

Memorandum



Date: February 7, 2012

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

Agenda Item No. 8(A)(1)

From: Carlos A. Gimenez
County Mayor *CG*

Resolution No. R-112-12

Subject: Ratification of Acceptance and Execution of Federal Aviation Administration Modification to Non-Federal Reimbursable Agreement No. AJW-FN-ESA-10-7013-B to relocate FAA Contract Tower ATCT at Opa-locka Executive Airport, in the amount of \$90,864.95

RECOMMENDATION

It is recommended that the Board adopt the attached resolution ratifying the acceptance and execution by the Mayor or Mayor's designee of the Modification to Non-Federal Reimbursable Agreement (RA) No. AJW-FN-ESA-10-7013-B with the Federal Aviation Administration (FAA). Under this Modification, the FAA will provide engineering and installation of a communication cable, at cost estimated to be \$90,864.95, from the midfield of Opa-locka Executive Airport (OPF) to the new Air Traffic Control Tower (ATCT).

SCOPE

This project is located within Commissioner Barbara J. Jordan's District 1; however, the impact of this item is countywide as OPF is a regional asset.

FISCAL IMPACT

This item involves a federal grant that will offset the cost of a portion of the work being done to construct a new Air Traffic Control Tower at the Airport. The work involves the installation of a communication cable to the new ATCT, the cost of which has been included in the Aviation Department's budget. The funding sources for the Aviation Department's budget are revenues generated by the Aviation Department from users of the entire County airport system.

The work will be done by the FAA itself, but the County must pre-pay the FAA for the work with the County being reimbursed the pre-paid amount through grant funds. This item does not have a fiscal impact on the County's budget because this particular item involves the FAA's reimbursement of the County for the \$90,864.95 the County must provide to the FAA in advance of the work.

Future Operations and Maintenance (O&M) costs associated with the new ATCT, such as utilities, maintenance, landscaping, and janitorial services, are estimated at \$42,000 per year. These costs will be included in MDAD's annual O&M Budget for the entire Airport System, and the O&M work will be performed through MDAD's Maintenance operations and existing contracts.

PROJECT MONITOR

This RA is managed by José A. Ramos, Interim MDAD Division Director of Aviation Planning, Land-Use and Grants.

BACKGROUND

OPF is a general aviation airport serving as a reliever for Miami International Airport (MIA). Its primary mission is to accommodate general aviation and commercial aircraft in need of maintenance and services that MIA is unable to provide. OPF is a vital component of Miami-Dade County's Aviation System and is an essential facility based on the number and type of operations, mix of aircraft traffic, and U.S. Coast Guard operations.

On May 9, 2006, pursuant to Resolution No. R-496-06, the Board entered into a \$2.5 million Other Transaction Agreement (OTA) with the FAA for the construction and equipping of a new ATCT at OPF to replace its outdated structure. (An OTA is an agreement between the FAA and an entity that is "other" than a federal agency.) The ATCT will be owned and operated by the County through MDAD. In a series of Supplements to that Agreement (approved in Resolutions No. R-1205-07 [\$4.2 million], R-969-10 [\$1,121,366.86] and R-226-11 [\$882,128]), the FAA's funds for the ATCT were increased to \$8,553,494.86. Under the OTA format, the FAA holds a certain amount of the grant in reserve which can be used later for other work associated with the original project.

The FAA announced its willingness to participate further in the ATCT project by providing and installing a communication cable from a midfield site to the new ATCT. The cost of this work can be paid through the reserve account, but accessing the reserve account requires a Reimbursable Agreement (RA). Under the RA, the County must pre-pay the cost of the additional work, and then be reimbursed in the future when the FAA releases the reserve account.

On January 20, 2011, the Board adopted Resolution No. R-10-11, approving an RA for MDAD to access the reserve account amount of \$459,195.00. The estimated cost of the communication cable work under the attached Resolution is \$90,864.95. This amount will be added to the reserve account amount of \$459,195.00 for a new available reserve account amount of \$550,059.95. To access the additional \$90,864.95, however, the County needs to enter into the attached Modification to the RA. Under the Modification, as is the case with the other funds in the reserve account, the County must pre-pay the FAA the estimated costs of \$90,864.95, but will be reimbursed this amount when the FAA releases the reserve account in the future.

