SOUTHWEST WASHINGTON REGIONAL AIRPORT INTERLOCAL COOPERATION AGREEMENT

This agreement (AGREEMENT) is entered into between the City of Kelso ("Kelso"), a municipal corporation of the State of Washington; the City of Longview ("Longview"), a municipal corporation of the State of Washington; the Port of Longview ("Port"), a municipal corporation of the state of Washington; and Cowlitz County ("County"), a political subdivision of the state of Washington, all the above entities are each referred to as PARTY or jointly as the PARTIES. Additional governmental entities may be included in the AGREEMENT by addendum executed by all PARTIES existing at that time and the proposed additional PARTY.

NOW THEREFORE, The PARTIES agree as follows:

I. RECITALS

The Southwest Washington Regional Airport ("Airport") is located within Kelso in Cowlitz County, Washington.

Kelso is currently the sole sponsoring agency for purposes of existing federal grants with the FAA and it is expected that this role will continue.

The PARTIES previously created an airport board for the joint operation of the airport. This agreement was terminated in 1997.

The continued operation of the Airport as a public airport is a benefit and service to the citizenry of the region and supports several public purposes for each of the PARTIES, including economic development and public safety, as well as improves opportunities for growth and alternatives for transportation.

The PARTIES wish to form an Airport Board to participate jointly in the operation, repair, improvement and regulation of the Airport for the benefit of the region.

The PARTIES are authorized to enter into and carry out the AGREEMENT pursuant to the provisions of Chapter 39.34 of the Revised Code of Washington (RCW), and RCW 14.08.200.

II. OBJECTIVES

The objectives of this AGREEMENT are as follows:

1. To establish an Airport Board ("Board") to participate jointly in the funding and decision-making for the operation, repair, improvement and regulation of the Airport to assure the continued operation of the Airport for the benefit of all;
2. To make additional money available for operation, repair, and improvement of the Airport;

3. To define the rights and responsibilities, and risk allocation of the PARTIES in the operation, repair, improvement, and regulation of the Airport;
4. To maintain Kelso's ownership of the Airport and all existing and FAA funded facilities therein;
5. To maintain Kelso's rights and power and final decision making authority in all decisions as may be required of a sponsor by the FAA under the grant assurances included in Kelso's grant agreements.
6. "To affirm the Parties' and the Board's intent is to keep the Airport open and make it available for public use as an airport, to protect the Airport, and to ensure continued safe and efficient Airport operations and development."

III. CREATION OF AIRPORT BOARD

Except as provided elsewhere in this Agreement and subject to all grant obligations and assurances as set forth in Paragraph IV below all operation and management of the Airport shall be vested in a Board. The Board shall consist of one (1) member of each PARTY to this Agreement and one (1) 'at large' member to be appointed by a majority vote of the other members. The term of the at-large member shall be set by the Board. Each member shall have one vote. Matters herein requiring a supermajority shall require a 2/3 vote of the jurisdictions or 3 of the 4 jurisdictions. All other matters will require only a majority vote of the Board unless otherwise provided by the Board's rules. The 'at large' member shall be in a managing/supervisory staff role for any of the entities a part of this Agreement or other designated employee if approved by each of the Parties. The appointment, termination, or reappointment of any member shall be within the sole discretion and control of the appointing authority and each appointing authority may appoint an alternate to serve in the absence, incapacity, or unavailability of any Board member appointed to it.

IV. GRANT ASSURANCES AND KELSO RATIFICATION

A. Parties acknowledge and agree that Kelso is the sole sponsor for grants from the FAA and that such grants require Kelso to meet certain obligations and to make certain grant assurances that govern how the Airport is financed, operated, managed, and regulated.

B. Parties agree that this AGREEMENT is subordinate to the FAA grant assurances and obligations and that the Board shall abide by these assurances and obligations as it relates to the Airport.

C. Parties agree that the Board is subject to and its authority is limited by the grant assurances and obligations imposed upon Kelso by the FAA as set forth in Exhibits A, B, and C attached hereto and incorporated by reference and by such grant assurances as they may be from time to time amended or expanded by the sole determination of the FAA. The parties understand that such limitation is further clarified by FAA Order 5190.6B Airport Compliance Manual as now adopted or as hereafter amended by the FAA, including but not limited to Appendix G, Guide to Sponsorship, attached

hereto as Exhibit D and incorporated by reference. A request by Kelso to amend or expand grant assurances with the FAA must first be authorized by a super majority of the Board unless it is otherwise required that Kelso be the sole determining authority in a particular grant assurance.

