

**GRAND JUNCTION REGIONAL AIRPORT AUTHORITY**



**Date:** August 9, 2017

**Location:** *GRAND JUNCTION CITY HALL  
250 N. 5<sup>TH</sup> ST  
GRAND JUNCTION, CO 81501  
AUDITORIUM*

**Time:** 5:15 PM

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**AGENDA**

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**I. Call to Order and Pledge of Allegiance**

**II. Approval of Agenda**

**III. Commissioner Comments**

**IV. Citizens Comments**

The Grand Junction Regional Airport Authority welcomes public comments at its meetings. The Citizens Comment period is open to all individuals that would like to comment. If you wish to speak under the Citizens Comment portion of the agenda, please fill out a comment card prior to the meeting. If you have a written statement for the Board, please have 10 copies available and give them to the Clerk for distribution to the Board. The Board Chairman will indicate when you may come forward and comment. Please state your name for the record.

**V. Consent Items**

The Consent Agenda is intended to allow the Board to spend its time on the more complex items on the agenda. These items are perceived as non-controversial and can be approved by a single motion. The public or Board Members may ask that an item be removed from the Consent Agenda and be considered individually.

- A. Dynetics invoice 1
- B. ADK executive search agreement 2

**VI. Discussion/Action Items**

- A. Order Granting In Part And Denying In Part Relators' Motion To Approve Fees And Costs 3
- B. AIP 56 replacement runway – design phase 2 4

**VII. Motion into Executive Session**

**VIII. Executive Session** for the purpose of discussing specialized details of security arrangements as authorized by C.R.S. Section 24-6-402(4)(c) and for determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators as authorized under C.R.S. Section 24-6-402(4)(e).

**IX. Adjourn Executive Session and move into regular board meeting**

**X. Any other business which may come before the Board**

**XI. Adjournment**

**Grand Junction Regional Airport Authority**

**Agenda Item Summary**

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**TOPIC:** Dynetics invoice 2854328

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**PURPOSE:** Information  Guidance  Decision

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**RECOMMENDATION:** Approve Dynetics invoice 2854328 dated 7/21/17

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**LAST ACTION:** \$81,500 was paid 12/22/15

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**DISCUSSION:** The total proposed price with Dynetics was \$163,000 approved by the board chairman on 11/13/15. The first half of the total cost was paid December 2015.

The details of the project are considered Sensitive Security Information, thus, discussion of this agreement must take place in Executive Session.

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**FISCAL IMPACT:** \$81,500

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**ATTACHMENTS:**

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**STAFF CONTACT:**

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Expertise. Agility. Innovation.

Billing Number 000001  
Invoice Number INV-0002854328

INVOICE DATE: 7/21/2017

Terms: NET 30  
PO Number: GJ 12232015  
Due Date: 8/20/2017

BILL TO: Grand Junction Regional Airport  
800 Eagle Drive  
Grand Junction, CO 81506

REMIT TO: DYNETICS, INC.  
ATTENTION: ACCOUNTS RECEIVABLES  
P.O. BOX 5500  
HUNTSVILLE, AL 35814

BILL SCHEDULE ITEMS

LINE-SCH	DESCRIPTION	QTY	UOM	PO PRICE	EXTENDED
1	Radar Delivery w/1 year Warranty	1	EA	\$ 125,000.00	\$ 125,000.00
2	Camera	1	EA	\$ 38,000.00	\$ 38,000.00

JUL 24 2017

Invoice Subtotal \$ 163,000.00  
Payments to date \$ (81,500.00)  
Invoice Total \$ 81,500.00

POC: Tina Edwards-Accountant  
O:256-964-4563  
E: tina.edwards@dynamics.com

**Grand Junction Regional Airport Authority**

**Agenda Item Summary**

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<b>TOPIC:</b>	ADK executive search services agreement		
<b>PURPOSE:</b>	Information <input type="checkbox"/>	Guidance <input type="checkbox"/>	Decision <input checked="" type="checkbox"/>
<b>RECOMMENDATION:</b>	Approve the ADK services agreement, authorize the Executive Director to sign the agreement and approve the installment payments totaling \$34,000		
<b>LAST ACTION:</b>	At the July 18, 2017, regular board meeting the board approved the engagement of ADK as part of an RFP process for executive search services		
<b>DISCUSSION:</b>	The attached ADK services agreement has been reviewed and approved by airport general counsel.		
<b>FISCAL IMPACT:</b>	\$34,000		
<b>ATTACHMENTS:</b>	ADK services agreement		
<b>STAFF CONTACT:</b>	Mark Achen Interim Executive Director		

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P.O. Box 330906 • Atlantic Beach, FL 32233 • 904-536-8102 • [adkconsulting@msn.com](mailto:adkconsulting@msn.com)

## EXECUTIVE SEARCH SERVICES AGREEMENT

### Services

This Executive Search Services Agreement (hereinafter referred to as "Agreement"), is made and entered into this \_\_\_\_ day of August, 2017 between the Grand Junction Regional airport Authority, a public body under the laws of the State of Colorado (hereinafter referred to as "Client"), and ADK Consulting, Inc., incorporated in the State of Florida, and authorized to conduct business throughout the United States (hereinafter referred to as "Consultant"), and collectively hereinafter referred to as the "Parties".

Consultant agrees to provide executive search services to Client in accordance with Consultant's proposal dated June 14, 2017 (hereinafter referred to as "Proposal"), and other services that may be requested from time to time and agreed upon by the Parties.