It is therefore recommended that the Board ratify the acceptance and execution of this Reimbursable Agreement in the amount of \$90,864.95.



Deputy Mayor



MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: February 7, 2012

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 8(A)(1)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(A)(1)
2-7-12

RESOLUTION NO. R-112-12

RESOLUTION RELATING TO OPA-LOCKA EXECUTIVE AIRPORT; RATIFYING EXECUTION BY THE MAYOR'S DESIGNEE OF MODIFICATION TO NON-FEDERAL REIMBURSABLE AGREEMENT NO. AJW-FN-ESA-10-7013-B UNDER WHICH THE FEDERAL AVIATION ADMINISTRATION WILL PROVIDE ENGINEERING AND INSTALLATION OF A COMMUNICATION CABLE AT OPA-LOCKA EXECUTIVE AIRPORT UPON THE PRE-PAYMENT BY THE COUNTY OF THE \$90,864.95 IN ESTIMATED COSTS FOR SUCH PROJECT

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board ratifies, confirms, and approves the execution by the Mayor's designee of the Modification to Non-Federal Reimbursable Agreement No. AJW-FN-ESA-10-7013-B with the Federal Aviation Administration in the amount of \$90,864.95, under which the County's Aviation Department will pre-pay the FAA the sum of \$90,864.95 for the estimated costs associated with the FAA's engineering and installation of a communication cable from the midfield of Opa-locka Executive Airport to the new Air Traffic Control Tower, following which County will be eligible for reimbursement of such amount from the FAA.

The foregoing resolution was offered by Commissioner **Barbara J. Jordan**, who moved its adoption. The motion was seconded by Commissioner **Rebeca Sosa** and upon being put to a vote, the vote was as follows:

	Joe A. Martinez, Chairman	aye	
	Audrey M. Edmonson, Vice Chairwoman	aye	
Bruno A. Barreiro	aye	Lynda Bell	aye
Esteban L. Bovo, Jr.	aye	Jose "Pepe" Diaz	aye
Sally A. Heyman	aye	Barbara J. Jordan	aye
Jean Monestime	aye	Dennis C. Moss	aye
Rebeca Sosa	aye	Sen. Javier D. Souto	absent
Xavier L. Suarez	aye		

The Chairperson thereupon declared the resolution duly passed and adopted this 7th day of February, 2012. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK



By: **Christopher Agrippa**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Thomas P. Abbott

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**MODIFICATION TO
NON-FEDERAL REIMBURSABLE AGREEMENT**

BETWEEN

**DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION**

AND

**MIAMI-DADE COUNTY THROUGH ITS
AVIATION DEPARTMENT
OPA LOCKA, FLORIDA**

WHEREAS, the Federal Aviation Administration (FAA) can furnish directly or by contract, material, supplies, equipment, and services which the Miami-Dade County through its Aviation Department (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;

WHEREAS, the authority for the FAA to furnish material, supplies, equipment, and services to the Sponsor upon a reimbursable payment basis is found in 49 U.S.C. § 106(l)(6) on such terms and conditions as the Administrator may consider necessary;

WHEREAS, Article 10 of AJW-FN-ESA-7013, Provide FAA Support to Relocate FAA Contract Tower ATCT at Opa-Locka Executive Airport (OPF), Opa-Locka, Florida requires that changes and or modifications to the Agreement shall be made in written modification, signed by authorized representatives of each party;

NOW THEREFORE, the FAA and the Sponsor mutually concur that the Agreement be modified by modifying Articles 3B and 7 of the existing Reimbursable Agreement, as specifically stated herein. Other than the modified articles specified, the original agreement remains unchanged. To the extent that there is any inconsistency between the original and these modifications, the modifications shall take precedence. The FAA and the Sponsor mutually agree as follows:

ARTICLE 1. Parties

The Parties to this Agreement are the FAA and Miami-Dade Aviation Department.