D. Parties agree that where such grant obligations and assurances require that Kelso maintain the sole discretion and authority to make certain decisions as the sole sponsor, that such authority is vested solely with Kelso and that Kelso may act contrary to the direction of the Board in carrying out its role as sponsor. Kelso agrees that in the exercise of such authority that it will consider the advice and direction of the Board in reaching its decision and that where it acts contrary to the direction of the Board, it will provide an explanation in writing to the Board within ten (10) days of such contrary act stating its reasons for deviating from the Board's direction.

E. In reaching any decision required by Kelso by Kelso's grant obligations and assurances, the PARTIES agree to the following steps:

1. The Board will consider the matter and make a decision that is subject to the ratification of Kelso before it is final.
2. The Board will bring the matter requiring ratification to Kelso.
3. The Kelso City Council or their duly authorized representative/s will consider the matter including the preliminary decision of the Board and reach a final decision. Such a decision may be to ratify, amend, or deny the decision. In the event Kelso does not ratify the Board's decision, it will provide reasons therefor in writing to the Board.
4. If time permits, the Board and Kelso will work to negotiate a resolution that is satisfactory to both parties.
5. The final decision of Kelso in these matters is binding on the Board. The Board shall act consistent with Kelso's final decision. If the Board does not act consistent with Kelso's decision, Kelso is authorized to take such action as may be necessarily consistent with its decision, including termination of the AGREEMENT pursuant to Section IX.

F. Kelso agrees that all other discretionary authority related to the operation, repair, improvement, and regulation of the Airport that is not required to be vested with Kelso by the FAA under the grant assurances is hereby delegated to the Board pursuant to RCW 14.08.200.

V. OPERATION AND MANAGEMENT

A. Authority and Duties

Subject to the terms and provisions of this AGREEMENT and all limitations and grant obligations and assurances as set forth in Section IV including ratification by Kelso where required, the Board is hereby authorized and it shall be its duty to do and perform any and all acts and business reasonably necessary to

carry on the operation of the Airport as a public airport, including all facilities and services common to similar airports and as have been heretofore provided at the Airport. Specifically, the authority and duties of the Board include but are not limited to the following:

1. Elect its own officers and make its own regulations, rules, and by-laws for the conduct of the business of the Board and of the Airport.

2. Employ and/or contract for an airport manager and such other employees as the Board may deem necessary and to fix all duties, salaries, wages, employee benefits, working terms, agreements, rules, and regulations.

3. To establish and enforce all reasonable rules and regulations not in conflict with law, any lawful regulation, or any grant obligations or assurances of the FAA governing users of the Airport and of any Airport improvements and facilities.

4. To negotiate, fix, determine, charge, and collect all rents, fees, and charges for the use of services provided at the Airport.

5. Execute contracts, leases, user agreements, licenses and other agreements as necessary to carry out the business of the Airport; provided that any contractual obligation in excess of $50,000 shall require prior approval by a supermajority of the Board.

6. As fiduciaries for the PARTIES to this AGREEMENT, to give any notice and to make any demand and bring any action at law or in equity to recover any claim, money, debt, obligation, and property due the Airport and to which it may be entitled, including the enforcement of any fine or penalty provided by law or any authorized regulation.

7. As fiduciaries for the PARTIES to this AGREEMENT, to defend any action at law or in equity arising from or connected with the operation of the Airport.

8. To acquire by gift, governmental grant, purchase, and trade or exchange real or tangible personal property for the Airport use including the acquisition by contract of buildings and building improvements and/or in the alternative to construct any of the same by the direct employment of labor, rental of equipment, and the purchase of materials, supplies, and equipment, subject to the limitations on real property acquisition set forth herein.

9. To improve any land used or owned by the Airport by ditching, filling, leveling, diking, fencing, gravelling, paving, grading and otherwise improving the same for airport purposes, said work and improvements may be done by contract or by the direct employments of labor, rental of equipment, and the purchase of materials, supplies, equipment and necessary permits.

