

## AGENDA

AGENDA OF THE SPECIAL SESSION OF THE MAYOR AND COUNCIL OF THE CITY OF BISBEE, COUNTY OF COCHISE, STATE OF ARIZONA TO BE HELD ON TUESDAY, JULY 27, 2010 AT 5:30 PM IN THE BISBEE MUNICIPAL BUILDING, 118 ARIZONA STREET, BISBEE, ARIZONA.

THE MEETING CALLED TO ORDER BY \_\_\_\_\_ AT \_\_\_\_\_ PM.

### ROLL CALL

#### COUNCIL

Councilmember Boyd Nicholl, Ward I  
Councilmember Bennie Scott, Ward III  
Councilmember Luche Giacomino, Ward II  
Mayor W.J. "Jack" Porter  
Councilmember Anna Cline, Ward III  
Councilmember Raymond Rodgers, Ward II, Mayor Pro Tempore  
Councilmember Kenneth "Ken" Budge, Ward I

#### STAFF

Stephen J. Pauken, City Manager  
Gloria P. Gonzalez, Interim City Clerk  
Dee L. Flanagan, Finance Director  
John Charley, Community Development Director  
Jim Elkins, Chief of Police  
Jack Earnest, Fire Chief  
Jennifer L. Graeme, Personnel Director  
Tom Klimek, Public Works Director  
Peg White, Library Director

#### CITY ATTORNEY

Mark J. Langlitz

THE FOLLOWING ITEMS WILL BE DISCUSSED, CONSIDERED AND/OR DECIDED UPON AT THIS MEETING:

1. Discussion and Possible Approval of Going into Executive Session for the Purpose of Consulting with the City Attorney Regarding Border Cities Land Corporation v. City of Bisbee Per A.R.S § 38-431.03(A)(3) and (4).  
Mark J. Langlitz, City Attorney
2. Discussion and Possible Approval of Direction to the City Attorney to Retain the Firm of Gust Rosenfeld, P.L.C. to Serve as Outside Counsel in the Border Cities Land Corporation v. City of Bisbee, and to Take Such Action as the City Attorney Deems Necessary in his Professional Opinion to Defend the City in such Lawsuit.  
Mark J. Langlitz, City Attorney

3. Discussion and Possible Approval to Enter into a Grant Agreement with the Federal Aviation Administration (FAA) which will allow the City to Bid for the Purchase and Installation of a Fuel Card Reader, Multi Purpose Tractor with Attachments and a Self Contained Sweeper for the Bisbee Municipal Airport.  
Tom Klimek, Public Works Director

Adjournment

Anyone needing special accommodation to attend this meeting should contact Gloria Gonzalez at (520) 432-6012 at least twenty-four hours before the meeting.



AGENDA ITEM NUMBER 1

**REQUEST FOR COUNCIL ACTION**

<b>DATE SUBMITTED:</b> July 23, 2010	<b>TYPE OF ACTION:</b> <input type="checkbox"/> RESOLUTION	<b>SUBJECT:</b> DISCUSSION AND POSSIBLE APPROVAL OF GOING INTO EXECUTIVE SESSION FOR THE PURPOSE OF CONSULTING WITH THE CITY ATTORNEY REGARDING BORDER CITIES LAND CORPORATION V. CITY OF BISBEE PER A.R.S § 38-431.03(A)(3) AND (4).
<b>DATE ACTION REQUESTED:</b> July 27, 2010	<input type="checkbox"/> ORDINANCE	
<input checked="" type="checkbox"/> REGULAR <input type="checkbox"/> CONSENT	<input type="checkbox"/> FORMAL ACTION	
	<input checked="" type="checkbox"/> OTHER:	

**TO:** Mayor and Council

**FROM:** Mark J. Langlitz, City Attorney

**RECOMMENDATION:** Approve going into Executive Session

**PROPOSED MOTION:** I move that Mayor and Council go into Executive Session at this time.

**DISCUSSION:** A public body may go into Executive Session as per Arizona Revised Statutes § 38-431.03 A (3) and (4) for the purpose of discussion or consultation with the attorney or attorneys of the public body. The City Attorney will be consulted regarding the City's position in the pending case of Border Cities Land Corporation v. City of Bisbee.