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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 is to provide FAA support for the relocation of the FAA Contract Tower (FCT) Airport Traffic Control Tower (ATCT) at Opa Locka Executive Airport, Opa Locka, Florida. With this in mind, this project is titled:

"Provide FAA Support to Relocate FAA Contract Tower ATCT at Opa-Locka Executive Airport (OPF), Opa Locka, Florida"

Modify Paragraph B to add items 5-6:

- B. The FAA will perform the following activities

1. Furnish equipment and materials to relocate the following equipment to the new ATCT: Automated Surface Observing System Acquisition Control Unit (ASOS ACU) and Operator Interface Device (OID), Computer Based Instruction (CBI) System, Flight Data Input/Output (FDIO), NAVAIDS Remote Control Equipment and the Standard Terminal Automation Replacement System (STARS).
2. Contract for establishment of telephone circuits for FAA equipment and services.
3. Furnish materials and services required for the removal of all FAA equipment from the existing ATCT that will not be relocated.
4. Perform demolition of the temporary ATCT and site restoration of the property.
5. Provide engineering for the installation of the communications cable from a designated point on the airfield to the new ATCT.
6. Install communications cable from the midfield to the new ATCT.

- C. The Sponsor will perform the following activities:

1. Provide a designated representative who will be readily available to the FAA during the equipment installation phase. This representative will be responsible for addressing FAA concerns to the Sponsor's contractor.

ARTICLE 4. Points of Contact

A. FAA:

1. The FAA Eastern Service Area will provide the technical administration of this Agreement.
 - Relocation of the STARS, FDIO and CBI will be handled by the Terminal Engineering Center. Mr. Larry Adornato is the Manager and can be reached at (404) 389-8721.
 - Relocation of the NAVAIDS equipment will be handled by the NAVAIDS Engineering Center. Mr. Anthony Sims is the Manager and can be reached at (404) 389-8531.
 - Relocation of the ASOS equipment will be handled by the Surveillance and Weather Engineering Center. Mr. Steve Braddy is the point of contact and can be reached at (404) 389-8691.

The Engineering Centers are 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. FAA Contracting Officer: The execution, modification, and administration of this Agreement must be authorized and accomplished by the Contracting Officer, Ms. Gail Edwards who can be reached at 404-305-5182.

B. Sponsor:

Miami-Dade Aviation Department
Mr. Jose Ramos
P.O. Box 025504
Miami, Florida 33102
(305) 876-7090

ARTICLE 5. Non-Interference with Operations

The Sponsor understands and hereby agrees that any relocation, replacement, or modification of any existing or future FAA facility, system, and/or equipment covered by this Agreement during its term or any renewal thereof made necessary by Sponsor improvements, changes, or other actions which in the FAA's opinion interfere with the technical and/or operations characteristics of an FAA facility, system, and/or piece of equipment will be at the expense of the Sponsor, except when such improvements or changes are made at the written request of the FAA. In the event such relocations, replacements, or modifications are necessitated due to causes not attributable to either the Sponsor or the FAA, the parties will determine funding responsibility.

ARTICLE 6. Transfer Agreement

- A. To the extent that the Sponsor provides any material associated with the project, all such material (buildings, equipment, systems, components, cable, enclosures, etc.) will become the property of the FAA. The Sponsor will enter into a transfer agreement with the FAA for all real and personal property being transferred to the FAA for conveyance of ownership. The Sponsor will provide a line item property listing in tabular format, consisting of all real and personal property that will be included in the Project. Real property will be identified by each line item and cost (e.g., foundation size, building type and dimensions, systems, composition of access road and parking, linear feet of fencing and cabling, etc.). Personal property listing will include the bar code number (where applicable), manufacturer, full item description, part number and/or serial number, quantity, model number, cost, funding appropriation, etc. The cost data for each item will be supported by a copy of the original invoice or billing statement and a copy of the construction contract along with verification of the contract acceptance date.
- B. The itemized cost data will be compiled into FAA Form 4650-12(1/99), Material Transfer/Receipt Document. This completed document provides an opportunity for the FAA (whenever possible) to verify equipment accountability; to assign national or local stock numbers; to determine the breakout of installed facility equipment; to establish line item accountable property; and to assign bar codes to specific equipment prior to it being recorded in property records. Joint signatures are required from both the Sponsor and the FAA Property Custodian on the FAA Form 4650-12(1/99) prior to recordation of the assets in the FAA's property systems.