### Compensation

As compensation for the services provided herein as described in the Proposal, Client agrees to pay to Consultant a professional fee of \$34,000.00 excluding any agreed to travel related expenses by the Parties. Said professional fee will include all professional fees, out-of-pocket office expenses, labor, materials, and other associated services.

Invoicing and payment would be as follows:

Installment 1 due within 30 days after notice to proceed:	\$11,000.00
Installment 2 due within 60 days after notice to proceed:	\$11,000.00
Installment 3 due after contract completion:	\$12,000.00

Client will be responsible for any Consultant travel expenses when traveling on behalf of Client as outlined in the Proposal and approved by Client.

Other expenses not mentioned in the Proposal and *not included* in the fee are considered over and above (overnight shipping, reproduction of documents for Client review, e.g.) and will be billed only if the service is requested by Client.

*We do not add any overhead fees to the fees described above.*

*ADK's fees are non-contingent and consistent with the standards of the retained search profession. Out-of-pocket expenses, as approved and requested by Client, for consultant travel, lodging, and search committee meeting expenses are billed separately at cost.*

*For this search, we anticipate at least two visits to Client's location, one for the initial meeting (two consultants) and the other for the final interviews (1 consultant). Additional visits will be made at Client's request and billed for expenses only.*

*There is no charge for video interviews or recordings.*

*We do not charge an additional fee for administrative and clerical support, teleconferencing, office copies, and computer/telephone usage.*

*We will, however, charge at cost for reproduction, binding, and courier services if requested by Client.*

*All deliverables are provided to Client at no cost electronically.*

*Reimbursement of candidate travel expenses is the responsibility of Client.*

#### *Contract Completion*

*For purposes of this Agreement, contract completion means a job offer has been communicated to and accepted by the selected finalist.*

#### *Insurance*

Consultant hereby certifies that it possesses a commercial liability policy with The Hartford, a professional services liability policy with the Philadelphia Insurance Companies and appropriate Worker's Compensation Insurance. Consultant will provide evidence of insurance to Client upon request.

#### *Principal Consultant*

Consultant has designated Ms. Linda Frankl as Consultant's Principal Search Manager who shall have the authority to act on behalf of Consultant with Ms. Annell Kuelzman as her assistant as well as your Client Manager. Client has the right to approve any proposed replacement of the Principal Search Manager.

#### *Termination*

Both Parties retain the right to terminate this Agreement at any time. Upon termination notice, Consultant will cease work and provide documentation of work completed to date of termination. Consultant will be compensated for all activity (professional fees) that has been performed at the date of termination per the terms of this Agreement, on a pro-rata basis.

#### *Indemnification*

Consultant shall indemnify and hold harmless Client and their respective officials, board members, employees, associates, and representatives from all liabilities, costs or damages (including reasonable attorneys' fees) that may arise from any action or inaction of Consultant's officials, employees, associates, and representatives in connection with the performance of the services outlined herein.

#### *Applicable Law and Venue*

This Agreement will be construed in accordance with the laws of the State of Colorado. Venue for any action brought pursuant to this Agreement will be in Mesa County, CO.

#### *Notices*

All notices required to be given by either of the parties hereto shall be in writing and be deemed communicated when mailed in the United States mail, certified, return receipt requested, and addressed as follows:

Grand Junction Airport Authority  
2828 Walker Field Drive, Suite 301  
Grand Junction, CO 81506

ADK Consulting, Inc.  
PO Box 330906  
Atlantic Beach, FL 32233

Agreed

_____ Signature	Mark Achen, Interim Executive Director Grand Junction Airport Authority	_____ Date
_____ Signature	Douglas R Kuelpman, President ADK Consulting, Inc.	_____ Date

**Grand Junction Regional Airport Authority**

**Agenda Item Summary**

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**TOPIC:** Order granting in part and denying in part realtors' motion to approve fees and costs

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**PURPOSE:** Information  Guidance  Decision

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**RECOMMENDATION:**

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**LAST ACTION:**

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**DISCUSSION:** On July 24, 2017 the US District Judge concluded the Relators' (David Shepard and William Marvel) fees and cost award as follows:

- 1. Fees**
  - a. Law office of John Steel
    - i. Requested \$288,855, awarded \$96,285
  - b. Fowler, Schimberg, Flanagan and McLetchie
    - i. Requested \$8,910, awarded \$8,910
- 2. Costs**
  - a. Law office of John Steel
    - i. Requested and awarded \$2,548.49
  - b. Fowler, Schimberg, Flanagan and McLetchie
    - i. Requested and awarded \$872.47
- 3. Total**
  - a. Law office of John Steel - \$98,833.49
  - b. Fowler, Schimberg, Flanagan and McLetchie \$9,782.47
  - c. Total - \$108,615.96

Based on correspondence with Julie Walker, with Kelly & Walker attorney representing the airport, payment should go directly to the two legal firms outlined above.

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**FISCAL IMPACT:** \$108,615.96

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**ATTACHMENTS:** Court Order

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**STAFF CONTACT:**

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Judge Christine M. Arguello**

Civil Action No. 13-cv-00736-CMA-CBS

UNITED STATES OF AMERICA, *ex rel*,  
DAVID H. SHEPARD, and  
WILLIAM M. MARVEL, appearing *qui tam*,

Plaintiffs/Relators,

v.