**FISCAL IMPACT:** None

**DEPARTMENT LINE ITEM ACCOUNT:**

**BALANCE IN LINE ITEM IF APPROVED:**

Prepared by:   
Mark J. Langlitz, City Attorney

Reviewed by:   
W.J. Porter, Mayor



AGENDA ITEM NUMBER 2

**REQUEST FOR COUNCIL ACTION**

<b>DATE SUBMITTED:</b> July 23, 2010	<b>TYPE OF ACTION:</b> <input type="checkbox"/> RESOLUTION	<b>SUBJECT:</b> DISCUSSION AND POSSIBLE APPROVAL OF DIRECTION TO THE CITY ATTORNEY TO RETAIN THE FIRM OF GUST ROSENFELD, P.L.C. TO SERVE AS OUTSIDE COUNSEL IN THE BORDER CITIES LAND CORPORATION V. CITY OF BISBEE LAWSUIT, AND TO TAKE SUCH ACTION AS THE CITY ATTORNEY DEEMS NECESSARY IN HIS PROFESSIONAL OPINION TO DEFEND THE CITY IN SUCH LAWSUIT.
<b>DATE ACTION REQUESTED:</b> July 27, 2010	<input type="checkbox"/> ORDINANCE	
<input checked="" type="checkbox"/> REGULAR <input type="checkbox"/> CONSENT	<input type="checkbox"/> FORMAL ACTION	
	<input checked="" type="checkbox"/> OTHER:	

**TO:** Mayor and Council

**FROM:** Mark J. Langlitz, City Attorney

**RECOMMENDATION:** Provide direction to City Attorney

**PROPOSED MOTION:** I move to direct the City Attorney to retain the firm of Gust Rosenfeld,

**DISCUSSION:** None

**FISCAL IMPACT:** None

**DEPARTMENT LINE ITEM ACCOUNT:**

**BALANCE IN LINE ITEM IF APPROVED:**

Prepared by:   
Mark J. Langlitz, City Attorney

Reviewed by:   
W.J. Porter, Mayor



**REQUEST FOR COUNCIL ACTION**

<b>DATE SUBMITTED:</b> July 23, 2010	<b>TYPE OF ACTION:</b> <input type="checkbox"/> RESOLUTION	<b>SUBJECT:</b> DISCUSSION AND POSSIBLE APPROVAL TO ENTER INTO A GRANT AGREEMENT WITH THE FEDERAL AVIATION ADMINISTRATION (FAA) WHICH WILL ALLOW THE CITY TO BID FOR THE PURCHASE AND INSTALLATION OF A FUEL CARD READER, A MULTI-PURPOSE TRACTOR WITH ATTACHMENTS AND A SELF-CONTAINED SWEEPER FOR THE BISBEE MUNICIPAL AIRPORT.
<b>DATE ACTION REQUESTED:</b> July 27, 2010	<input type="checkbox"/> ORDINANCE	
<input checked="" type="checkbox"/> REGULAR <input type="checkbox"/> CONSENT	<input checked="" type="checkbox"/> FORMAL ACTION  <input type="checkbox"/> OTHER:	

<b>TO:</b> Mayor and Council
<b>FROM:</b> Thomas J. Klimek, Public Works Director
<b>RECOMMENDATION:</b> Recommend approval of the Grant Agreement with the Federal Aviation Administration (FAA) which will allow the City to bid for the purchase and installation of a Fuel Card Reader, Multi Purpose Tractor with Attachments and a Self Contained Sweeper for the Bisbee Municipal Airport.
<b>PROPOSED MOTION:</b> I move to approve to Enter into a Grant Agreement with the Federal Aviation Administration (FAA) which will allow the City to go out to bid for the purchase and Installation of a Fuel Card Reader, Multi Purpose Tractor with Attachments and a Self Contained Sweeper for the Bisbee Municipal Airport

**DISCUSSION:** The Public Works Department is seeking approval to enter into a Grant Agreement with the Federal Aviation Administration (FAA) to bid for the purchase and installation of an Airport Fuel Card Reader, a Multi-Purpose Tractor with Attachments and a Self-Contained Sweeper for the Bisbee Municipal Airport. The total Project budget amount is \$182,000. The Federal Grant amount is \$172,900. The City's local match is \$9,100. Once the Federal Grant is completed, the State of Arizona will issue a separate grant to reimburse the City of Bisbee for \$4,550. Therefore, the City of Bisbee share upon completion is \$4,550 or 2½ % of the total project costs.

<b>FISCAL IMPACT: \$182,000.00</b>
<b>DEPARTMENT LINE ITEM ACCOUNT: 18-40-22519</b>
<b>BALANCE IN LINE ITEM IF APPROVED: \$17,500.00</b>

Prepared by:  
S/T.J. Klimek  
Thomas J. Klimek, Public Works Director

Reviewed by:  
Stephen J. Pauken  
Stephen J. Pauken, City Manager

**U.S. DEPARTMENT  
OF TRANSPORTATION**

**FEDERAL AVIATION  
ADMINISTRATION**

**DRAFT**

**GRANT AGREEMENT**

**Part I - Offer**

Date of Offer: Draft

**Bisbee Municipal** Airport/Planning Area

Project No: **3-04-0004-10**

**TO: City of Bisbee, Arizona**  
(herein called the "Sponsor")

**FROM:** The United States of America (acting through the Federal Aviation Administration, herein called the "FAA")

**WHEREAS**, the Sponsor has submitted to the FAA Project Application dated February 26, 2010, for a grant of Federal funds for projects at or associated with the **Bisbee Municipal** Airport/Planning Area which Project Application, as approved by the FAA, is hereby incorporated herein and made a part hereof; and

**WHEREAS**, the FAA has approved a project for the Airport or Planning Area (herein called the "Project") consisting of the following:

**Improve Fuel Farm, (Install Fuel Card Reader)**

**Acquire Equipment (Acquire Airport Tractor & Sweeper)**

**DRAFT**

all as more particularly described in the Project Application.