10. To keep full and accurate financial records and accounts in such manner as required by law for municipal corporations, together with minutes of all Board meetings and such other records and

accounts necessary to fully show all assets, liabilities, and business transactions. All such records shall be available at any reasonable time for inspection by any officer or agent of any of the PARTIES, by a representative of the FAA and/or Auditor for the State of Washington. Further, all records shall be kept in the manner and for the length of time required under the records retention laws of the State of Washington. Additionally, all PARTIES shall comply with and promptly assist in responding to any disclosure of public records in accordance with Chapter 42.56 RCW. In the event any records responsive to a public records request belong to any of the PARTIES, the Board must immediately inform the Party of the request and provide the Party with the opportunity for objecting to release of the records pursuant to the state statute. The Board may contract with one of the PARTIES for all or a portion of the duties in paragraph 10 herein. All meetings shall be held in compliance with the Open Public Meetings Act as found in Chapter 42.30 RCW.

11. To make any and all reports as required by law and regulation in the operation of the Airport.

12. To maintain in good order and repair all Airport property of useful value and to insure against loss by fire and storm damage airport personal property and building improvements (which may be subject to such damage) in the amount of the reasonable value thereof.

13. To carry public liability insurance in the manner set forth in Section VII to adequately protect the Airport and the PARTIES to this AGREEMENT from damage claims and liability exposure.

14. Within the resources of the Airport under the control of the Board to borrow money, execute promissory notes, issue bonds, pledge airport assets and /or revenues, enter into government matching fund agreements, and execute security agreements.

15. To sell and trade or exchange any personal property of the Airport when the same is no longer reasonably usable by the Airport, is surplus to the needs of the Airport, or is being traded for other property of like kind. Any such transaction may be by a privately negotiated agreement or by the giving of public notice and call for bids.

16. To take reasonable action to improve and expand the Airport operations and services, including the attraction of airport oriented industry.

17. To establish and regularly use such claims procedure for the payment of Airport expenses, debts, obligations, and liabilities as will comply with the law and provide a reasonable means of auditing and approving the payment of claims.

18. To submit a proposed annual budget for the succeeding year to the PARTIES on or before August 1 of each year.

B. **Limitations on Authority.**

1. None of the foregoing authorizations shall be interpreted as authorizing anything otherwise prohibited by local, state and/or federal law, or grant assurances with the federal government.

2. No real estate shall be purchased or acquired by lease, nor shall any money be borrowed for capital improvement, without a super majority vote of the PARTIES, meaning three of the four jurisdictions.

3. No person, firm, association, corporation, or group shall be given the exclusive right to the use of the Airport. This restriction shall not apply to the lease of any Airport building or portion thereof.

4. The authority of the Board shall at all times be subject to the control and direction of the PARTIES hereto by a super-majority vote of the Board, including the amendment or modification of or termination of this AGREEMENT; provided however, that the AGREEMENT may be terminated by Kelso pursuant to section IX.

5. No compensation shall be paid to any Board member.

6. The Airport Board shall not discriminate in any matter prohibited by law, against any person, firm, corporation, association, or group in the use of the Airport and in the fixing of fees, rents, or any Airport charge and such fees, rents, and charges shall be uniform for all like uses or services.

7. No member of the Board shall be an Airport employee or enter into any contract with the Board or Airport for the purchase or sale of any property or for the performance of any construction contract.

8. No Airport property or money shall be loaned to anyone, provided that this provision shall not be construed to prevent the deposit of any money with any bank on interest or the purchase of any investment authorized by law for municipal corporations.

VI. FINANCES

A. Income: All income from rents, fees, charges, and any and all income from the Airport operations whatsoever shall be collected and received as money of the Airport to be used exclusively for the operating expenses, repair and maintenance expenses, furniture, fixtures, machinery, equipment, improvements, and such other necessary Airport expenses.

B. Contributions: To provide additional money needed for management, operations, repairs, and improvements, each PARTY hereto shall appropriate and contribute to the Airport, each year, by no later than March 31, 2012 and January 31 of each subsequent year, a percentage of the approved budget for the Airport for that year as follows:

1. Kelso - 25%
2. Longview - 25%
3. Port - 25%
4. County - 25%

All unspent funds shall remain in the Airport Fund and shall be carried over from year to year, without credit against the amount owed by a PARTY for the next year. The PARTIES acknowledge that the contributions are subject to annual appropriation by the governing bodies.

C. FAA Regulations: The Board agrees that it shall manage the Airport revenue in accordance with FAA Policy and Procedures Concerning the Use of Airport Revenue, 64 Fed. Reg. 7696, dated February 16, 1999 (attached hereto as Exhibit E and incorporated by reference) and any subsequent amendments thereto.

