



## MEMORANDUM

TO: Arcadia City Council

FROM: Judi Jankosky, City Administrator 

DATE: January 10, 2013

SUBJECT: Arcadia Airport and Friends of Arcadia Airport

First I want to say that I believe a pavilion and other facilities such as a camp area would be a good fit for our airport and type of aviation activity we encounter and seek more of. We will never be an Orlando International or Tampa but, although it seems very strange and hard to comprehend because of such differences in size and activity between us and the mentioned airports, we are under the same grant assurances as Orlando or Tampa when we accept FDOT and/or FAA grant funding. I have attached numerous pages of material explaining grant assurances and consequences of not adhering to the grant assurances.

The two grant assurances that are of most concern regarding the pavilion proposal are:

Airport Layout Plan (Master Plan) – the current airport layout plan, which is an agreement between FAA and the airport, depicts the entire airport property as aeronautical use areas. Until the updated airport layout plan (master plan) is completed there are no areas designated for non-aeronautical uses. Although it seems the pavilion is an aeronautical use because it will serve as an area for pilots to gather for pancake breakfasts, seminar, meeting location...it is not classified by the FAA as an aeronautical use. Even an airport museum is not considered an aeronautical use. In order to place a non-aeronautical use on aeronautical designated use land requires the permission of the FAA. Even when the land is designated for non-aeronautical use in the airport layout plan FAA approval will be required at the time the land is to be developed for a non-aeronautical purpose.

Revenue Retention and Revenue Diversion – this is probably the hardest of the grant assurances to keep straight but one of the most important. In a nutshell, revenue retention (generated) by the airport must be used for the aviation purposes. Revenue diversion is not as simple as it sounds. It includes such things as leasing land for under market value or using revenue for general economic development, marketing or promotional activities unrelated to airport (marketing or spending airport funds to promote activities for the non-aeronautical pavilion would be revenue diversion), and the airport sharing in the cost of general fund expenses that are not based on a reasonable, transparent cost allocation formula calculated consistently for all units or costs centers of government. I understand the proposal is for the Friend of Arcadia Airport to obtain a grant from Mosaic in order to construct the pavilion and then the pavilion would be dedicated to the city (airport). If the FAA released the land for non-aeronautical purposes the FAA policy requires that the airport receive fair market value for the sale or lease of the land – the city would have to pay the airport for the non-aeronautical lease of that land. If the airport sells or leases land for less than fair market value, the revenues are considered to be lost or foregone and this constitutes revenue diversion.

Consequences of Non-Compliance – violating revenue retention requirements, an airport runs the risk of losing the privilege of eligibility for grants, faces civil penalties and FAA lawsuits, as well as the possibility of credit rating downgrade that could jeopardize future debt financing.

The FAA has a number of enforcement tools:

1. Withhold grant funding (existing or new) or deny land leases
2. Judicial enforcement – FAA can seek court judgment
3. Civil penalties – FAA may assess civil penalties up to \$50,000 WITHOUT going to court. In addition, the U.S. Secretary of Transportation may assess civil penalties in an amount up to three times the amount of illegally diverted airport revenue
4. Withhold transportation funds – from the local government, not just the airport, but the city as well
5. Credit rating – decreased credit rating that can lead to a downgrade of bonds and increase the cost of borrowing (because the grants have been withheld)

Have there been cases where airports have been sanctioned – YES, both commercial and general aviation airports were ordered to reimburse the airports for illegally diverted funds and also lost the privilege to receive grant funding.

These two grant assurance are just a couple of several dozen that have to be reviewed and complied with pretty much any time anything is done at the airport. There are no quick and easy answers when a proposal is made.

Mosaic is going to be in Desoto County for a very long time and will be investing in many future improvements as well, so rushing this project through would be a big disservice to not only the airport but also the city and county if we were to be found in violation of our airport layout plan or revenue diversion and grant money was withheld. It is suggested that during the master plan update we work together to locate an area suitable for the pavilion and other non-aeronautical uses that our airport could benefit from. I do not want to see the pavilion project killed but just put on hold until we make sure we do it right and in the right location.

# How Airports Make Money and What's New in Compliance

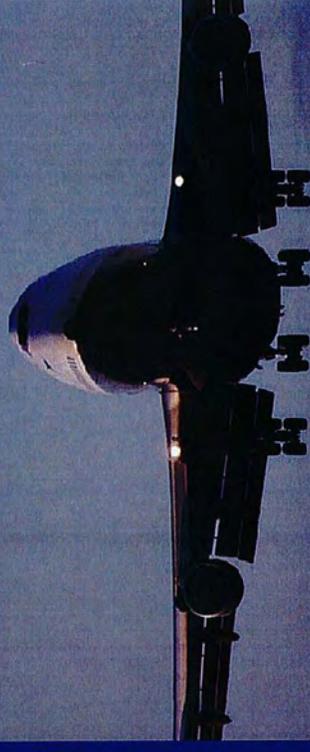
Presentation to: Northwest Mountain Region Airports Conference

Name: Joelle Briggs, Regional Compliance Specialist

Date: April 17, 2012



Federal Aviation  
Administration



## Primary sources of revenues for general aviation airports:

- | <u>Method of revenue</u> | <u>% of revenue</u> |
|--------------------------|---------------------|
| • Fuel sales             | • 63%               |
| • Commercial leases      | • 60%               |
| • T hangars              | • 59%               |
| • Private hangars        | • 32%               |
| • Ag leases              | • 32%               |
| • Landing/ramp fees      | • 20%               |



# Grant Assurance Obligations

- 5. Rights and Powers
  - 19. Operations and Maintenance
  - 22. Economic Nondiscrimination
  - 23. Exclusive Rights
  - 24. Fee and Rental Structure
  - 29. Airport Layout Plan
- 
- These grant assurances will have an impact on the leases you set up and administer – make sure to refer to them early and often.



# Airports are valuable property

- Many are confounded as to why McDonald's, a purveyor of inexpensive hamburgers, is one of the world's largest and most successful companies. The answer is it's not about the burgers, it's about land. McDonald's is the world's largest private landowner, holding the deed to more square footage of the planet than the distant second place, the Roman Catholic Church. The maxim here is that it's not burgers or fries or extra pickles that make the money or hold value well - it's the land the restaurant sits upon. The airport business is a real estate business, and if the airport is prime real estate, it commands a premium.



