

To: Airport Authority  
From: Steve Tackes, Airport Counsel  
Date: 5-18-2018  
Re: Airport Counsel Briefing for Meeting of Wednesday, May 23, 2018

1. FOR POSSIBLE ACTION: TO APPROVE THE CARSON CITY AIRPORT AUTHORITY TENTATIVE BUDGET AS THE FINAL BUDGET FOR FISCAL YEAR JULY 1, 2018 THROUGH JUNE 30, 2019; AUTHORIZATION TO CERTIFY AND TRANSMIT SAME TO THE DEPARTMENT OF TRANSPORTATION AND THE NEVADA TAX COMMISSION; AUTHORIZATION FOR STAFF TO MAKE THE REQUIRED FILINGS. (B. Kohn, L. Harvey, K. Moen).

*Staff Summary: This Budget was prepared in such detail and on the forms prescribed by the Department of Taxation.*

NRS 354.470 et seq is the section of law that requires the Airport Authority (and all other governmental entities) to have a budget for the upcoming fiscal year (July 1 to June 30) in place and filed with the State Dept of Taxation. <https://www.leg.state.nv.us/NRS/NRS-354.html#NRS354Sec470>

In short, the Authority must file a tentative budget by April 15 of each year, and adopt the tentative budget (with any desired modifications) as a final budget by June 1 of each year. The Authority must set a date for adoption of the final budget which cannot be sooner than the third Monday in May and not later than the last day in May, thus this meeting on May 23. The Authority must publish notice of its intent to adopt the final budget in the newspaper not more than 14 nor less than 7 days before the date set for the Authority meeting. The Airport Manager took care of this and has the Proof of Publication (posted to website)

This item is before the Authority so that the Authority can make any final changes and approve the tentative budget as modified as the final budget.

Beth Kohn, CPA, Authority Member and Treasurer Larry Harvey and Airport Manager Ken Moen can address specifics in the budget.

**Proposed Motion: I move we approve the Tentative Budget (as modified—if modified) for Fiscal year July 1, 2018 through June 30, 2019, and direct Staff to make the required filings.**

2. FOR POSSIBLE ACTION: TO APPROVE KOHN AND COMPANY, LLP TO CONDUCT FY2017/18 AUDIT OF THE CARSON CITY AIRPORT AUTHORITY (B. Kohn).

*Staff Summary: Approve Kohn and Company to conduct annual audit.*

The FAA grant requirements as well as Nevada law require that we have an audit performed every fiscal year by a CPA. Beth Kohn has done this for us for the last many years. She has great insight into our financial accounts, bookkeeping and prior audits, and has done a very good job for us in the past.

Proposed Motion: I move we approve KOHN AND COMPANY, LLP to conduct Fiscal Year 2017/18 audit of the Carson City Airport Authority.

3. INFORMATION: PRESENTATION OF RENO LUMBER PROJECT NORTH TAXIWAY DELTA ON ARROWHEAD DRIVE AND SIERRA SKYWAYS HANGAR PROJECT. (K. MOEN and K. SHAFFER MANHARD CONSULTING).

This is the Airport Manager's item. As an aside, I did speak with the Reno Lumber representatives early in the project to help them answer land use compatibility questions. In short, this is a very compatible project for being adjacent to an airport.

Proposed Motion: none.

4. FOR DISCUSSION AND POSSIBLE ACTION: REVIEW OF PROPOSED CHANGES TO THE DRAFT LEGISLATION UPDATING NRS 844 REGARDING THE CARSON CITY AIRPORT AUTHORITY; MAKE ADDITIONAL MODIFICATIONS OR GIVE WORKING GROUP FURTHER DIRECTION (S. Tackes, K. Moen, B. Vowell, J. Rogers).

Staff Summary: *As directed at the prior meeting, the Staff met with Authority members Vowell and Rogers to suggest other changes to NRS 844 to streamline sections and address other issues raised.*

During the April 18, 2018 meeting of the Airport Authority (Agenda Item #8), the Authority voted to proceed with a Bill Draft Request to be submitted by Assemblyman Al Kramer to amend NRS 844, the law that created and governs the Carson City Airport Authority. Chief among the changes was a clarification on terms such that a member can serve 2 successive terms. However, the Authority voted to look at other needed changes and bring those back for consideration.

