liable for claims for consequential, punitive, special and incidental damages, claims for lost profits, or other indirect damages.

ARTICLE 18. Civil Rights Act

The Sponsor will comply with Title VI of the Civil Rights Act of 1964 relating to nondiscrimination in federally assisted programs.

ARTICLE 19. Protection of Information

The parties agree that they will take appropriate measures to identify and protect proprietary, privileged, or otherwise confidential information that may come into their possession as a result of this Agreement.

ARTICLE 20. Security [RESERVED]

ARTICLE 21. Entire Agreement

This document is the entire Agreement of the parties, who accept the terms of this Agreement as shown by their signatures below. In the event the parties duly execute any amendment to this Agreement, the terms of such amendment will supersede the terms of this Agreement to the extent of any inconsistency. Each party acknowledges participation in the negotiations and drafting of this Agreement and any amendments thereto, and, accordingly that this Agreement will not be construed more stringently against one party than against the other. If this Agreement is not executed by the Sponsor within 120 calendar days after the FAA transmits it to the Sponsor, the terms contained and set forth in this Agreement shall be null and void. Additionally, the FAA expects this agreement to be funded within 120 days of execution, if funding is not received by that date; the FAA may exercise the right to renegotiate estimated costs.

AGREED:

**FEDERAL AVIATION
ADMINISTRATION**

LEA COUNTY

SIGNATURE _____
NAME Michele Mustin
TITLE Contracting Officer
DATE _____

SIGNATURE _____
NAME Mike Gallagher
TITLE County Manager
DATE _____