## Just some reminders...

- When you write a lease, keep this in mind:
  - Ensure sponsor's compliance with Federal Obligations
  - Ensure sponsor Rights and Powers to operate the airport are maintained
  - Term may not exceed 50 years (property disposal)

*No explicit FAA approval of leases but we will review if you ask.*

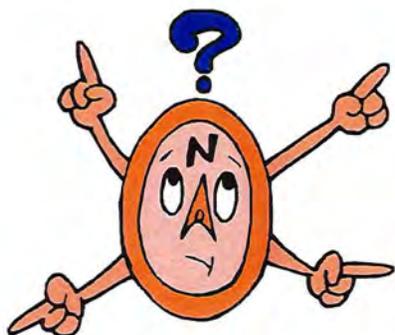


## Some reminders..

### Grant Assurance 24, Fee and Rental Structure

*Requires that, It (the airport sponsor) will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection.*





## What's New (or not so new) in Compliance

- Non-Aeronautical Use
- Revenue Use Audits
- Temporary Airport Closures
- Residential Through-the-Fence
- Reauthorization Summary



## Non-Aeronautical Use of Hangars

*Valley Aviation Services v. City of Glendale*  
(Directors Determination 16-09-06, May 29, 2011)

### Violation of Grant Assurance 19, *Operation and Maintenance*

- Allowed Nonaeronautical use in hangars and operating non-aviation related industries in hangars
- RV caught fire; police vehicles, classic cars, carpet rolls, etc.

### Violation of Grant Assurance 29, *Airport Layout Plan*

- Did not correctly reflect aeronautical/nonaeronautical uses of airport property

### Lessons Learned

- Hangars and Aeronautical property are to be used for aeronautical purposes. Incidental non-aeronautical is okay.
- Request Interim Use for Non-Aeronautical Uses
- Charge Fair Market Value

# Airport Revenue Use Audits

## Most Common Findings

- Improper Use of Airport Property
- Cost Allocation Issues
  - Direct vs. Indirect
  - Unallowable Costs
- Misuse of Marketing Funds



## Results of Revenue Use Audits

<u>Year</u>	<u>Airport</u>	<u>Issue</u>	<u>Recovery</u>
2005	San Francisco	Direct and Indirect Costs	\$4.5 M
2006	Fresno	Sale of Land Below FMV	\$5.8 M
2007	Miami	Improper Cost Allocation	\$15 M
2007	Palm Beach	Noise Land	-
2008	Los Angeles	Marketing	\$ 14 M
2009	Ft Lauderdale	Uses of Airport Property	Pending
2010	Houston	Marketing and Franchise Fees	Pending
2011	Kansas City	Improper Cost Allocation	Pending
2012	Salt Lake City	Uses of Airport Property	Pending



# Sources of Unlawful Revenue Diversion

Unlawful Revenue Diversions usually do not originate at the airport but instead it originates with airport oversight authorities and local governments that look to the airport as a means of offsetting their costs

- Sponsor does not pay fair market value rents
- **Locating city operations** like jails, animal shelters and schools on airport property **for free or reduced rents**
- Subsidizing other city departments
- Overcharging the airport through their cost allocation plan

*City pay for airport pavilion land lease - fair market rent*

## FAA Order 5190.6B Section 22.4 FAA Consideration of Releases.

- b. **Types of Federal Obligations.** Generally, a sponsor can be federally obligated by the following actions:
- (1). Acceptance of a federal grant for an aeronautical improvement, including land for aeronautical use. **Property listed on the Exhibit "A" of a grant agreement is obligated, regardless of how it was acquired or its purpose.**
  - (2). Acceptance of a conveyance of federal land.
  - (3). Federal grants for a military airport program (MAP), for noise, and for planning. Planning grants contain a limited list of assurances and do not impose all of the obligations of a development grant.
  - (4). Acquisition of property with airport revenue, regardless of whether the property is on the Exhibit "A" or ALP.
  - (5). **Designation of property for aeronautical purposes on an ALP. Once designated for aeronautical use, the property may not be used for nonaeronautical purposes without FAA approval.**

**FAA Order 5190.6B Section 21.6(d)(5) p. 21-7  
(Land Use Inspection Guidance.)**

**(5). Nonaeronautical leaseholds.** The most common improper and noncompliant land uses are situations where nonaeronautical leaseholds are located on **designated aeronautical use land** without FAA approval or **on property not released by FAA**, and permitting **dedicated aeronautical property** to be used for **nonaeronautical uses**. Examples of typical uses include using hangars to store vehicles or other unrelated items. Other improper land uses found in the past have included using **aeronautical land** for **nonaeronautical purposes** such as animal control facilities, nonairport vehicle and maintenance equipment storage, **aircraft museums**, and municipal administrative offices. (NOTE: Approval of an ALP showing **future nonaeronautical land use** does not constitute FAA approval for that **nonaeronautical use** when it may actually occur. The ALP is a planning document only. FAA approval will be required at the time the land is to be used for a **nonaeronautical purpose**.)



## Grant Assurances Airport Sponsors

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### A. General.

1. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors.
2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, U.S.C., subtitle VII, as amended. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
3. Upon acceptance of this grant offer by the sponsor, these assurances are incorporated in and become part of this grant agreement.

### B. Duration and Applicability.

1. **Airport development or Noise Compatibility Program Projects Undertaken by a Public Agency Sponsor.** The terms, conditions and assurances of this grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport. There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with federal funds. Furthermore, the duration of the Civil Rights assurance shall be specified in the assurances.
2. **Airport Development or Noise Compatibility Projects Undertaken by a Private Sponsor.** The preceding paragraph 1 also applies to a private sponsor except that the useful life of project items installed within a facility or the useful life of the facilities developed or equipment acquired under an airport development or noise compatibility program project shall be no less than ten (10) years from the date of acceptance of Federal aid for the project.