GRAND JUNCTION REGIONAL AIRPORT AUTHORITY,  
REX TIPPETTS, individually,  
EDDIE STORER, individually,  
AVIATION, INC.,  
JASON VIRZI, individually, and  
MORGAN EINSPAHR, individually,

Defendants.

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**ORDER GRANTING IN PART AND DENYING IN PART RELATORS' MOTION TO  
APPROVE FEES AND COSTS**

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This matter is before the Court on Plaintiffs/Relators David H. Shepard and William M. Marvel's Motion to Approve Fees and Costs. (Doc. # 84.) Therein, Relators seek \$288,855.00 in fees and \$2,548.49 in expenses to the Law Office of John Steel as well as \$8,910.00 in fees and \$872.47 in expenses to the law firm of Fowler, Schimberg, Flanagan and McLetchie P.C. (Doc. # 84 at 1.) For the following reasons, the Court grants in part and denies in part Relators' motion and awards Relators \$108,615.96 in fees and costs.

I. BACKGROUND

This case arises from a dispute over a fence project at the Grand Junction Airport; the project was funded by the Federal Aviation Administration (FAA). Relators state that in September 2012, they approached Attorney John Steel for advice on potential remedies regarding their discovery of false statements made during the grant and environmental compliance processes relating to the project. (Doc. # 84 at 2.) Attorney Steel, a local attorney with experience in Federal Court litigation, had some experience in the False Claims Act ("FCA") but no experience in FCA litigation. *Id.* Attorney Steel was hired on a contingency basis. (Doc. # 84 at 3.) Attorney Steel and his associate Renee Marr began drafting the *qui tam* complaint. (Doc. # 84 at 4.)

On March 20, 2013, Relators, both owners of hangers at the subject airport, filed the *qui tam* action on behalf of the Government alleging that payment for the fence was the product of false claims made to the FAA by the Grand Junction Regional Airport Authority (Airport Authority) in violation of the False Claims Act (FCA), as amended in 1986. The FCA provides that any person who

knowingly presents, or causes to be presented, a false or fraudulent claim to the United States for payment or approval . . . is liable to the United States Government for a civil penalty.

31 U.S.C. § 3729(a)(1)(A).

The Office of the Inspector General for the United States Department of Transportation, with help from the FBI and IRS, conducted a two-year investigation into Relators' allegations. At first, the investigation included consideration of criminal liability, but ultimately, the Government declined to pursue criminal charges. In regard

to this civil proceeding, the investigation revealed that some of Relators' claims were actionable under the FCA but not others. The Government and Airport Authority entered into a non-prosecution agreement in May 2014. (Doc. # 84-10.) The Airport Authority alleges that in June 2015, the Government advised Relators of the proposed settlement with the Airport Authority. (Doc. # 85 at 7.) In July 2015, Relators, the Government, and the Airport Authority attended an Executive Session to negotiate the settlement. (Doc. # 85 at 8.) Relators state that they were invited to attend the Executive Session and present their arguments opposing the settlement. (Doc. # 84 at 5.) On June 8, 2016, the Government filed a motion requesting that this Court approve a proposed settlement between it and the Airport Authority. (Doc. # 32.)

Relators objected to the settlement and in light of their objections, the Court set the matter for a fairness hearing. (Doc. # 38.) The hearing took place on February 16, 2017. After the hearing, this Court approved the settlement agreement on February 27, 2017. (Doc. # 79.) The final settlement was in the amount of \$16,500. (Doc. # 32-1.)

Relators now seek attorneys' fees and costs incurred throughout the case. Relators state they used Attorneys Steel and Marr as primary counsel and Attorneys Fowler and Widmann at the firm of Fowler, Schimberg, Flanagan and McLetchie P.C. as local counsel. (Doc. # 84 at 11.) In preparing his bills for the present motion, Attorney Steel states that he undertook measures to reduce the submitted bills including eliminating "all and any activity not directly related to the prosecution of this case," reducing travel time by 50%, and deducting 10% from both his and Attorney Marr's bills. (Doc. # 84 at ¶¶ 7, 9.) Relators note, however, that time spent on the application for fees will be submitted separately. (Doc. # 84 at 11.) Relators have not submitted any

reductions from the 38.6 hours submitted by Fowler, Schimberg, Flanagan and McLetchie P.C.

Defendants propose reducing the fees and costs to one-third of the total amount recovered which would result in a fees and costs award of \$5,500. (Doc. # 85 at 7.) In the alternative, Defendants request that the Court reduce the amount of fees by deducting all fees claimed after the notice of settlement, all fees over 50 hours spent drafting the complaint, all fees on the electrification issue, and all fees spent preparing for the Executive Session. (Doc. # 85 at 7–9.) This would leave the total fees recovered at \$54,990.00. (Doc. # 85 at 9.)

## II. LEGAL STANDARD

The FCA provides that a *qui tam* relator who successfully brings an FCA action shall receive “an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys’ fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.” 31 U.S.C. § 3730(d)(1).

Determination of the amount and reasonableness of attorneys’ fees is within the district court’s discretion. *Wright v. U-Let-Us Skycap Servs., Inc.*, 648 F. Supp. 1216, 1218 (D. Colo. 1986). When evaluating a motion for attorneys’ fees, the court follows the three-step process set forth in *Ramos v. Lamm*, 713 F.2d 546 (10th Cir. 1983), overruled on other grounds by *Pennsylvania v. Del. Valley Citizens’ Council for Clean Air*, 483 U.S. 711, 725 (1987).

