

RESOLUTION NO. R 028 76

WHEREAS, the Federal Aviation Administration has approved a project and tendered to the County of Sussex, Delaware, a Grant Offer under which the United States commits itself in accordance with the terms stated therein to pay 90 percent of allowable project costs of certain development at the Sussex County Airport; and

WHEREAS, the Offer made by the United States must be accepted in the manner provided in the terms thereof and in accordance with the regulations incorporated therein by reference,

THEREFORE,

BE IT RESOLVED:

1. That the County of Sussex, Delaware, does hereby accept the Grant Offer issued on the project by the Federal Aviation Administration as hereinafter set forth in the attached Grant Agreement,

2. The County Administrator, Joseph T. Conaway, is authorized to execute the Grant Agreement in the manner provided as evidence of the County's acceptance, and the Clerk of the County Council, Emogene P. Ellis, is authorized to attest such execution and to affix the official seal thereto, and

3. A copy of the Grant Agreement, formed by the Grant Offer and Acceptance hereinbefore mentioned, is attached hereto and made a part of this resolution.

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF RESOLUTION NO. R 028 76 PASSED BY THE COUNTY COUNCIL OF SUSSEX COUNTY ON THE 28TH DAY OF SEPTEMBER, 1976.


EMOGENE P. ELLIS
CLERK OF THE COUNTY COUNCIL

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 of all allowable project costs.

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 \$ 90,000.00.
2. The Sponsor shall:
 - (a) begin accomplishment of the Project within thirty (30) 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 reason 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 September 30, 1976, or such subsequent date as may be prescribed in writing by the FAA.
8. In addition, the Sponsor shall:
 - (a) Incorporate or cause to be incorporated in each contract for construction work under the project, or any modification thereof, the equal opportunity clause as set forth in Section 202 of Executive Order No. 11246 of 24 September 1965, or such modification thereof as may be approved by the Secretary of Labor.
 - (b) Incorporate or cause to be incorporated in each bid or proposal form submitted by prospective contractors for construction work under the project the provisions prescribed by Section 152.61, Part 152, Federal Aviation Regulations.
 - (c) Be bound by said equal opportunity clause in any construction work under the project which it performs itself other than through its own permanent work force directly employed or through the permanent work force directly employed by another agency of government.
 - (d) Cooperate actively with the FAA 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.
 - (e) Furnish the FAA and the Secretary of Labor such information as they may require for the supervision of such compliance and will otherwise assist the FAA in the discharge of its primary responsibility for securing compliance.
 - (f) Refrain from entering into any contract or contract modification subject to Executive Order No. 11246 with a contractor debarred from, or who has not demonstrated eligibility for, government contracts and Federally-assisted construction contracts pursuant to Part II, Subpart D of Executive Order No. 11246.

(g) Carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the FAA and the Secretary of Labor pursuant to Part II, Subpart D of Executive Order No. 11246; and in the event that the Sponsor fails or refuses to comply with its undertakings, the FAA may cancel, terminate or suspend in whole or in part any contractual arrangement it may have with the Sponsor, may refrain from extending any further assistance under any of its programs subject to Executive Order 11246 until satisfactory assurance of future compliance has been received from such applicant, or may refer the case to the Department of Justice for appropriate legal proceedings.

9. It is understood and agreed that the Sponsor will submit, within thirty (30) days of the date of acceptance of this Grant Offer, for review and approval by FAA, final plans and specifications for the work to be accomplished. Further, the Invitation for Bids will not be issued until the final plans and specifications have been approved by the Chief, Harrisburg Airports District Office, FAA, Eastern Region.
10. The Federal Government does not now plan or contemplate the construction of any structures pursuant to paragraph 27 of Part V - Assurances of the Application for Federal Assistance dated September 10, 1976, and, therefore, it is understood and agreed that the Sponsor is under no obligation to furnish any such areas or rights under this Grant Agreement.
11. The Sponsor will send a copy of all Invitations for Bids, advertised or negotiated, for concessions or other businesses at the airport to the Office of Minority Business Enterprise (OMBE) representative as identified by the FAA Regional Civil Rights Office. The Sponsor will disclose and make information about the contracts, contracting procedures and requirements available to OMBE or its designated affiliate 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 the requirements of 49 CFR 21 Appendix C (A)(1)(X), Regulations of the Office of the Secretary of Transportation.
12. It is understood and agreed that the Sponsor will acquire, with or without Federal assistance, on or before October 1, 1978, in order to ensure the safe and unobstructed passage of aircraft in and through the airspace indicated below, property interests in the approaches to Runways 4 and 22, to provide a clear zone, as defined in Part 152, paragraph 152.9(b), with an inner width of 500', outer width of 1010', length of 1700', giving the Sponsor sufficient control to rid such zone of all obstructions (objects so far as they project above the approach surfaces established by Part 77 of the Federal Aviation Regulations) and to prevent the creation of future obstructions, together with rights of entrance and exit for those purposes.

13. 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 Airways 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. et seq.) shall be included in the rate base in establishing fees, rates, and charges for users of the airport.
14. 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).
15. 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 airports shall be subject to nondiscriminatory and substantially comparable rates, fees, rentals, and other charges and nondiscriminatory and substantially comparable rules, regulations, and 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 tenants shall not be unreasonably withheld by any airport 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) shall not require the reformation of any lease or other contract entered into by any Sponsor before July 12, 1976. Provision (B) shall not require the reformation of any lease or other contract entered into by any Sponsor before July 1, 1975.

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 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.....

(TITLE)

Chief, Harrisburg Airports District Office

Part II-Acceptance

The County of Sussex, Delaware 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 such acceptance agrees to all of the terms and conditions thereof.

Executed this 28th day of September, 1976.

County of Sussex

(Name of Sponsor)

By

Joseph T. Conway

Title

County Administrator

(SEAL)

Attest: Eugene P. Ellis

Title: Clerk of the County Council

CERTIFICATE OF SPONSOR'S ATTORNEY

I, A. Dean Betts, acting as Attorney for the County of Sussex, (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 Delaware 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 Georgetown, Delaware this 28th day of September, 1976.

A. D. Betts

Title County Solicitor