3. **Airport Planning Undertaken by a Sponsor.** Unless otherwise specified in this grant agreement, only Assurances 1, 2, 3, 5, 6, 13, 18, 30, 32, 33, and 34 in section C apply to planning projects. The terms, conditions, and assurances of this grant agreement shall remain in full force and effect during the life of the project.

C. **Sponsor Certification.** The sponsor hereby assures and certifies, with respect to this grant that:

1. **General Federal Requirements.** It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance and use of Federal funds for this project including but not limited to the following:

#### **Federal Legislation**

- a. Title 49, U.S.C., subtitle VII, as amended.
- b. Davis-Bacon Act - 40 U.S.C. 276(a), et seq.<sup>1</sup>
- c. Federal Fair Labor Standards Act - 29 U.S.C. 201, et seq.
- d. Hatch Act – 5 U.S.C. 1501, et seq.<sup>2</sup>
- e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title 42 U.S.C. 4601, et seq.<sup>1,2</sup>
- f. National Historic Preservation Act of 1966 - Section 106 - 16 U.S.C. 470(f).<sup>1</sup>
- g. Archeological and Historic Preservation Act of 1974 - 16 U.S.C. 469 through 469c.<sup>1</sup>
- h. Native Americans Grave Repatriation Act - 25 U.S.C. Section 3001, et seq.
- i. Clean Air Act, P.L. 90-148, as amended.
- j. Coastal Zone Management Act, P.L. 93-205, as amended.
- k. Flood Disaster Protection Act of 1973 - Section 102(a) - 42 U.S.C. 4012a.<sup>1</sup>
- l. Title 49, U.S.C., Section 303, (formerly known as Section 4(f))
- m. Rehabilitation Act of 1973 - 29 U.S.C. 794.
- n. Civil Rights Act of 1964 - Title VI - 42 U.S.C. 2000d through d-4.
- o. Age Discrimination Act of 1975 - 42 U.S.C. 6101, et seq.
- p. American Indian Religious Freedom Act, P.L. 95-341, as amended.
- q. Architectural Barriers Act of 1968 -42 U.S.C. 4151, et seq.<sup>1</sup>
- r. Power plant and Industrial Fuel Use Act of 1978 - Section 403- 2 U.S.C. 8373.<sup>1</sup>
- s. Contract Work Hours and Safety Standards Act - 40 U.S.C. 327, et seq.<sup>1</sup>
- t. Copeland Anti kickback Act - 18 U.S.C. 874.1
- u. National Environmental Policy Act of 1969 - 42 U.S.C. 4321, et seq.<sup>1</sup>
- v. Wild and Scenic Rivers Act, P.L. 90-542, as amended.
- w. Single Audit Act of 1984 - 31 U.S.C. 7501, et seq.<sup>2</sup>
- x. Drug-Free Workplace Act of 1988 - 41 U.S.C. 702 through 706.

#### **Executive Orders**

Executive Order 11246 - Equal Employment Opportunity<sup>1</sup>  
Executive Order 11990 - Protection of Wetlands  
Executive Order 11998 – Flood Plain Management  
Executive Order 12372 - Intergovernmental Review of Federal Programs  
Executive Order 12699 - Seismic Safety of Federal and Federally Assisted New Building Construction<sup>1</sup>  
Executive Order 12898 - Environmental Justice

### **Federal Regulations**

- a. 14 CFR Part 13 - Investigative and Enforcement Procedures.
- b. 14 CFR Part 16 - Rules of Practice For Federally Assisted Airport Enforcement Proceedings.
- c. 14 CFR Part 150 - Airport noise compatibility planning.
- d. 29 CFR Part 1 - Procedures for predetermination of wage rates.<sup>1</sup>
- e. 29 CFR Part 3 - Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States.<sup>1</sup>
- f. 29 CFR Part 5 - Labor standards provisions applicable to contracts covering federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act).<sup>1</sup>
- g. 41 CFR Part 60 - Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements).<sup>1</sup>
- h. 49 CFR Part 18 - Uniform administrative requirements for grants and cooperative agreements to state and local governments.<sup>3</sup>
- i. 49 CFR Part 20 - New restrictions on lobbying.
- j. 49 CFR Part 21 - Nondiscrimination in federally-assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964.
- k. 49 CFR Part 23 - Participation by Disadvantage Business Enterprise in Airport Concessions.
- l. 49 CFR Part 24 - Uniform relocation assistance and real property acquisition for Federal and federally assisted programs.<sup>1,2</sup>
- m. 49 CFR Part 26 – Participation By Disadvantaged Business Enterprises in Department of Transportation Programs.
- n. 49 CFR Part 27 - Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance.<sup>1</sup>
- o. 49 CFR Part 29 – Government wide debarment and suspension (nonprocurement) and government wide requirements for drug-free workplace (grants).
- p. 49 CFR Part 30 - Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors.

- q. 49 CFR Part 41 - Seismic safety of Federal and federally assisted or regulated new building construction.<sup>1</sup>

#### **Office of Management and Budget Circulars**

- a. A-87 - Cost Principles Applicable to Grants and Contracts with State and Local Governments.
- b. A-133 - Audits of States, Local Governments, and Non-Profit Organizations

<sup>1</sup> These laws do not apply to airport planning sponsors.

<sup>2</sup> These laws do not apply to private sponsors.

<sup>3</sup> 49 CFR Part 18 and OMB Circular A-87 contain requirements for State and Local Governments receiving Federal assistance. Any requirement levied upon State and Local Governments by this regulation and circular shall also be applicable to private sponsors receiving Federal assistance under Title 49, United States Code.

Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars are incorporated by reference in this grant agreement.

#### **2. Responsibility and Authority of the Sponsor.**

- a. **Public Agency Sponsor:** It has legal authority to apply for this grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.
- b. **Private Sponsor:** It has legal authority to apply for this grant and to finance and carry out the proposed project and comply with all terms, conditions, and assurances of this grant agreement. It shall designate an official representative and shall in writing direct and authorize that person to file this application, including all understandings and assurances contained therein; to act in connection with this application; and to provide such additional information as may be required.

**3. Sponsor Fund Availability.** It has sufficient funds available for that portion of the project costs which are not to be paid by the United States. It has sufficient funds available to assure operation and maintenance of items funded under this grant agreement which it will own or control.