D. Airport Accountant/Bookkeeper: The Board shall employ and/or contract for an accountant/bookkeeper, who may also be the manager of the Airport, who shall be directly responsible for the collection of all Airport income and the payment of all Airport expenses as well as the keeping of all Airport financial records and reports. In addition, the accounting records shall be reviewed not less than one (1) time per month by a separate accountant/bookkeeper for financial monitoring and provide a report to each Party in a form acceptable to the Board within ten (10) days of the review of the books.

E. Airport Treasurer: The treasurer of Kelso shall be the Airport treasurer and all money received shall be deposited with the treasurer to be expended upon warrants submitted by the Airport accountant/bookkeeper with approval of the Board.

F. Budget: The Board shall submit a proposed annual budget for the succeeding year to each of the PARTIES on or before August 1 of each year. The proposed budget should include among other things, detail of all anticipated receipts and expenditures for the coming calendar year and clearly show the proposed contribution of each of the PARTIES. The PARTIES shall review the proposed budget not later than October 1 each year. The budget of the Board shall become the Airport Budget for the calendar year specified upon receiving the approval by a super-majority of all of the PARTIES, meaning three of the four jurisdictions. If not so approved the budget shall be revised by the Board as to obtain the approval of a super-majority of all the PARTIES. All expenditures for the calendar year covered shall be restricted and limited to the budget items as so adopted and approved

excepting that transfers between budget operating items may be made by the Board. No transfer may be made from any item of repair or capital improvement. Other transfers, supplements, and amendments of the budget may be made at any time in any manner with the unanimous approval of all the PARTIES.

VII. PROPERTY OWNERSHIP

A. All funds, real property, buildings, fixtures, and personal property of the Airport currently owned by Kelso shall remain the property of Kelso.

B. Title to any additional real property or any buildings or fixtures acquired after the commencement of this AGREEMENT shall be held by and in the name of Kelso, but will be a joint asset of the Parties. Disposal of such property is not anticipated by the parties; however, any such disposal of property shall require the written approval of the FAA. Any proceeds from any sale of such property shall be returned to the Airport and used for Airport maintenance and operations consistent with FAA Revenue Use Policy. In the event the Airport ceases to operate, any proceeds remaining from such property acquired after the commencement of this Agreement, and after the full satisfaction of all Federal obligations, grant repayments to the FAA, and satisfaction of FAA's Revenue Use Policy, shall be distributed to the parties in the same proportion as the financial contribution of the parties for its acquisition.

C. Any personal property of the Airport, except buildings and fixtures described above, that are acquired by the Board after the commencement of this Agreement shall belong to the Board. Proceeds from any sale of such property shall be returned to the Airport and used for Airport maintenance and operations, consistent with FAA Revenue Use Policy.

D. An inventory of all personal property, including buildings of the airport, shall be made, kept, and maintained as a part of the permanent records of the Airport.

Kelso hereby agrees that it will furnish to the Airport the real estate known as the Southwest Washington Regional Airport at 2215 Parrott Way in Kelso Washington and legally described as set forth in Exhibits F and G, attached hereto and incorporated by this reference, owned by it for the uses and purposes herein agreed for the duration of this Agreement. The Parties also acknowledge and agree to the Airport boundaries and use map as set forth in Exhibit H (which is Exhibit A to the City of Kelso's ALP set) as delineating all Airport property owned or to be acquired, regardless of whether the federal government participated in the cost of acquiring any or all such land. The Parties agree that the property as set forth in Exhibit H cannot be disposed of or encumbered without FAA approval. Kelso and the Board are hereby authorized to negotiate any rental and or use agreement for the land as may be mutually beneficial. It is intended and expected that Kelso will continue during the duration of this Agreement to hold title to the land underlying the existing Airport and the Board will not acquire any title thereto.

VIII. INSURANCE AND INDEMNIFICATION

A. The Board shall defend, indemnify, and hold harmless the PARTIES and their officers, officials, employees, and volunteers from any and all claims, injuries, damages, losses, or suits, including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries or damages caused by the sole negligence of one of the PARTIES.