**NOW THEREFORE**, pursuant to and for the purpose of carrying out the provisions of Title 49, United States Code, as amended, herein called "the Act", 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 compliance with the assurances and conditions 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, **95 per centum** thereof.

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

**Conditions**

DRAFT

1. The maximum obligation of the United States payable under this offer shall be ~~\$172,900~~. For the purposes of any future grant amendments which may increase the foregoing maximum obligation of the United States under the provisions of Section 47108(b) of the Act, the following amounts are being specified for this purpose:

\$                    for planning  
**\$172,900**            for airport development or noise program implementation.

2. The allowable costs of the project shall not include any costs determined by the FAA to be ineligible for consideration as to allowability under the Act.
3. Payment of the United States share of the allowable project costs will be made pursuant to and in accordance with the provisions of such regulations and procedures as the Secretary shall prescribe. Final determination of the United States share will be based upon the final audit of the total amount of allowable project costs and settlement will be made for any upward or downward adjustments to the Federal share of costs.
4. The sponsor shall carry out and complete the Project without undue delays and in accordance with the terms hereof, and such regulations and procedures as the Secretary shall prescribe, and agrees to comply with the assurances which were made part of the project application.
5. The FAA reserves the right to amend or withdraw this offer at any time prior to its acceptance by the sponsor.
6. 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 **7/28/2010** or such subsequent date as may be prescribed in writing by the FAA.
7. The sponsor shall take all steps, including litigation if necessary, to recover Federal funds spent fraudulently, wastefully, or in violation of Federal antitrust statutes, or misused in any other manner in any project upon which Federal funds have been expended. For the purposes of this grant agreement, the term "Federal funds" means funds however used or disbursed by the sponsor that were originally paid pursuant to this or any other Federal grant agreement. It shall obtain the approval of the Secretary as to any determination of the amount of the Federal share of such funds. It shall return the recovered Federal share, including funds recovered by settlement, order or judgment, to the Secretary. It shall furnish to the Secretary, upon request, all documents and records pertaining to the determination of the amount of the Federal share or to any settlement, litigation, negotiation, or other efforts taken to recover such funds. All settlements or other final positions of the sponsor, in court or otherwise, involving the recovery of such Federal share shall be approved in advance by the Secretary.
8. The United States shall not be responsible or liable for damage to property or injury to persons which may arise from, or be incident to, compliance with this grant agreement.

9. **ASSURANCES AIRPORT SPONSORS:** The attached Assurances Airport Sponsors dated **03/2005**, incorporated hereto with the Grant Offer, are hereby substituted in lieu of those in the Sponsor's Project Application and made a part hereof.
10. **INFORMAL LETTER AMENDMENT OF AIP PROJECTS:** It is mutually understood and agreed that if, during the life of the project, the FAA determines that the maximum grant obligation of the United States exceeds the expected needs of the Sponsor by \$25,000.00 or five percent (5%), whichever is greater, the maximum obligation of the United States can be unilaterally reduced by letter from the FAA advising of the budget change. Conversely, if there is an overrun in the total actual eligible and allowable project costs, FAA may increase the maximum grant obligation of the United States to cover the amount of the overrun not to exceed the statutory percent limitation and will advise the Sponsor by letter of the increase. It is further understood and agreed that if, during the life of the project, the FAA determines that a change in the grant description is advantageous and in the best interests of the United States, the change in grant description will be unilaterally amended by letter from the FAA. Upon issuance of the aforementioned letter, either the grant obligation of the United States is adjusted to the amount specified or the grant description is amended to the description specified.
11. **BUY AMERICAN REQUIREMENT.** Unless otherwise approved by the FAA, it will not acquire or permit any contractor or subcontractor to acquire any steel or manufactured products produced outside the United States to be used for any project for airport development or noise compatibility for which funds are provided under this grant. The sponsor will include in every contract a provision implementing this special condition.
12. **AIR AND WATER QUALITY:** Approval of the project included in this agreement is conditioned on the Sponsor's compliance with applicable air and water quality standards in accomplishing project construction. Failure to comply with this requirement may result in suspension, cancellation, or termination of Federal assistance under this agreement.
13. **MAXIMUM OBLIGATION INCREASE FOR NONPRIMARY AIRPORTS:** In accordance with Section 47108(b) of the Act, as amended, the maximum obligation of the United States, as stated in Condition No. 1 of this Grant Offer:
- a. may not be increased for a planning project;
  - b. may be increased by not more than 15 percent for development projects;
  - c. may be increased by not more than 15 percent or by an amount not to exceed 25 percent of the total increase in allowable costs attributable to the acquisition of land or interests in land, whichever is greater, based on current credible appraisals or a court award in a condemnation proceeding.
14. **RUNWAY PROTECTION ZONES:** The Sponsor agrees to take the following actions to maintain and/or acquire a property interest, satisfactory to the FAA, in the Runway Protection Zones:
- i. **Existing Fee Title Interest in the Runway Protection Zone:** The Sponsor agrees to prevent the erection or creation of any structure or place of public assembly in the Runway Protection Zone, except for NAVAIDS that are fixed by their functional purposes or any other structure approved by the FAA. Any existing structures or uses within the Runway Protection Zone will be cleared or discontinued unless approved by the FAA.
  - ii. **Existing Easement Interest in the Runway Protection Zone:** The Sponsor agrees to take any and all steps necessary to ensure that the owner of the land within the designated Runway Protection Zone will not build any structure in the Runway Protection Zone that is a hazard to air navigation or which might create glare or misleading lights or lead to the construction of residences, fuel handling and storage facilities, smoke generating activities, or places of public assembly, such as churches, schools, office buildings, shopping centers, and stadiums.