The attached draft includes the other suggestions that have been made, either by Authority members, staff members or others. Proposed changes include:

- 1- Section 4. Reduction of the Authority members from 7 members to 5 members. This was proposed to reduce the problems of having a full board and to streamline the structure. The draft shows a reduction of one manufacturer member (still leaving one) and removal of the citizen-at-large member as that person is not required to have any knowledge or involvement with airports. Alternatively, the Authority could consider removal of one of the 2 FBO positions since that category has 2 representatives. In any event, any changes should not affect the current board since the changes would not take place until the next round of terms expire in October 2019.
- 2- Also Section 4. Changed the language on terms served so that a member can serve 2 successive 4 year terms. This is a needed change since much of the Airport planning is on 5 year cycles and it is difficult to manage those when the policy decision makers' terms are too short to see a planning cycle through to completion. After the 2<sup>nd</sup> term, the member would not be eligible for 4 years. The break was built into the original law to avoid a good-old-boys network.
- 3- Section 8. We inserted the NRS sections and names of the laws so that a reader could understand the laws that are stated to apply to the Authority.

- 4- Section 9. Change to permit the Authority to purchase property (real or personal) instead of only get it by gift. This is a cleanup. The law seems to think that we get everything by gift. In truth, we have always been required to buy what we use, we rarely get it gifted to us. This change also makes it clear that the Board of Supervisor approval only applies when we are dealing with real property since the City owns the underlying property. It makes sense that any sale of that property would need Supervisor consideration and approval. The Authority is charged with managing the Airport and thus the Authority should be addressing all other aspects, especially the operational aspects, including leases and changes in leases. We changed 'recommend' to 'specify' regarding zoning changes around the airport since the FAA Grant assurances require compatible uses (not just recommend them). We deleted the provision that the Board (ie. Airport Authority) provide emergency services to the Authority since that sentence does not even make sense. We also removed the reference to transportation of passengers or cargo from the contracting provision because it would otherwise be included, and is somewhat misleading since the contracting that we do rarely has to do with passenger issues. Lastly, we removed the requirement that every contract with an FBO be approved by the Board of Supervisors. We frequently make arrangements with FBOs (by contract, oral or written) on a variety of operational issues that should be managed by the Authority per NRS 844 and would frustrate operations if each were actually put before the Board of Supervisors for approval.
- 5- Section 24. This section on hiring and firing appears to have been copied from a large airport with many employees and levels of management. It is overly cumbersome for a small airport. That said, we retained the employee's right to notice, hearing and review of disciplinary matters to make sure our employees are always treated fairly, but otherwise streamlined the language.
- 6- Section 26. We deleted this section since it only described the transfer of equipment and funds from the City to the Airport Authority when it was formed in 1989. It was completed in 1990 and does not address ongoing matters.
- 7- Section 28. Similarly, this section was a bridge of services section saying the DA would represent the Authority until the Authority could hire its own counsel. Again, it is a statement of the past.
- 8- Section 29. We added language to make sure the terms of office for Authority members remains staggered so as to avoid disruption that might occur if all terms ended at the same time.

As with all Authority matters, this is a proposal and can be modified as desired by the Authority by majority vote. Once finalized we should get the revised draft to Assemblyman Kramer so that it can be submitted to LCB for drafting. We want to get this ready so that it can be acted upon during the early part of the Legislative Session when Legislators do not have a lot to do. Otherwise we risk it being shelved because of more pressing matters that affect more than just Carson City, or its airport.