#### **4. Good Title.**

- a. It, a public agency or the Federal government, holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.

- b. For noise compatibility program projects to be carried out on the property of the sponsor, it holds good title satisfactory to the Secretary to that portion of the property upon which Federal funds will be expended or will give assurance to the Secretary that good title will be obtained.

**5. Preserving Rights and Powers.**

- a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.
- b. It will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in this grant agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under Title 49, United States Code, to assume the obligations of this grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this grant agreement.
- c. For all noise compatibility program projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise compatibility program project. That agreement and changes thereto must be satisfactory to the Secretary. It will take steps to enforce this agreement against the local government if there is substantial non-compliance with the terms of the agreement.
- d. For noise compatibility program projects to be carried out on privately owned property, it will enter into an agreement with the owner of that property which includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial non-compliance with the terms of the agreement.
- e. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.
- f. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to insure

that the airport will be operated and maintained in accordance Title 49, United States Code, the regulations and the terms, conditions and assurances in this grant agreement and shall insure that such arrangement also requires compliance therewith.

g. Sponsors of commercial service airports will not permit or enter into any arrangement that results in permission for the owner or tenant of a property used as a residence, or zoned for residential use, to taxi an aircraft between that property and any location on airport. Sponsors of general aviation airports entering into any arrangement that results in permission for the owner of residential real property adjacent to or near the airport must comply with the requirements of Sec. 136 of Public Law 112-95 and the sponsor assurances.

6. **Consistency with Local Plans.** The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.
7. **Consideration of Local Interest.** It has given fair consideration to the interest of communities in or near where the project may be located.
8. **Consultation with Users.** In making a decision to undertake any airport development project under Title 49, United States Code, it has undertaken reasonable consultations with affected parties using the airport at which project is proposed.
9. **Public Hearings.** In projects involving the location of an airport, an airport runway, or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary. Further, for such projects, it has on its management board either voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project.
10. **Air and Water Quality Standards.** In projects involving airport location, a major runway extension, or runway location it will provide for the Governor of the state in which the project is located to certify in writing to the Secretary that the project will be located, designed, constructed, and operated so as to comply with applicable air and water quality standards. In any case where such standards have not been approved and where applicable air and water quality standards have been promulgated by the Administrator of the Environmental Protection Agency, certification shall be obtained from such Administrator. Notice of certification or refusal to certify shall be provided within sixty days after the project application has been received by the Secretary.
11. **Pavement Preventive Maintenance.** With respect to a project approved after January 1, 1995, for the replacement or reconstruction of pavement at the airport,

it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed or repaired with Federal financial assistance at the airport. It will provide such reports on pavement condition and pavement management programs as the Secretary determines may be useful.

- 12. Terminal Development Prerequisites.** For projects which include terminal development at a public use airport, as defined in Title 49, it has, on the date of submittal of the project grant application, all the safety equipment required for certification of such airport under section 44706 of Title 49, United States Code, and all the security equipment required by rule or regulation, and has provided for access to the passenger enplaning and deplaning area of such airport to passengers enplaning and deplaning from aircraft other than air carrier aircraft.

**13. Accounting System, Audit, and Record Keeping Requirements.**

- a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of this grant, the total cost of the project in connection with which this grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.
- b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to this grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which this grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.

- 14. Minimum Wage Rates.** It shall include, in all contracts in excess of \$2,000 for work on any projects funded under this grant agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

- 15. Veteran's Preference.** It shall include in all contracts for work on any project funded under this grant agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Vietnam

era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns owned and controlled by disabled veterans as defined in Section 47112 of Title 49, United States Code. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

16. **Conformity to Plans and Specifications.** It will execute the project subject to plans, specifications, and schedules approved by the Secretary. Such plans, specifications, and schedules shall be submitted to the Secretary prior to commencement of site preparation, construction, or other performance under this grant agreement, and, upon approval of the Secretary, shall be incorporated into this grant agreement. Any modification to the approved plans, specifications, and schedules shall also be subject to approval of the Secretary, and incorporated into this grant agreement.
17. **Construction Inspection and Approval.** It will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms to the plans, specifications, and schedules approved by the Secretary for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the Secretary and such work shall be in accordance with regulations and procedures prescribed by the Secretary. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary.
18. **Planning Projects.** In carrying out planning projects:
  - a. It will execute the project in accordance with the approved program narrative contained in the project application or with the modifications similarly approved.
  - b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.
  - c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.
  - d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.
  - e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.
  - f. It will grant the Secretary the right to disapprove the sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.
  - g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.
  - h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of

this grant does not constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.

**19. Operation and Maintenance.**

- a. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, state and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Secretary. In furtherance of this assurance, the sponsor will have in effect arrangements for-
- 1) Operating the airport's aeronautical facilities whenever required;
  - 2) Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and
  - 3) Promptly notifying airmen of any condition affecting aeronautical use of the airport. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.
- b. It will suitably operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended.

**20. Hazard Removal and Mitigation.** It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

**21. Compatible Land Use.** It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.

**22. Economic Nondiscrimination.**

- a. It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.
- b. In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to-
  - 1) furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and
  - 2) charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.
- c. Each fixed-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.
- d. Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.
- e. Each air carrier using such airport (whether as a tenant, non tenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities, subject to reasonable classifications such as tenants or non tenants and signatory carriers and non signatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status.
- f. It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees [including, but not limited to maintenance, repair, and fueling] that it may choose to perform.
- g. In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.