First, the court determines the number of hours reasonably spent by counsel. *Malloy v. Monahan*, 73 F.3d 1012, 1017 (10th Cir. 1996); *Ramos*, 713 F.2d at 553. Factors considered in this reasonableness determination include: (1) whether the

amount of time spent on a particular task appears reasonable in light of the complexity of the case, the strategies pursued, and the responses necessitated by an opponent's maneuvering; (2) whether the amount of time spent is reasonable in relation to counsel's experience; and (3) whether the billing entries are sufficiently detailed, showing how much time was allotted to a specific task. *Rocky Mountain Christian Church v. Bd. of Cnty. Comm'rs of Boulder Cnty.*, No. 06-cv-00554, 2010 WL 3703224, at \*2-3 (D. Colo. Sept. 13, 2010). "Counsel . . . should make a good faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary." *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983). Courts need not "identify and justify every hour allowed or disallowed, as doing so would run counter to the Supreme Court's warning that a 'request for attorney's fees should not result in a second major litigation.'" *Malloy*, 73 F.3d at 1018 (quoting *Hensley*, 461 U.S. at 437); *Fox v. Vice*, 131 S. Ct. 2205, 2216 (2011) ("The essential goal in shifting fees . . . is to do rough justice, not to achieve auditing perfection.").

Second, the court must determine a reasonable hourly rate of compensation, based on "what lawyers of comparable skill and experience [in the given practice area] would charge for their time." *Ramos*, 713 F.2d at 555. "The party seeking the award has the burden of persuading the court that the hours expended and the rate sought are both reasonable." *LaSelle v. Public Serv. Co. of Colo. Severance Pay Plan*, 988 F. Supp. 1348, 1351 (D. Colo. 1997); *Malloy*, 73 F.3d at 1018.

Third, courts multiply the reasonable hourly rate with the number of hours reasonably expended to determine the "lodestar" amount. *LaSelle*, 988 F. Supp. at

1351; *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). Courts may adjust upward or downward depending on different factors. *Ramos*, 713 F.2d at 556.

### III. ANALYSIS

#### A. Proportionality

As a threshold matter, Defendants argue that Relators' request for \$323,848.49 in attorneys' fees is excessive and should receive an across-the-board cut because the case settled for \$16,500. (Doc. # 85 at 3–7.) Relators' counter that their goal was to achieve "good governance" at the airport, which had been achieved through the non-prosecution agreement and settlement. (Doc. # 86.)

The Supreme Court has recognized that "plaintiff's success is a crucial factor in determining the proper amount of an award of attorney's fees." *Hensley*, 461 U.S. at 440. The Tenth Circuit has previously affirmed reducing attorneys' fees when plaintiffs have achieved limited success and permits district courts to "lawfully award low fees or no fees' without calculating a lodestar." *Phelps v. Hamilton*, 120 F.3d 1126, 1131 (10th Cir. 1997) (quoting *Farrar v. Hobby*, 506 U.S. 103, 114-15 (1992)); see also *Bell v. Bd. Of Comm'rs of Jefferson County*, 451 F.3d 1097, 1104 (10th Cir. 2006).

The Court declines to reduce attorneys' fees in this case based on the amount of recovery. Instead, the Court will consider the *Ramos* factors, so as to avoid undercutting the FCA's goals, which the Tenth Circuit has recognized to be "to enhance the government's ability to recover losses resulting from fraud and to encourage individuals who know of government fraud to come forward with that information." *Shaw v. AAA Engineering & Drafting, Inc.*, 213 F.3d 538, 544 (10th Cir. 2000). "The FCA's attorney's fees provisions are central to the implementation of these policies." *Id.* The

FCA's legislative history recognizes that "[u]navailability of attorneys [sic] fees inhibits and precludes many private individuals, as well as their attorneys, from bringing civil fraud suits." S. Rep. 99-345, at 29 (1986), reprinted in 1986 U.S.C.C.A.N. 5266, 5294.

If a court were to substantially reduce a relator's attorneys' fees because the government settles for less than the amount expected by the relator, it may have a cooling effect and discourage relators or attorneys from investing in bringing *qui tam* actions thus undermining the purpose of the FAC. For these reasons, the Court will not reduce attorneys' fees on a proportional amount to the amount settled.

#### **B. REASONABLENESS OF FEES**

Defendants raise several challenges to the reasonableness of Relators' requested fees, specifically objecting to: (1) fees incurred after Relators were advised of the proposed settlement in June 2015 (suggesting reducing fees to \$88,900.00); (2) the approximately 200 hours billed related to drafting the complaint (suggesting reducing fees by \$15,000.00); (3) all fees related to preparation for the Executive Session (suggesting reducing fees by \$9,900.000); and (4) all fees related to the electrification issues which the Court found was not related to the fraud at the center of the suit (suggesting reducing fees by \$9,000.00). (Doc. # 85 at 7-9.) Relators do not accept any of the proposed reductions. (Doc. # 86.)

Having thoroughly reviewed Relators' time entries, Defendants' objections, and the *Ramos* factors, the Court finds that Relators' requested fees reflect Relators' active engagement in the FCA action from commencement through conclusion. However, the fees should be reduced to reflect reasonable fees related to bringing an FCA claim.

The Court agrees with Defendants that approximately 200 hours to draft a complaint is not reasonable and reduces the fees based on what it views is reasonable time spent drafting a complaint of this nature.