B. It is the intent of the PARTIES to provide services set forth in this AGREEMENT without the threat of being subject to liability to one another and to fully cooperate in the defense of any claims or lawsuits arising out of or connected with the PARTIES' actions under this AGREEMENT that are brought against the jurisdictions. To this end, the PARTIES agree to equally share responsibility and liability for the acts or omissions of their participating officers and employees when acting in furtherance of this AGREEMENT. In the event that an action is brought against any of the PARTIES, each jurisdiction shall be responsible for an equal share of any legal costs, award for, or settlement of claims of damages, fines, fees, or costs regardless of which jurisdiction, officer, or employee is ultimately responsible for the conduct. The PARTIES shall share equally regardless of the number of jurisdictions named in the lawsuit or claim or the number of officers from each jurisdiction named in the lawsuit or claim. Nothing herein, however, shall require or be interpreted to require indemnification or sharing in the payment of any judgment for intentionally wrongful conduct that is outside the scope of employment or authority of the Board or for any judgment or punitive damages against the individual or jurisdiction for such intentionally wrongful conduct.

C. The Board shall procure and maintain for the duration of this AGREEMENT, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of work under this AGREEMENT by the Board, its agents, representatives, employees, or subcontractors. The Airport Board shall maintain the following insurance policies with the stated limits:

1. Airport General Liability policy covering any general liability for the airport in the amount of $20 million per occurrence.

2. Errors and Omissions Liability policy in the amount of $1 million.

3. Such other insurance policies as the Board deems necessary including (a) any Employment Liability policy in the event that the Board has any direct employees, (b) any Property Liability policy in the event the Board acquires any personal property, and (c) any Automobile Liability policy in the event the Board acquires any automobiles.

D. Other Insurance Provisions.

1. The Board's Automobile Liability and Errors and Omissions insurance policies are to contain, or be endorsed to contain that they shall be primary insurance as respect the Parties.

2. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

3. **Verification of Coverage.** The Board shall furnish the Parties with original certificates and a copy of any applicable amendatory endorsements evidencing the insurance requirements of the Board each calendar year.

4. **Notice of Cancellation.** The Board shall provide the Parties with written notice of any policy cancellation, within two business days of their receipt of such notice.

IX. TERM, TERMINATION, AND WITHDRAWAL

A. Term. This AGREEMENT shall be for a Term of five (5) years. Within the last year of the initial term, the Board shall review the AGREEMENT to assure compliance and to determine if there is a need for any amendments and submit the AGREEMENT, including any recommended changes, to each entity at least ninety (90) days prior to the expiration of the initial term of the Agreement.

B. Termination by PARTIES. This AGREEMENT may be terminated at any time only upon the approval by a super-majority of the PARTIES. Upon the termination of this AGREEMENT, all real estate and airport personal property shall be distributed as defined in Section VII above. Any debt obligations of the Board acquired after the date of this AGREEMENT shall be resolved proportionally to the contributions of the PARTIES as outlined in Section VI above . Any debt acquired by Kelso prior to this AGREEMENT shall remain the sole obligation of Kelso.

C. Termination by KELSO. Pursuant to Grant Assurance #5, Preservation of Rights and Powers, Kelso, as Sponsor, shall have the authority to terminate this AGREEMENT immediately, without a supermajority vote, in the event the Board or the PARTIES act contrary to the grant assurances and obligations and this termination is reasonably necessary to preserve the rights and powers required by Grant Assurance #5.

D. Notice of Withdrawal:

1. Any Party may withdraw from this AGREEMENT by giving nine (9) months' written notice to the other PARTIES.

2. In the event of the withdrawal of a PARTY, the withdrawing PARTY shall cease to be bound by the terms and conditions of this AGREEMENT after the effective date of the withdrawal; PROVIDED HOWEVER, that any and all multiyear debt incurred by the Airport or by Kelso which is approved while the PARTY was subject to this Agreement and which extends beyond the date of withdrawal shall remain the responsibility of the withdrawing PARTY and shall be due to the Board by January 31 of each year. Any PARTY who withdraws from this AGREEMENT is not entitled to

any share of funds in the Airport Fund remaining at the time of withdrawal or in any distribution of proceeds as provided in Section VII except as may be specifically identified in accordance with the contributions of the Party. If three PARTIES withdraw, any remaining funds in the Airport Fund will be transferred to the owner of the Airport for use at the Airport.

X. GENERAL PROVISIONS

A. This Agreement together with attachments or addenda, represents the entire and integrated Agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, either written or oral except as follows:

1997 Rescission Agreement of Kelso, Longview, Port and County providing for Airport repayment of $85,000 remaining on the Loan to Longview by 2015 (attached hereto as Exhibit I, Paragraph 4(a)). This loan was originally for $230,000 from U.S. Bank and was incurred by the City of Longview on behalf of the Kelso/Longview Regional Airport Authority for the construction of T-Hangars. The loan bears an interest rate 4.25%-6.0%.