**Proposed Motion: I move we approve the revised version of the legislative changes and direct Staff to pursue the bill draft request with Assemblyman Kramer.**

5. FOR POSSIBLE ACTION: DISCUSSION AND APPROVAL FAA AIP 32 REHABILITATE TAXIWAYS A, B, C, D, TAXILANES E, F, AND ACCESS ROAD ACCEPTANCE OF MAXWELL ASPHALT AS THE LOW BIDDER AT \$229,588.30 AND TO AUTHORIZE CHAIR LAW TO ACCEPT FAA GRANT; AUTHORIZE STAFF TO OBTAIN BOARD OF SUPERVISOR APPROVAL; ALTERNATIVELY REJECT ALL BIDS AND RE-ISSUE REQUEST FOR BIDS OR ACCEPT THE ONLY RESPONSIVE BID OF THE THREE BIDS RECEIVED. (B. Fitzgerald; S. Tackes)

Staff Summary: *Bids opened on May 8, 2018 at 10:00am (FAA AIP 32).*

The Airport Engineer will give an update on the specifics. The legal issue is whether a conflict between the oral and written descriptions of the level of contractor's license can be resolved so that the bid can be issued at this time, and then if so, who gets the bid.

In short, the original bid documents stated that the contractor would need an A General Engineering or AB General Engineering and Building contractor's license to perform the project and therefore to qualify its bid. The Airport Engineer subsequently determined that the lesser A-8 or A-16 contractor's licenses would be sufficient. During the pre-bid meeting, the Airport Engineer told the bidders that an A-8 or A-16 license would be sufficient, but when issuing an Addendum to the bid documents that change was not included. Thus the written documents still required an A General Engineering or AB General Engineering and Building contractor's license.

The legal question is whether the written documents control, and if so, then whether the only bidder (Q&D Construction) who holds the A General Engineering license can be awarded the contract. Alternatively, does the oral statement at the bid meeting permit the Authority to issue the contract to one of the other bidders with an A-8 or A-16 license, if their bids were lower (and one was lower).

The bid documents very clearly state the following:

"Each bid shall be in accordance with the Contract Documents" [from advertised conditions of Bid]  
"5. The State Contractor's Board has determined that the bidder must have an A-General Engineering or an AB-General Engineering and General Building license to act as the prime contractor on the project." [page AI-3]

This is reinforced on page AI-12 para VII, where it states: "The bid bond of any apparent low bidder who does not have a valid Nevada Contractors License will be forfeited to the Owner and the bidder will be disqualified." (emphasis added)

The follow-up Addendum made several corrections and changes, but did not change the language on the type of required Nevada Contractors License.

The initial bid documents also reference the "Mandatory Pre-Bid meeting" but does not say the discussions over-ride the contract documents (nor would one expect it to).

In this case, the A General Engineering bidder has complained of the failure of the lower bid to meet the written bid documents. If the bid were awarded to the lower bidder, I believe a Court could well rule that the documents control and that the bid challenge from the A/AB-General Engineering qualified contractor would prevail.

The converse is also problematic. If the bid were awarded to the A General Engineering bidder, I can also see the potential for a bid dispute from the lower bidder based on the confusion caused by the

oral instructions which were inconsistent with the written documents. While no one can predict the outcome of a bid dispute with certainty, the likelihood of having problems and being overturned and further delayed is significant. Thus, I recommend that all bids be rejected, as is the Authority's right under the contract (expressly allowed in 2nd para on page AI-2), and re-advertise it with the correct information.

Proposed Motion: I move we reject all bids and re-notice the project for bids with the correct information in the written bid documents.

6. FOR DISCUSSION AND POSSIBLE ACTION: AUTHORIZE STAFF TO SUBMIT AWOS REPLACEMENT ESTIMATE TO FAA FOR INCLUSION IN 2018-19 ACIP (B. Fitzgerald).

Staff Summary: *Updated estimate received from Advanced Weather, Inc.*

At the last meeting, the Airport voted to move replacement of the AWOS (Automated Weather Observation System) up on our ACIP (Airport Capital Improvement Program) priority list and seek FAA funding to replace the system given the report by the manufacturer that the current system has exceeded its expected lifetime and is no longer supported.

The Airport Engineer has obtained an updated estimate of the cost of replacement.

Proposed Motion: I move we approve the replacement of the AWOS using the updated estimate of costs and update the ACIP accordingly.

J. LEGAL COUNSEL'S REPORT (*Non-Action Item*).

No additional report at this time.