The Court does not believe that all fees billed after the notice of proposed settlement should be removed but does believe that the hours billed after the notice should be reduced. Attorney Steel's bills reflect approximately 100 billed hours attributed at least in some part to "[r]esponse" and approximately 100 hours attributed to the objection starting in May 2016. (Doc. # 84-4 at 5-7.) These calculations do not include the additional time billed by Attorney Marr on the same components of the litigation (e.g., 7/14/2016 JS: Objection: Research & Drafting 7.00 [hours] RM: Edit opposition 6.50 [hours]"). (Doc. # 84-4 at 6). While the Court understands there will be some overlap in tasks, the bills reflect significant overlap on the same aspects of the litigation. It is unclear if duplicative billing entries were completely removed by Attorney Steel.

Additionally, Attorneys Steel and Marr's bills reflect large blocks of time with minimal description (e.g., 26.5 hours billed for Attorney Steel between February 22, 2013 and February 26, 2013 with the diary entry, "Revised Complaint, Work on Exhibits" or 26 hours billed between May 25, 2016 and May 31, 2016 with the entry "Response"). (Doc. # 84-4 at 2.) Attorney Steel also submitted numerous time entries that do not distinguish between tasks, such as: "2/15/2013 JS: Complaint: Intensive review, exhibits, meet with B. Marvel in GJT (inc. travel discounted at 50%) 7.00 [hours]" or "11/10/2016 JS: Organizing files, preparing for fairness hearing 7.00 [hours]." (Doc. # 84-4 at 2, 8.) The Court finds that some reduction in fees is necessary to account for



these general time entries. *Jane L. v. Bangerter*, 61 F.3d 1505, 1510 (10th Cir. 1995) (reducing fee award where plaintiffs' failed to document adequately how plaintiffs' attorneys utilized large blocks of time).

For the foregoing reasons, the Court will reduce the fees requested by the Law Office of John Steel by two-thirds. The Court finds the 38.6 hours billed by Attorneys Fowler and Widmann to be reasonable and will not reduce these hours.

**C. REASONABLENESS OF HOURLY RATE**

Defendants do not object to Relators' attorneys' hourly rates. A reasonably hourly rate is based on the "prevailing market rates in the relevant community." *Malloy*, 73 F.3d at 1018. By affidavit, Attorney Steel states that his hourly rate of \$300 is "in the upper range of hourly rates in Telluride." (Doc. # 84-6 at ¶ 3.) Attorney Fowler charges an hourly rate of \$250-275 and states this is "relatively low by Denver standards." (Doc. # 84-7 at ¶ 3.) The other two attorneys billing to the case, Attorneys Marr and Widmann, charged \$200 an hour each. (Doc. # 84 at 12.) Relators have submitted the billing rates for the various firms representing the Grand Junction Regional Airport Authority, which reflect rates in the range of \$115 an hour to \$575 an hour. (Doc. # 84-8.)

The Court is familiar with the rates charged by lawyers in the Denver metropolitan area and concludes that the rates charged by Relators' attorneys to be reasonable. See *Guides, Ltd. v. Yarmouth Grp. Prop. Mgmt., Inc.*, 295 F.3d 1065, 1079 (10th Cir. 2002) ("[A] district court . . . may use other relevant factors, including its own knowledge, to establish the [prevailing market] rate.").

**IV. CONCLUSION**

Based on the foregoing, the Court calculates Relators' fees and cost award as follows:

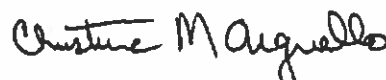
- Fees award: \$288,855 (fees requested by the Law Office of John Steel) - \$192,570.00 (two-thirds reduction to account for broad billing statements, the time for complaint, and overlap in tasks) + \$8,910 (fees requested by Fowler, Schimberg, Flanagan and McLetchie P.C.) = \$105,195.00
- Costs: \$2,548.49 (Law Office of John Steel costs) + \$872.47 (Fowler, Schimberg, Flanagan and McLetchie P.C. costs) = \$3,420.96.
- Total: \$105,195.00 + \$3,420.96 = \$108,615.96

Accordingly, IT IS ORDERED that Relators' Fee Application and Memorandum In Support (Doc. # 84) is GRANTED IN PART and DENIED IN PART.

IT IS FURTHER ORDERED that Relators Shepard and Marvel are awarded attorney fees against Defendants jointly and severally in the amount of \$108,615.96.

DATED: July 24, 2017

BY THE COURT:



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CHRISTINE M. ARGUELLO  
United States District Judge