B. No provisions of this Agreement may be amended, modified or added to except by written instrument properly signed by the PARTIES hereto.

C. Any provision of this Agreement which is declared invalid or illegal shall in no way affect or invalidate any other provision hereof and such other provisions shall remain in full force and effect.

D. Any failure by one Party to enforce strict performance of any provision of the Agreement will not constitute a waiver of that Party's right to subsequently enforce such provision or any other provision of the Agreement.

E. All notices and other communications required under the Agreement must be in writing, and must be given by registered or certified mail, postage prepaid, or delivered by hand to the Party to whom the communication is to be given, at its address as follows:

City of Kelso:

City Manager
203 South Pacific, Suite 216
P.O. Box 819
Kelso, WA 98626

City of Longview:

City Manager
Executive Department
City of Longview
1525 Broadway
Longview, WA 98632

Port of Longview:

Executive Director
Port of Longview
10 Port Way
P.O. Box 1258
Longview, WA 98632

Cowlitz County:

Board of Commissioners
Cowlitz County Administration Building, Room 305
207 North Fourth Avenue
Kelso, WA 98626

F. In any lawsuit between the Parties with respect to the matters covered by the Agreement, the prevailing party will be entitled to receive its reasonable attorney's fees and costs incurred in the lawsuit, in addition to any other relief it may be awarded.

G. The captions in this Agreement are for convenience only and do not in any way limit or amplify particular provisions.

H. This Agreement may be executed in any number of counterparts, which counterparts shall collectively constitute the entire Agreement.

IN WITNESS WHEREOF, each of the PARTIES has executed this AGREEMENT by their duly authorized officials on the date and year indicated following his or her signature.

THE CITY OF KELSO, WASHINGTON

By _____
City Manager

Date 2/21/2012

ATTEST: _____
Clerk

APPROVED AS TO FORM: _____
City Attorney

THE CITY OF LONGVIEW, WASHINGTON

By _____
City Manager

Date 2/23/12

ATTEST: _____
Clerk

APPROVED AS TO FORM: _____
City Attorney

PORT OF LONGVIEW , WASHINGTON

By _____
President

Date 02-24-12

ATTEST: _____
Secretary

APPROVED AS TO FORM: _____
Port Attorney

COWLITZ COUNTY, WASHINGTON

By _____
Commissioner

By _____
Commissioner

By _____
Commissioner

Date _____

APPROVED AS TO FORM: _____
Chief Civil Deputy Prosecuting Attorney

IN WITNESS WHEREOF, each of the PARTIES has executed this AGREEMENT by their duly authorized officials on the date and year indicated following his or her signature.

THE CITY OF KELSO, WASHINGTON

By _____
City Manager

Date _____

ATTEST:

_____
Clerk

APPROVED AS TO FORM:

_____
City Attorney

THE CITY OF LONGVIEW, WASHINGTON

By _____
City Manager

Date _____

ATTEST:

_____
Clerk

APPROVED AS TO FORM:

_____
City Attorney

PORT OF LONGVIEW , WASHINGTON

By _____
President

Date _____

ATTEST:

_____
Secretary

APPROVED AS TO FORM:

_____
Port Attorney

COWLITZ COUNTY, WASHINGTON

By _____
George Rather, Chair

By _____
Michael A. Karnofski, Commissioner

By _____
James R. Misner, Commissioner

Date February 21, 2012

Attest: Vickie M. Musgrove
Vickie M. Musgrove, Clerk of the Board

APPROVED AS TO FORM:

_____
Chief Civil Deputy Prosecuting Attorney

STATE OF WASHINGTON)
) ss.
County of Cowlitz)

On this day personally appeared before me Dennis Richards CITY MAGNAGER, and Brian Butterfield, FINANCE DIRECTOR/CITY CLERK, respectively for the CITY OF KELSO, A MUNICIPAL CORPORATION OF THE STATE OF WASHINGTON, the municipal corporation that executed the foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the said instrument, and that the seal affixed is the corporate seal of said municipal corporation.