ARTICLE 7. Estimated Costs

Modify Article 7 to add the estimated costs in the table below to "Modification 1":

Description of Reimbursable Item	Estimated Cost
Engineering - WB4020	\$3,000.00
Construction - WB4050	\$44,000.00
Government Furnished Material - WB4050	\$16,500.00
Installation, Testing & Checkout- WB4060	\$1,800.00
Contingency - 10%	\$6,530.00
Modification 1 Subtotal:	\$71,830.00
26.5% Overhead:	\$19,034.94
Total Modification 1 Estimated Cost:	\$90,864.95
Total Cost of Original Agreement:	\$459,195.00
Total Cost of Modified Agreement:	\$550,059.95

ARTICLE 8. Period of Agreement and Effective Date

This Agreement supersedes and nullifies any previous agreements between the parties on the subject matter. 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 E of this Agreement. Under no circumstances will this Agreement extend 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 a copy of the executed Agreement and full advance payment in the amount stated in Article 7 to the Accounting Division 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.
- B. The Sponsor certifies that arrangements for sufficient funding have been made to cover the estimated costs of the Agreement.
- C. The Accounting Division is identified by the FAA as the billing office for this Agreement. The Sponsor will send a copy of the executed Agreement and the full advance payment to the Accounting Division shown below. All payments must include the Agreement number, Agreement name, Sponsor name, and project location.

The mailing address is:

FAA Mike Monroney Aeronautical Center
Attn: AMZ-330, Reimbursable Project Team
P.O. Box 25082
Oklahoma City, OK 73125

The overnight mailing address is:

FAA Mike Monroney Aeronautical Center
Attn: AMZ-330, Reimbursable Project Team
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: 405-954-2828

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

Miami-Dade Aviation Department
Mr. Jose Ramos
P.O. Box 025504

Miami, Florida 33102
(305) 876-7090

- D. The FAA will provide updates at least quarterly of costs incurred against the advance payment. A Reimbursable Bill Support List (a summary of cost by object class) will accompany all updates.
- E. The cost estimates contained in Article 7 are expected to be the maximum costs associated with this Agreement, but may be modified 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 a modification to the Agreement which includes the FAA's additional costs. The Sponsor agrees to prepay the entire estimated cost of the modification. The Sponsor will send a copy of the executed modification to the Agreement to the FAA-Mike Monroney Aeronautical Center with the additional advance payment. Work identified in the modification 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 Modifications

Changes and/or modifications to this Agreement will be formalized by a written modification that will outline in detail the exact nature of the change. Any modification 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 modification(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 modifying or otherwise affecting the terms of the Agreement. Any party to this Agreement may request that it be modified, whereupon the parties will consult to consider such modifications.

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

If attachments are included in this Agreement and in the event of any inconsistency between the attachments and the terms of this Agreement, the inconsistency will be resolved by giving preference in the following order:

- A. This Agreement
- B. The attachments

ARTICLE 13. Legal Authority

This Agreement is entered into under the authority of 49 U.S.C. § 106(l)(6), 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

In the event that the security office determines that the security requirements under FAA Order 1600.72A applies to work under this Agreement, the FAA is responsible for ensuring that security requirements, including compliance with AMS clause 3.14-2, Contractor Personnel Suitability Requirements (January 2011) are met.

ARTICLE 21. Entire Agreement

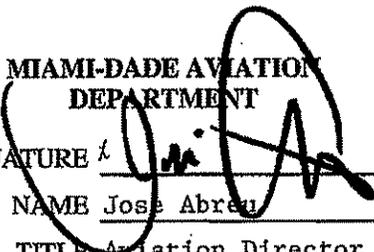
This document is the entire Agreement of the parties, who accept the terms of this Agreement as shown by their signatures below. In the event the parties duly execute any modification to this Agreement, the terms of such modification will supersede the terms of this Agreement to the extent of any inconsistency. Each party acknowledges participation in the negotiations and drafting of this Agreement and any modifications 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 100 calendar days after the FAA transmits it to the Sponsor, the terms contained and set forth in this Agreement shall be null and void.

AGREED:

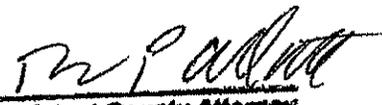
FEDERAL AVIATION
ADMINISTRATION

SIGNATURE _____
NAME _____
TITLE Contracting Officer
DATE _____

MIAMI-DADE AVIATION
DEPARTMENT

SIGNATURE  _____
NAME Jose Abreu
TITLE Aviation Director
DATE October 19, 2011

Approved as to form
and legal sufficiency


Assistant County Attorney




Gene Spencer
10/20/11
Clerk of the Board