# Grand Junction Regional Airport Authority

## Agenda Item Summary

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TOPIC:	AIP 56 Grant Offer and Co-Sponsorship Agreements
PURPOSE:	Information <input type="checkbox"/> Guidance <input type="checkbox"/> Decision <input checked="" type="checkbox"/>
RECOMMENDATION:	Staff recommends the Board authorize the Chairman to execute:  1. City of Grand Junction Co-Sponsorship Agreement 2. Mesa County Co-Sponsorship Agreement  And for the Chairman and Legal Counsel to execute Grant Offer 3-08-0027-056-2017
LAST ACTION:	The Board approved the Airport's AIP grant application for this project at the December Board Meeting.
DISCUSSION:	The Grand Junction Regional Airport Authority (Authority) began in 2016 a multi-year program to relocate the primary runway. The relocation is intended to minimize impacts to community air service while modernizing the runway, originally constructed in 1958. The most effective way to meet the current Federal Aviation Administration (FAA) design standards, maintain airport operations during construction, and reduce economic impacts by the project is to build a replacement runway north of the current runway's location. The Authority has received the second of multiple Airport Improvement Program (AIP) Grants from the FAA to continue this effort titled: <b>Construct New Runway 11/29 (shifting 637 feet to the northwest): Preliminary Design-Phase II and Relocate 27 ¼ Road-Design Only</b> . The project is listed on the Authority's approved Airport Layout Plan and Capital Improvement Plan.
FISCAL IMPACT:	Federal AIP Grant (Entitlement Funds) - \$ 1,894,901 State Match - \$105,272 Local Match - \$105,273 (estimated)
ATTACHMENTS:	1. Grant Offer AIP 56 2. Co-Sponsorship Agreement – Mesa County 3. Co-Sponsorship Agreement – City of Grand Junction
STAFF CONTACT:	Eric Trinklein <a href="mailto:etrinklein@gairport.com">etrinklein@gairport.com</a> , Office: 970-248-8597

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U.S. Department  
of Transportation  
Federal Aviation  
Administration

## GRANT AGREEMENT

### PART I – OFFER

Date of Offer	<u>July 31, 2017</u>
Airport/Planning Area	<u>Grand Junction Regional Airport</u>
AIP Grant Number	<u>3-08-0027-056-2017 (Contract No. DOT-FA17NM-1049)</u>
DUNS Number	<u>156135394</u>

**TO:** Mesa County, Colorado; City of Grand Junction, Colorado; and the Grand Junction Regional Airport Authority  
(herein called the "Sponsor") (For Co-Sponsors, list all Co-Sponsor names. The word "Sponsor" in this Grant Agreement also applies to a Co-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 a Project Application dated December 16, 2016 and amended on July 31, 2017, for a grant of Federal funds for a project at or associated with the Grand Junction Regional Airport, which is included as part of this Grant Agreement; and

WHEREAS, the FAA has approved a project for the Grand Junction Regional Airport (herein called the "Project") consisting of the following:

**Construct New Runway 11/29 (shifting 637 feet to the northwest): Preliminary Design -- Phase II and Relocate 27 1/2 Road – Design Only**

which is more fully described in the Project Application.

NOW THEREFORE, according to the applicable provisions of the former Federal Aviation Act of 1958, as amended and recodified, 49 U.S.C. § 40101, et seq., and the former Airport and Airway Improvement Act of 1982 (AAIA), as amended and recodified, 49 U.S.C. § 47101, et seq., (herein the AAIA grant statute is referred to as "the Act"), the representations contained in the Project Application, and in consideration of (a) the Sponsor's adoption and ratification of the Grant Assurances dated March 2014, and the Sponsor's acceptance of this Offer; and (b) the benefits to accrue to the United States and the public from the accomplishment of the Project and compliance with the Grant Assurances and conditions as herein provided.

THE FEDERAL AVIATION ADMINISTRATION, FOR AND ON BEHALF OF THE UNITED STATES, HEREBY OFFERS AND AGREES to pay 90.00 percent of the allowable costs incurred accomplishing the Project as the United States share of the Project.

This Offer is made on and SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

### CONDITIONS

1. **Maximum Obligation.** The maximum obligation of the United States payable under this Offer is \$1,894,901.  
The following amounts represent a breakdown of the maximum obligation for the purpose of establishing allowable amounts for any future grant amendment, which may increase the foregoing maximum obligation of the United States under the provisions of 49 U.S.C. § 47108(b):  
\$0 for planning  
\$1,894,901 for airport development or noise program implementation; and,  
\$0 for land acquisition.
2. **Period of Performance.** The period of performance begins on the date the Sponsor formally accepts this agreement. Unless explicitly stated otherwise in an amendment from the FAA, the end date of the period of performance is 4 years (1,460 calendar days) from the date of formal grant acceptance by the Sponsor.  
The Sponsor may only charge allowable costs for obligations incurred prior to the end date of the period of performance (2 CFR § 200.309). Unless the FAA authorizes a written extension, the sponsor must submit all project closeout documentation and liquidate (pay off) all obligations incurred under this award no later than 90 calendar days after the end date of the period of performance (2 CFR § 200.343).  
The period of performance end date does not relieve or reduce Sponsor obligations and assurances that extend beyond the closeout of a grant agreement.
3. **Ineligible or Unallowable Costs.** The Sponsor must not include any costs in the project that the FAA has determined to be ineligible or unallowable.
4. **Indirect Costs – Sponsor.** Sponsor may charge indirect costs under this award by applying the indirect cost rate identified in the project application as accepted by the FAA to allowable costs for Sponsor direct salaries and wages.
5. **Determining the Final Federal Share of Costs.** The United States' share of allowable project costs will be made in accordance with the regulations, policies, and procedures of the Secretary. 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.
6. **Completing the Project Without Delay and in Conformance with Requirements.** The Sponsor must carry out and complete the project without undue delays and in accordance with this agreement, and the regulations, policies, and procedures of the Secretary. The Sponsor also agrees to comply with the assurances which are part of this agreement.
7. **Amendments or Withdrawals before Grant Acceptance.** The FAA reserves the right to amend or withdraw this offer at any time prior to its acceptance by the Sponsor.
8. **Offer Expiration Date.** This offer will expire and the United States will 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 1, 2017, or such subsequent date as may be prescribed in writing by the FAA.
9. **Improper Use of Federal Funds.** The Sponsor must 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 for 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 dispersed by the Sponsor, that were originally paid pursuant to this or any other Federal grant agreement. The Sponsor must obtain the approval of the Secretary as to any determination of the amount of the Federal share of such funds. The Sponsor must return the recovered Federal share, including funds recovered by settlement, order, or judgment, to the Secretary. The Sponsor must 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 require advance approval by the Secretary.