GIVEN under my hand and official seal this 21st day of February 2012

Stephanie L Helem
NOTARY PUBLIC in and for the State
of Washington, residing at Kelso
My commission expires: 9-30-2014

STEPHANIE L HELEM
COMMISSION EXPIRES
NOTARY
PUBLIC
SEPT. 30, 2014
STATE OF WASHINGTON

STATE OF WASHINGTON)
) ss.
County of Cowlitz)

On this day personally appeared before me Robert J. Gregory, CITY MANAGER, and Ann C. Davis, CITY CLERK, respectively for the CITY OF LONGVIEW , A MUNICIPAL CORPORATION OF THE STATE OF WASHINGTON, the municipal corporation that executed the foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the said instrument, and that the seal affixed is the corporate seal of said municipal corporation.

GIVEN under my hand and official seal this 28th day of Feb, 2012

Tamara Ames Larson
NOTARY PUBLIC in and for the State
of Washington , residing at Longview.
My commission expires: 11/30/15.

TAMARA AMES LARSON
COMMISSION EXPIRES
NOTARY
PUBLIC
NOVEMBER 30, 2015
STATE OF WASHINGTON

STATE OF WASHINGTON)
) ss.
County of Cowlitz)

On this day personally appeared before me ROBERT BAGAASON and LOUIS E. JOHNSON, the President and Secretary, respectively, for the PORT OF LONGVIEW, A MUNICIPAL CORPORATION OF THE STATE OF WASHINGTON, the municipal corporation that executed the foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the said instrument, and that the seal affixed is the corporate seal of said municipal corporation.

GIVEN under my hand and official seal this 24th day of February, 2012.

ROBIN JOHNSON
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES
SEPTEMBER 14, 2015

Robin Johnson
NOTARY PUBLIC in and for the State
of Washington, residing at Longview
My commission expires: 9/14/15

STATE OF WASHINGTON)
) ss.
County of Cowlitz)

On this day personally appeared before me _____, _____, and _____, COMMISSIONERS respectively for the COUNTY OF COWLITZ, A POLITICAL SUBDIVISION OF THE STATE OF WASHINGTON, the political subdivision that executed the foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said political subdivision, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the said instrument, and that the seal affixed is the corporate seal of said political subdivision.

GIVEN under my hand and official seal this _____ day of _____,

_____
NOTARY PUBLIC in and for the State
of Washington , residing at _____.

My commission expires:_____.

STATE OF WASHINGTON)
) ss.
County of Cowlitz)

On this day personally appeared before me _____, _____, for the PORT OF LONGVIEW, A MUNICIPAL CORPORATION OF THE STATE OF WASHINGTON, the municipal corporation that executed the foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the said instrument, and that the seal affixed is the corporate seal of said municipal corporation.

GIVEN under my hand and official seal this _____ day of _____,

_____
NOTARY PUBLIC in and for the State
of Washington, residing at _____.
My commission expires:_____.

STATE OF WASHINGTON)
) ss.
County of Cowlitz)

On this day personally appeared before me George Reiter, Michael Karnofski, and James Misner, COMMISSIONERS respectively for the COUNTY OF COWLITZ, A POLITICAL SUBDIVISION OF THE STATE OF WASHINGTON, the political subdivision that executed the foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said political subdivision, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the said instrument, and that the seal affixed is the corporate seal of said political subdivision.

GIVEN under my hand and official seal this 21st day of Feb, 2012

Stephanie R. Dunn, Stephanie R Dunn
NOTARY PUBLIC in and for the State
of Washington , residing at Longview

My commission expires: 5-22-12

STEPHANIE R DUNN
NOTARY PUBLIC
STATE OF WASHINGTON
MAY 22

EXHIBITS

A. Exhibit A.	FAA Order 5190.6B, Airport Compliance Manual, Appendix A—Airport Sponsors Assurances
B. Exhibit B.	FAA Order 5100.38C, Appendix 7—Grant Special Conditions
C. Exhibit C.	FAA Order 5100.38C, Appendix 6. Grant Agreement
D. Exhibit D.	FAA Order 5190.6B, Airport Compliance Manual, Appendix G
E. Exhibit E.	FAA Policy and Procedures Concerning the Use of Airport Revenue, 64 Fed.. Reg. 7696, February 16, 1999
F. Exhibit F.	Statutory Warranty Deed for Airport Property, Auditor No: 941122009
G. Exhibit G.	Record of Survey for Airport Property, Auditor No: 3171562
H. Exhibit H.	Map of Airport, ALP drawing set for FAA, Exhibit A to ALP set
I. Exhibit I.	1997 Rescission Agreement between City of Kelso, City of Longview, Port of Longview and Cowlitz County

EXHIBIT "A"