**15. This grant offer may be funded all or in part, with funds from the Small Airport Fund.**

**16. MANUAL PAYMENTS:** The sponsor agrees to request cash draw downs using appropriate FAA forms, only when actually needed for its disbursements and to timely report of such disbursements as required. It is understood that failure to adhere to this provision may cause a delay in payment.

**17. GRANTS ISSUED ON DESIGN:** It is understood and agreed by and between the parties hereto that this Grant Offer is made and accepted based on design for improving the fuel farm and acquiring the tractor and sweeper; and the parties hereby covenant and agree that within 180 calendar days from the date of acceptance of this Grant Offer, the Sponsor shall receive bids for the work contained within the grant description.

**18. TRAFFICKING IN PERSONS:**

**a. Provisions applicable to a recipient that is a private entity.**

1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not--
  - i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
  - ii. Procure a commercial sex act during the period of time that the award is in effect; or
  - iii. Use forced labor in the performance of the award or subawards under the award.
2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity--
  - i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or
  - ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either--
    - A. Associated with performance under this award; or
    - B. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 49 CFR Part 29.

**b. Provision applicable to a recipient other than a private entity.** We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity--

1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either--
  - i. Associated with performance under this award; or
  - ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 49 CFR Part 29.

**c. Provisions applicable to any recipient.**

1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section.
  - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
  - ii. Is in addition to all other remedies for noncompliance that are available to us under this award.
3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

**d. Definitions.** For purposes of this award term:

1. "Employee" means either:
  - i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or

- ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
- 2. "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
- 3. "Private entity":
  - i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
  - ii. Includes:
    - A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
    - B. A for-profit organization.
- 4. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

SECRET

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 hereinafter provided, and this Offer and Acceptance shall comprise a Grant Agreement, as provided by the Act, constituting the contractual obligations and rights of the United States and the Sponsor with respect to the accomplishment of the Project and compliance with the assurances and conditions as provided herein. Such Grant Agreement shall become effective upon the Sponsor's acceptance of this Offer.

**UNITED STATES OF AMERICA  
FEDERAL AVIATION ADMINISTRATION**

\_\_\_\_\_  
Ruben C. Cabalbag  
Acting Manager, Los Angeles Airports District Office

**Part II - Acceptance**

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

Executed this \_\_\_\_\_ day of July, 2010

**City of Bisbee, Arizona**

(SEAL)  
(Sponsor's Designated Official Representative)

By \_\_\_\_\_

Attest: \_\_\_\_\_

Title \_\_\_\_\_

Title: \_\_\_\_\_

**CERTIFICATE OF SPONSOR'S ATTORNEY**

I, \_\_\_\_\_, acting as Attorney for the Sponsor do hereby certify:

That in my opinion the Sponsor is empowered to enter into the foregoing Grant Agreement under the laws of the State of **Arizona**. Further, I have examined the foregoing Grant Agreement and the actions taken by said Sponsor and Sponsor's official representative has been duly authorized and that the execution thereof is in all respects due and proper and in accordance with the laws of the said State and the Act. In addition, for grants involving projects to be carried out on property not owned by the Sponsor, there are no legal impediments that will prevent full performance by the Sponsor. Further, it is my opinion that the said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of July, 2010

\_\_\_\_\_  
Signature of Sponsor's Attorney