10. **United States Not Liable for Damage or Injury.** The United States is not responsible or liable for damage to property or injury to persons which may arise from, or be incident to, compliance with this grant agreement.
11. **System for Award Management (SAM) Registration And Universal Identifier.**
  - A. Requirement for System for Award Management (SAM): Unless the Sponsor is exempted from this requirement under 2 CFR 25.110, the Sponsor must maintain the currency of its information in the SAM until the Sponsor submits the final financial report required under this grant, or receives the final payment, whichever is later. This requires that the Sponsor review and update the information at least annually after the initial registration and more frequently if required by changes in information or another award term. Additional information about registration procedures may be found at the SAM website (currently at <http://www.sam.gov>).
  - B. Data Universal Numbering System: DUNS number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D & B) to uniquely identify business entities. A DUNS number may be obtained from D & B by telephone (currently 866-705-5771) or on the web (currently at <http://fedgov.dnb.com/webform>).
12. **Electronic Grant Payment(s).** Unless otherwise directed by the FAA, the Sponsor must make each payment request under this agreement electronically via the Delphi invoicing System for Department of Transportation (DOT) Financial Assistance Awardees.
13. **Informal Letter Amendment of AIP Projects.** 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 or five percent (5%), whichever is greater, the FAA can issue a letter amendment to the Sponsor unilaterally reducing the maximum obligation.
 

The FAA can also issue a letter to the Sponsor increasing the maximum obligation if there is an overrun in the total actual eligible and allowable project costs to cover the amount of the overrun provided it will not exceed the statutory limitations for grant amendments. The FAA's authority to increase the maximum obligation does not apply to the "planning" component of condition No. 1.

The FAA can also issue an informal letter amendment that modifies the grant description to correct administrative errors or to delete work items if the FAA finds it advantageous and in the best interests of the United States.

An informal letter amendment has the same force and effect as a formal grant amendment.
14. **Air and Water Quality.** The Sponsor is required to comply with all applicable air and water quality standards for all projects in this grant. If the Sponsor fails to comply with this requirement, the FAA may suspend, cancel, or terminate this agreement.
15. **Financial Reporting and Payment Requirements.** The Sponsor will comply with all federal financial reporting requirements and payment requirements, including submittal of timely and accurate reports.
16. **Buy American.** Unless otherwise approved in advance by the FAA, the Sponsor 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 which funds are provided under this grant. The Sponsor will include a provision implementing Buy American in every contract.
17. **Maximum Obligation Increase for Primary Airports.** In accordance with 49 U.S.C. § 47108(b), 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 for a land project.



18. **Audits for Public Sponsors.** The Sponsor must provide for a Single Audit or program specific audit in accordance with 2 CFR part 200. The Sponsor must submit the audit reporting package to the Federal Audit Clearinghouse on the Federal Audit Clearinghouse's Internet Data Entry System at <http://harvester.census.gov/facweb/>. Provide one copy of the completed audit to the FAA if requested.
19. **Suspension or Debarment.** When entering into a "covered transaction" as defined by 2 CFR § 180.200, the Sponsor must:
- A. Verify the non-federal entity is eligible to participate in this Federal program by:
    1. Checking the excluded parties list system (EPLS) as maintained within the System for Award Management (SAM) to determine if the non-federal entity is excluded or disqualified; or
    2. Collecting a certification statement from the non-federal entity attesting they are not excluded or disqualified from participating; or
    3. Adding a clause or condition to covered transactions attesting individual or firm are not excluded or disqualified from participating.
  - B. Require prime contractors to comply with 2 CFR § 180.330 when entering into lower-tier transactions (e.g. Sub-contracts).
  - C. Immediately disclose to the FAA whenever the Sponsor (1) learns they have entered into a covered transaction with an ineligible entity or (2) suspends or debar a contractor, person, or entity.
20. **Ban on Texting When Driving.**
- A. In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, and DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, the Sponsor is encouraged to:
    1. Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving when performing any work for, or on behalf of, the Federal government, including work relating to a grant or subgrant.
    2. Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as:
      - a. Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
      - b. Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.
  - B. The Sponsor must insert the substance of this clause on banning texting when driving in all subgrants, contracts and subcontracts
21. **Exhibit "A" Property Map.** The Exhibit "A" Property Map dated April 2012, is incorporated herein by reference or is submitted with the project application and made part of this grant agreement.
22. **Co-Sponsor.** The Co-Sponsors understand and agree that they jointly and severally adopt and ratify the representations and assurances contained therein and that the word "Sponsor" as used in the application and other assurances is deemed to include all co-sponsors.
23. **Employee Protection from Reprisal.**
- A. Prohibition of Reprisals –
    1. In accordance with 41 U.S.C. § 4712, an employee of a grantee or subgrantee may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in sub-paragraph (A)(2), information that the employee reasonably believes is evidence of:
      - a. Gross mismanagement of a Federal grant;
      - b. Gross waste of Federal funds;
      - c. An abuse of authority relating to implementation or use of Federal funds;