- h. The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.
  - i. The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.
- 23. **Exclusive Rights.** It will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the providing of the services at an airport by a single fixed-based operator shall not be construed as an exclusive right if both of the following apply:
  - a. It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and
  - b. If allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport. It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49, United States Code.
- 24. **Fee and Rental Structure.** It will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. No part of the Federal share of an airport development, airport planning or noise compatibility project for which a grant is made under Title 49, United States Code, the Airport and Airway Improvement Act of 1982, the Federal Airport Act or the Airport and Airway Development Act of 1970 shall be included in the rate basis in establishing fees, rates, and charges for users of that airport.
- 25. **Airport Revenues.**
  - a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the

airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. The following exceptions apply to this paragraph:

- 1) If covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.
  - 2) If the Secretary approves the sale of a privately owned airport to a public sponsor and provides funding for any portion of the public sponsor's acquisition of land, this limitation on the use of all revenues generated by the sale shall not apply to certain proceeds from the sale. This is conditioned on repayment to the Secretary by the private owner of an amount equal to the remaining unamortized portion (amortized over a 20-year period) of any airport improvement grant made to the private owner for any purpose other than land acquisition on or after October 1, 1996, plus an amount equal to the federal share of the current fair market value of any land acquired with an airport improvement grant made to that airport on or after October 1, 1996.
  - 3) Certain revenue derived from or generated by mineral extraction, production, lease, or other means at a general aviation airport (as defined at Section 47102 of title 49 United States Code), if the FAA determines the airport sponsor meets the requirements set forth in Sec. 813 of Public Law 112-95.
- b. As part of the annual audit required under the Single Audit Act of 1984, the sponsor will direct that the audit will review, and the resulting audit report will provide an opinion concerning, the use of airport revenue and taxes in paragraph (a), and indicating whether funds paid or transferred to the owner or operator are paid or transferred in a manner consistent with Title 49, United States Code and any other applicable provision of law, including any regulation promulgated by the Secretary or Administrator.
  - c. Any civil penalties or other sanctions will be imposed for violation of this assurance in accordance with the provisions of Section 47107 of Title 49, United States Code.

**26. Reports and Inspections.** It will:

- a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports

available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;

- b. for airport development projects, make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use agreements, regulations and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request;
- c. for noise compatibility program projects, make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of this grant agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request; and
- d. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:
  - 1) all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and
  - 2) all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

**27. Use by Government Aircraft.** It will make available all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft to the United States for use by Government aircraft in common with other aircraft at all times without charge, except, if the use by Government aircraft is substantial, charge may be made for a reasonable share, proportional to such use, for the cost of operating and maintaining the facilities used. Unless otherwise determined by the Secretary, or otherwise agreed to by the sponsor and the using agency, substantial use of an airport by Government aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the Secretary, would unduly interfere with use of the landing areas by other authorized aircraft, or during any calendar month that –

- a. Five (5) or more Government aircraft are regularly based at the airport or on land adjacent thereto; or
- b. The total number of movements (counting each landing as a movement) of Government aircraft is 300 or more, or the gross accumulative weight of Government aircraft using the airport (the total movement of Government aircraft multiplied by gross weights of such aircraft) is in excess of five million pounds.

**28. Land for Federal Facilities.** It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein, or rights in buildings of the sponsor as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such

purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

**29. Airport Layout Plan.**

- a. It will keep up to date at all times an airport layout plan of the airport showing (1) boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto; (2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions of existing airport facilities; (3) the location of all existing and proposed nonaviation areas and of all existing improvements thereon; and (4) all proposed and existing access points used to taxi aircraft across the airport's property boundary. Such airport layout plans and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the airport layout plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport.
- b. If a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary (1) eliminate such adverse effect in a manner approved by the Secretary; or (2) bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities except in the case of a relocation or replacement of an existing airport facility due to a change in the Secretary's design standards beyond the control of the airport sponsor.

- 30. Civil Rights.** It will comply with such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from funds received from this grant. This assurance obligates the sponsor for the period during which Federal financial assistance is extended to the program, except where Federal financial assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon in which case the assurance obligates the sponsor or any transferee for the longer of the following periods: (a) the period during which the property is used for a purpose for which Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits, or

(b) the period during which the sponsor retains ownership or possession of the property.

**31. Disposal of Land.**

- a. For land purchased under a grant for airport noise compatibility purposes, including land serving as a noise buffer, it will dispose of the land, when the land is no longer needed for such purposes, at fair market value, at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States' share of acquisition of such land will be, at the discretion of the Secretary, (1) reinvested in another project at the airport, or (2) transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order, (1) reinvestment in an approved noise compatibility project, (2) reinvestment in an approved project that is eligible for grant funding under Section 47117(e) of title 49 United States Code, (3) reinvestment in an approved airport development project that is eligible for grant funding under Sections 47114, 47115, or 47117 of title 49 United States Code, (4) transferred to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport, and (5) paid to the Secretary for deposit in the Airport and Airway Trust Fund. If land acquired under a grant for noise compatibility purposes is leased at fair market value and consistent with noise buffering purposes, the lease will not be considered a disposal of the land. Revenues derived from such a lease may be used for an approved airport development project that would otherwise be eligible for grant funding or any permitted use of airport revenue.
- b. For land purchased under a grant for airport development purposes (other than noise compatibility), it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States' proportionate share of the fair market value of the land. That portion of the proceeds of such disposition which is proportionate to the United States' share of the cost of acquisition of such land will, (1) upon application to the Secretary, be reinvested or transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order: (1) reinvestment in an approved noise compatibility project, (2) reinvestment in an approved project that is eligible for grant funding under Section 47117(e) of title 49 United States Code, (3) reinvestment in an approved airport development project that is eligible for grant funding under Sections 47114, 47115, or 47117 of title 49 United States Code, (4) transferred to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport, and (5) paid to the Secretary for deposit in the Airport and Airway Trust Fund.
- c. Land shall be considered to be needed for airport purposes under this assurance if (1) it may be needed for aeronautical purposes (including runway protection zones) or serve as noise buffer land, and (2) the revenue

from interim uses of such land contributes to the financial self-sufficiency of the airport. Further, land purchased with a grant received by an airport operator or owner before December 31, 1987, will be considered to be needed for airport purposes if the Secretary or Federal agency making such grant before December 31, 1987, was notified by the operator or owner of the uses of such land, did not object to such use, and the land continues to be used for that purpose, such use having commenced no later than December 15, 1989.

- d. Disposition of such land under (a) (b) or (c) will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with operation of the airport.

**32. Engineering and Design Services.** It will award each contract, or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping or related services with respect to the project in the same manner as a contract for architectural and engineering services is negotiated under Title IX of the Federal Property and Administrative Services Act of 1949 or an equivalent qualifications-based requirement **prescribed** for or by the sponsor of the airport.