- d. A substantial and specific danger to public health or safety; or
  - e. A violation of law, rule, or regulation related to a Federal grant.
2. Persons and bodies covered: The persons and bodies to which a disclosure by an employee is covered are as follows:
    - a. A member of Congress or a representative of a committee of Congress;
    - b. An Inspector General;
    - c. The Government Accountability Office;
    - d. A Federal office or employee responsible for oversight of a grant program;
    - e. A court or grand jury;
    - f. A management office of the grantee or subgrantee; or
    - g. A Federal or State regulatory enforcement agency.
  3. Submission of Complaint – A person who believes that they have been subjected to a reprisal prohibited by paragraph A of this grant term may submit a complaint regarding the reprisal to the Office of Inspector General (OIG) for the U.S. Department of Transportation.
  4. Time Limitation for Submittal of a Complaint - A complaint may not be brought under this subsection more than three years after the date on which the alleged reprisal took place.
  5. Required Actions of the Inspector General – Actions, limitations and exceptions of the Inspector General’s office are established under 41 U.S.C. § 4712(b)
  6. Assumption of Rights to Civil Remedy - Upon receipt of an explanation of a decision not to conduct or continue an investigation by the Office of Inspector General, the person submitting a complaint assumes the right to a civil remedy under 41 U.S.C. § 4712(c).
24. **Design Grant.** This grant agreement is being issued in order to complete the design of the project. The Sponsor understands and agrees that within 2 years after the design is completed that the Sponsor will accept, subject to the availability of the amount of federal funding identified in the Airport Capital Improvement Plan (ACIP), a grant to complete the construction of the project in order to provide a useful and useable unit of work. The Sponsor also understands that if the FAA has provided federal funding to complete the design for the project, and the Sponsor has not completed the design within four (4) years from the execution of this grant agreement, the FAA may suspend or terminate grants related to the design.
  25. **Current FAA Advisory Circulars for AIP Projects.** The sponsor will carry out the project in accordance with policies, standards, and specifications approved by the Secretary including but not limited to the advisory circulars listed in the *Current FAA Advisory Circulars Required For Use In AIP Funded and PFC Approved Projects*, dated January 24, 2017, and included in this grant, and in accordance with applicable state policies, standards, and specifications approved by the Secretary.
  26. **Assurances.** The Sponsor agrees to comply with the Assurances attached to this offer, which replaces the assurances that accompanied the Application for Federal Assistance.
  27. **Final Project Documentation.** The Sponsor understands and agrees that in accordance with 49 USC 47111, and the Airport District Office's concurrence, that no payments totaling more than 97.5 percent of United States Government’s share of the project’s estimated allowable cost may be made before the project is determined to be satisfactorily completed. Satisfactorily complete means the following: (1) The project results in a complete, usable unit of work as defined in the grant agreement; and (2) The sponsor submits necessary documents showing that the project is substantially complete per the contract requirements, or has a plan (that FAA agrees with) that addresses all elements contained on the punch list.
  28. **AGIS Requirements.** Airports GIS requirements, as specified in Advisory Circular 150/5300-18, apply to the project included in this grant offer. Final construction as-built information or planning deliverables must be collected



according to these specifications and submitted to the FAA. The submittal must be reviewed and accepted by the FAA before the grant can be administratively closed.

29. **Pavement Maintenance Management Program.** The Sponsor agrees that it will implement an effective airport pavement maintenance management program as required by Grant Assurance Pavement Preventive Management. The Sponsor agrees that it will use the program for the useful life of any pavement constructed, reconstructed, or repaired with federal financial assistance at the airport. The Sponsor further agrees that the program will
- A. Follow FAA Advisory Circular 150/5380-6, "Guidelines and Procedures for Maintenance of Airport Pavements," for specific guidelines and procedures for maintaining airport pavements, establishing an effective maintenance program, specific types of distress and its probable cause, inspection guidelines, and recommended methods of repair;
  - B. Detail the procedures to be followed to assure that proper pavement maintenance, both preventive and repair, is performed;
  - C. Include a Pavement Inventory, Inspection Schedule, Record Keeping, Information Retrieval, and Reference, meeting the following requirements:
    1. Pavement Inventory. The following must be depicted in an appropriate form and level of detail:
      - a. location of all runways, taxiways, and aprons;
      - b. dimensions;
      - c. type of pavement, and;
      - d. year of construction or most recent major rehabilitation.
    2. Inspection Schedule.
      - a. Detailed Inspection. A detailed inspection must be performed at least once a year. If a history of recorded pavement deterioration is available, i.e., Pavement Condition Index (PCI) survey as set forth in the Advisory Circular 150/5380-6, the frequency of inspections may be extended to three years.
      - b. Drive-By Inspection. A drive-by inspection must be performed a minimum of once per month to detect unexpected changes in the pavement condition. For drive-by inspections, the date of inspection and any maintenance performed must be recorded.
  - D. Record Keeping. Complete information on the findings of all detailed inspections and on the maintenance performed must be recorded and kept on file for a minimum of five years. The type of distress, location, and remedial action, scheduled or performed, must be documented. The minimum information is:
    1. inspection date;
    2. location;
    3. distress types; and
    4. maintenance scheduled or performed.
  - E. Information Retrieval System. The Sponsor must be able to retrieve the information and records produced by the pavement survey to provide a report to the FAA as may be required.

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