**33. Foreign Market Restrictions.** It will not allow funds provided under this grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

**34. Policies, Standards, and Specifications.** It 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 for AIP projects, dated \_\_\_\_\_ (the latest approved version as of this grant offer) and included in this grant, and in accordance with applicable state policies, standards, and specifications approved by the Secretary.

**35. Relocation and Real Property Acquisition.** (1) It will be guided in acquiring real property, to the greatest extent practicable under State law, by the land acquisition policies in Subpart B of 49 CFR Part 24 and will pay or reimburse property owners for necessary expenses as specified in Subpart B. (2) It will provide a relocation assistance program offering the services described in Subpart C and fair and reasonable relocation payments and assistance to displaced persons as required in Subpart D and E of 49 CFR Part 24. (3) It will make available within a reasonable period of time prior to displacement, comparable replacement dwellings to displaced persons in accordance with Subpart E of 49 CFR Part 24.

**36. Access By Intercity Buses.** The airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to

have access to the airport; however, it has no obligation to fund special facilities for intercity buses or for other modes of transportation.

- 37. Disadvantaged Business Enterprises.** The recipient shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non discrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR Part 26, and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801).
- 38. Hangar Construction.** If the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft owner's expense, the airport owner or operator will grant to the aircraft owner for the hangar a long term lease that is subject to such terms and conditions on the hangar as the airport owner or operator may impose.
- 39. Competitive Access.**
- a. If the airport owner or operator of a medium or large hub airport (as defined in section 47102 of title 49, U.S.C.) has been unable to accommodate one or more requests by an air carrier for access to gates or other facilities at that airport in order to allow the air carrier to provide service to the airport or to expand service at the airport, the airport owner or operator shall transmit a report to the Secretary that-
    - 1) Describes the requests;
    - 2) Provides an explanation as to why the requests could not be accommodated; and
    - 3) Provides a time frame within which, if any, the airport will be able to accommodate the requests.
  - b. Such report shall be due on either February 1 or August 1 of each year if the airport has been unable to accommodate the request(s) in the six month period prior to the applicable due date.

## FLORIDA DEPARTMENT OF TRANSPORTATION AIRPORT GRANT ASSURANCES

### I. GENERAL

- a. These assurances shall be complied with in the performance of master planning, land acquisition, economic development or capital improvement projects, which contain NO federal funds. *- fence, pavement conditioning + marking + lights*
- b. Upon acceptance of this Joint Participation Agreement by the sponsor, these assurances are incorporated in and become a part thereof. *\$ 922,000*

### II. DURATION

The terms, conditions and assurances of the grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for any airport development project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant agreement utilizing state funds for the project. However, there shall be no limit on the duration of the assurances with respect to real property acquired with project funds.

### III. SPONSOR CERTIFICATION

The sponsor hereby assures and certifies, with respect to this grant:

- a. It has sufficient funds available for that portion of the project costs not paid for by the State. It has sufficient funds available to assure operation and maintenance of items it will own or control funded under the grant agreement.
- b. It holds good title, satisfactory to the Department, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Department, that good title will be acquired.
- c. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to ensure that the airport will be operated and maintained in accordance with the Federal Airport and Airway Improvement Act of 1982, or successive legislation; the regulations and the terms, conditions and assurances in the grant agreement; and shall ensure that such arrangement also requires compliance therewith.

- d. It will adequately clear and protect the aerial approaches to the airport by removing, lowering, relocating, marking, or lighting, or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.
- e. It will make its airport available as an airport for public use of fair and reasonable terms.
- f. It will permit no exclusive rights for the use of the airport by any persons providing, or intending to provide aeronautical services to the public.
- g. All revenues generated by the airport will be expended by it for the capital or operating costs of the airport, the local airport system, or other local facilities owned or operated by the owner or operator of the airport and directly related to the actual aerial transportation of passengers or property.
- h. Once accomplished, it will keep up-to-date a minimum of an Airport Layout Plan of the airport showing (1) boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto; (2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions of existing airport facilities; and (3) the location of all existing improvements thereon.

## SECTION ONE

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### Airport Revenue Diversion – Frequently Asked Questions

#### Why should this issue concern airports and elected officials?

By accepting federal/state financial grants or property transfers, the airport agrees to abide by certain binding contractual obligations (i.e., signing a contract with federal/state government where the government provides the funding and the recipient agrees to follow certain rules). One of those rules specifies that all airport-generated revenues should be spent at the airport.

Violating any of the grant assurances (including the revenue retention provision) is like violating the terms of a contract. It can result in losing the privilege to receive grants in the future and can also lead to lawsuits and civil penalties. Congress allows the Secretary of Transportation to withhold transit and rail funds from any local government that violates the airport revenue retention restriction.

In other words, it can be too expensive for the grant recipient to violate the terms of the contract with the federal/state government. If that happens, the airport sponsor can be required to repay the grant, suffer hefty financial penalties, and lose eligibility for receiving grants in the future. In addition, the local jurisdiction can also lose federal/state general (non-aviation) transportation dollars.

#### Why is FDOT interested in this issue?

The intent of federal/state aviation funding is to ensure that the national network of airports is well-functioning, efficient and financially viable. Since the federal and state governments are capable of providing only a fraction of airports' development needs, airports need to spend all the revenues they generate for the operations and development of the airport to ensure adequate infrastructure investment.

The ultimate goal of any airport development grant is to make the airports as self-sustaining as possible and minimize the need for further federal/state assistance. The diversion of airport revenue for non-aviation use limits the effectiveness of grant assistance and jeopardizes the goal of achieving self-sustainability.

governments expect the grant recipients to fully honor the grant agreements and have the necessary legal resources to enforce compliance.

In addition, if the airport sponsor received airport property (real estate) from the federal government, the sponsor is subject to revenue retention obligations, even if no AIP grants have ever been given to the airport. The revenue use requirements apply to every airport that receives “federal financial assistance”, which includes airport development and noise mitigation grants, transfers of federal property under the Surplus Property Act, and deeds of conveyance issued under specified federal statutes. Therefore, federal obligations regarding revenue diversion apply to all federal surplus property airports, even if no federal grants have been received by the airport sponsor.

### **What can be considered fund diversion?**

In general, revenues are considered to be diverted when an airport fails to use revenues generated from the activities that take place on the airport property for aviation purposes. More specifically, the following uses of airport revenue constitute revenue diversion:

- direct or indirect payments that are not based on a reasonable, transparent cost allocation formula calculated consistently for all units or cost centers of government
- use of airport revenue for general economic development, marketing and promotional activities unrelated to airports
- payments in lieu of taxes or other assessments that exceed the value of services provided or are not based on a reasonable, transparent cost allocation formula calculated consistently for other units or cost centers of government
- payments to compensate non-sponsoring governmental bodies for lost tax revenues exceeding stated tax rates
- loans of airport funds to a state or local agency at less than the prevailing rate of interest
- land rental to or use of land by the sponsor for non-aeronautical purposes at less than the amount that would be charged to a commercial tenant
- impact fees assessed by a non-sponsoring governmental body that the airport sponsor is not obligated to pay or that exceed such fees assessed against commercial or other governmental entities
- charging interest on a subsidy provided to the airport
- loans to the airport from internal government funds at greater than the prevailing rate of interest charged to other units or cost center of the government, or under otherwise less favorable terms

**What penalties or sanctions could be imposed if it is determined that funds have been diverted?**

If it is determined that revenues have been diverted, the grantor can immediately demand the repayment of the grant. It is stated in FDOT Aviation program assurances that: “if the agency takes any action that is not consistent with these assurances, the full amount of the Agreement will immediately become due and payable to the Florida Department of Transportation.” In addition, violation of the revenue retention requirement can result in losing the privilege of receiving federal/state grants in the future. This alone can be an extremely significant deterrent for some smaller airports.

Diverting airport revenue for non-aviation uses constitutes a violation of the grant agreement and can also result in lawsuits and civil penalties. The federal/state government is entitled to the same legal options as any other party to a contract that has been breached.

Federal transportation officials can also withhold general transportation funds from any local government that diverts revenue generated by a public airport. Under 49 USC §47107, the U.S. Secretary of Transportation “may withhold any amount from funds that would otherwise be made available to the sponsor, including funds that would otherwise be made available to a State, municipality or political subdivision thereof (including any multimodal transportation agency or transit authority of which the sponsor is a member entity) as part of an apportionment or grant if the sponsor fails to reimburse the airport for unlawfully diverted revenue.” This means that the U.S. Secretary of Transportation has the authority to withhold not only aviation, but also transit and rail funds from local governments that fail to reimburse airports for illegally diverted funds.

Among other actions, the Secretary of Transportation (USDOT) may also withhold the approval of any application to impose passenger facility charge (PFC) at any airport in response to the violation of airport revenue retention restriction by the sponsor. In addition, the Airport Revenue Protection Act of 1996 gives the U.S. Secretary of Transportation the authority to obtain (in court) civil penalties from the airport sponsor in the amount of up to three times the illegally diverted airport funds.

Finally, diverting revenue from the airport can result in a decrease in an airport’s credit rating leading to a downgrade in airport bonds and an increase in the cost of borrowing.

### Have there been cases where airports have been sanctioned?

Yes. There are multiple cases where sponsors of both commercial and GA airports were ordered to reimburse the airports for illegally diverted funds and also lost the privilege of receiving AIP grants in the future. The most infamous case of airport revenue diversion occurred at Los Angeles International Airport (LAX).

In 1993, the City of Los Angeles proposed to increase landing fees at LAX and to establish an airport surplus fund to help finance the City's police, fire and ambulance services. The new mayor called for using LAX revenues to fund an expansion of the City's police force. The City also held a referendum known as, "Proposition K," that eliminated the prohibition on revenue diversion contained in the City Charter. Later that year, LAX increased landing fees by 300 percent resulting in large protests and complaints from the air carriers. The City also demanded that the airport paid \$8.7 million in back "reimbursement" for the newly calculated indirect City service costs for the years 1983-1992.\*

These events led to the passage of provisions in the FAA Authorization Act of 1994. The new statute articulated again the long-standing federal prohibition against revenue diversion. It specifically prohibited airport payments for city services unrelated to the operation of the airport, imposed new reporting requirements on airports, and authorized civil penalties of up to \$50,000.

This prohibition did not stop the city of Los Angeles from diverting airport revenue from LAX. In 1985 the state of California had condemned some 1.5 million square feet (34 acres) of airport land to build the Century Freeway, which connected the airport with the I-405 freeway. Back then the state paid \$43 million for the land, which the city put in the airports account. But by 1994, the city of Los Angeles, facing financial problems, requested to transfer the money to the city general account claiming that the proceeds were not subject to revenue diversion restrictions. In 1995, Los Angeles transferred \$58.5 million (condemnation proceeds plus interest) from the airport account to the city's general fund.\*\*

Both the Aircraft Owners and Pilots Association (AOPA) and the Air Transport Association (ATA) filed a complaint against the city of Los Angeles. FAA concluded that the revenue was diverted illegally and ordered the City to return \$20.1 million plus interest to the airports account.\*\* That amount resulted from the interpretation of the rules that existed at that time. FAA ruled that only 34 percent of the total amount the City received constituted illegally diverted airport revenue. Under the present policy, the entire

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\*\*Gwartney, T., Estimating Land Values, July 1999, online:

proceeds would have been considered airport revenue and would have to be returned to the airport.

**My airport revenue is sent “downtown” and I have little say over what is spent on the airport. What should I do?**

It is the city/county airport owner’s responsibility to develop and maintain a clear accounting system of all revenue generated by the airport, all fees paid by the airport to the city/county government, and all services and payments provided by the city/county government to the airport. All direct and indirect fees assessed to the airport have to be calculated consistently for all city/county departments and have to be based on a reasonable and transparent cost allocation formula in order for the airport sponsor not to default on a contractual grant agreement with federal/state government. Airports can also maintain their own accounting system to keep track of payments to the city/county budget and receipts (either in-kind or monetary) benefiting the airport.

we do

### 3. Rationale for Revenue Retention Provision

The plain purpose of revenue retention is to prevent an airport owner or operator who receives federal assistance from using airport revenues for expenditures unrelated to the airport.

The main rationale for the revenue retention provision is the intent of the federal government to ensure that the national network of airports is well-functioning, efficient and safe. This is possible only with adequate investment in airport infrastructure of both commercial and GA airports. However, the federal AIP program is capable of providing only about 20 percent to 30 percent of the total capital development needs of the airports (4). To ensure the maximum effectiveness of the AIP program, and thus adequate infrastructure investment, airports should also spend all of the revenue they generate for operations and development of the airport. A federal grant should not provide the airport with an opportunity to use federal funds to replace other airport-generated funds and use the latter for non-aviation related activity. Thus, revenue retention requirement serves as the sort of “unlimited match” on a federal grant. The goal is to make the airports as self-sustaining as possible and minimize the need for further federal assistance.

## VI. Land Use Policies

The disposition of land acquired by federal donation or with federal assistance is governed by specific requirements included in the agreement between the United States and the sponsor. Typically, those provisions are more restrictive than the general restrictions on the use of the airport revenue. Although, the revenue received through the sale of sponsor-owned property (acquired without federal assistance) technically is not subject to revenue retention requirements (except when such property is on approved airport layout plan), historically, FAA has strongly discouraged the use of such revenue for the non-airport purposes. If land is on the Exhibit “A” attached to a grant, it is considered obligated airport property and is subject to revenue use provisions, regardless of how it was obtained, until resealed by FAA.

### 1. Airport Layout Plan

An Airport Layout Plan is the agreement between FAA and the airport owner regarding the allocation of airport areas for specific operational and support facilities. In general, land designated in the plan cannot be used, leased, or sold for purposes other than airport purposes without the consent of FAA. To alter the land use, an airport owner

must receive FAA permission regardless of whether the land was acquired with or without federal assistance. FAA can grant its permission (called "land release") if the land is not needed for present or foreseeable future airport purposes.

When FAA releases the land for non-airport purposes to generate revenues for an airport, its policies require that the airport receives fair market value for the sale or lease of the land. Generally, if an airport sells or leases land for less than fair market value, the revenues are considered to be lost or foregone, and this constitutes revenue diversion.

### VII. Consequences of Non-compliance

In violating revenue retention requirements, an airport runs the risk of losing the privilege of eligibility for AIP grants, facing civil penalties, and FAA lawsuits, as well as the possibility of a credit rating downgrade that could jeopardize future debt financing. When the airport fails to comply with federal requirements, FAA has a number of enforcement tools:

#### 1. Withholding AIP Grants

FAA can withhold the AIP funds (both new and existing grants) from the airport, or deny requested land releases. Pulling out federal assistance money might prove to be not a very effective deterrent to some airports especially the largest ones that can go without federal assistance. However, many small GA airports can't afford to lose federal grant money.

#### 2. Judicial Enforcement

The federal government is entitled to the same legal options as any other party to a contract that has been breached. FAA can seek court judgment in the case of violation of the revenue retention provision.

#### 3. Civil Penalties

FAA may assess civil penalties of up to \$50,000 without going to court (6). In addition, Airport Revenue Protection Act of 1996 (P.L. 104-264) gives statutory authority to the U.S. Secretary of Transportation to assess civil penalties (filed in U.S. District Court) against the airport sponsor in the amount of up to three times the amount of the illegally diverted airport revenue (8).

### 4. Withholding Transportation Funds

Congress has strengthened FAA's enforcement power to resolve revenue diversion cases by including restrictive language in appropriations and transportation laws. For fiscal years 1994 and 1995, Congress specified that transportation funds could be withheld from any local government that diverts revenue generated by a public airport (7). The Airport Revenue Protection Act of 1996 made this enforcement action permanent, giving the Secretary of Transportation the authority to withhold not only aviation, but also transit and rail funds from local governments that fail to reimburse airports for illegally diverted funds and to assess civil penalties against those that fail to reimburse the federal government (8). The full text of the Airport Revenue Protection Act of 1996 is presented in Appendix C.

### 5. Credit Rating

Another possible consequence of diverting revenue from the airport, which is often overlooked, is a decreased credit rating that can lead to a downgrade of airport bonds, and an increase in the cost of borrowing. According to Moody's Investors Service and Standard & Poor Corp., diversion of revenue from the airport would force both agencies to review the airport's credit rating, because diverting funds could cut into an airport's revenue and increase its debt. When funds are diverted from a public facility, the credit rating agencies (Moody's and S&P) usually place the facility on credit watch with negative implications, meaning that a credit watch is usually a precursor for a lower rating (9).

## VIII. FAA Enforcement Procedure

Despite the enforcement tools available, FAA prefers to address airport noncompliance through negotiations and settlements. Informal resolution of disputes is initiated prior to formal enforcement procedures. If the airport owner violates its assurance obligations, the FAA regional or district office will first try to obtain voluntary compliance. When the airport owner cannot be brought into voluntary compliance, the FAA regional or district office will notify the airport owner in writing about the violation, specify corrective action to bring the owner back into compliance, and prescribe a deadline for the corrective action. If the airport owner refuses to take the suggested corrective action, the FAA regional and headquarters offices coordinate the enforcement actions.

FAA relies heavily on airports' voluntary compliance and self-certification rather than direct oversight of all airports. Furthermore, FAA also relies on third-party complaints

## ACTIVITIES VIOLATING FEDERAL REQUIREMENTS

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### 2. Land Use

The following are considered unauthorized uses of airport land and are prohibited by FAA:

- Selling or leasing the land acquired with federal assistance for less than its fair market value
- Using the land acquired with federal assistance for non-airport related purposes without the consent of FAA
- Selling, leasing or altering the use of airport land designated in the Airport Layout Plan without the permission of FAA, regardless of whether the land was acquired with or without federal assistance
- Altering the use of land or transferring other airport property that causes harm to the airport, creates incompatible land-use, or interferes with current or future aeronautical activities or functions at the airport
- Any sale, lease or alteration of use of airport property (including land) that can result in the safety hazards to civil aviation