Appendix A ▶ Airport Sponsors Assurances

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, United States Code (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 the grant offer by the sponsor, these assurances are incorporated in and become part of the 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 the 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 the grant agreement, only Grant 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 the 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.1.
c. Federal Fair Labor Standards Act - 29 U.S.C. 201, et seq. Airport Assurances (9/99).
d. Hatch Act - 5 U.S.C. 1501, et seq.2.
e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title 42 U.S.C. 4601, et seq.1 2
f. National Historic Preservation Act of 1966 - Section 106 - 16 U.S.C. 470(f).1.
g. Archeological and Historic Preservation Act of 1974 - 16 U.S.C. 469 through 469c.1.

h. Native Americans Grave Repatriation Act - 25 U.S.C. Section 3001, et seq.
i. Clean Air Act, P.L. No. 90-148, as amended.
j. Coastal Zone Management Act, P.L. No. 93-205, as amended.
k. Flood Disaster Protection Act of 1973 - Section 102(a) - 42 U.S.C. § 4012a.1.
l. Title 49, U.S.C., Section 303, (formerly known as Section 4(f) of the Department of Transportation Act of 1966.)
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. No. 95-341, as amended.
q Architectural Barriers Act of 1968 -42 U.S.C. 4151, et seq.1.
r. Powerplant and Industrial Fuel Use Act of 1978 - Section 403- 2 U.S.C. § 8373.1.
s. Contract Work Hours and Safety Standards Act - 40 U.S.C. 327, et seq.1.
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.1.
v. Wild and Scenic Rivers Act, P.L. No. 90-542, as amended.
w. Single Audit Act of 1984 - 31 U.S.C. 7501, et seq.2.
x. Drug-Free Workplace Act of 1988 - 41 U.S.C. 702 through 706.

Executive Orders

Executive Order 11246 - Equal Employment Opportunity.
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.
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.
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.
f. 29 CFR Part 5 - Labor standards provisions applicable to contracts covering federally financed and assisted construction (also labor standards provisions applicable to nonconstruction contracts subject to the Contract Work Hours and Safety Standards Act).
g. 41 CFR Part 60 - Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (federal and federally assisted contracting requirements).
h. 49 CFR Part 18 - Uniform administrative requirements for grants and cooperative agreements to state and local governments.
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.
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.
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.

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 Nonprofit Organizations.

2. Responsibilities and Authority of the Sponsor.

a. Public Agency Sponsor: It has legal authority to apply for the 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 the 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 the 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 airfield 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 the 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 the 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 federal obligations of the grant agreement and to have the power, authority, and financial resources to carry out all such federal 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 that 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 federally 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 noncompliance 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 noncompliance 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 the grant agreement and shall insure that such arrangement also requires compliance therewith.

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 the grant, the total cost of the project in connection with which the 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 the 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 the 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 the 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 the 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 Veterans of the Vietnam era and 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 the 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 nonaeronautical 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-base operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-base operators making the same or similar uses of such airport and using the same or similar facilities.
d. Each air carrier using such airport shall have the right to service itself or to use any fixed-base 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, nontenant, 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 use similar facilities, subject to reasonable classifications such as tenants or nontenants and signatory air carriers and nonsignatory air 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-base 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-base operator to provide such services, and
b. If allowing more than one fixed-base operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-base 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 (AAIA), 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 revenue 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. Provided, however, that 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.

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 the 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:

(i) All amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and

(ii) 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 Federal 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 federal government aircraft in common with other aircraft at all times without charge, except, if the use by federal 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 federal 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 airfield by other authorized aircraft, or during any calendar month that:

a. Five (5) or more federal 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 federal government aircraft is 300 or more, or the gross accumulative weight of federal government aircraft using the airport (the total movement of federal 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; and (3) the location of all existing and proposed nonaviation areas and of all existing improvements thereon. 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.

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, 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, at the discretion of the Secretary, (1) be paid to the Secretary for deposit in the Trust Fund, or (2) be reinvested in an approved noise compatibility project as prescribed by the Secretary, including the purchase of nonresidential buildings or property in the vicinity of residential buildings or property previously purchased by the airport as part of a noise compatibility program.

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 in another eligible airport improvement project or projects approved by the Secretary at that airport or within the national airport system, or (2) be paid to the Secretary for deposit in the Trust Fund if no eligible project exists.

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 selfsufficiency 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 _____ 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 federal 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 federal 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.

Exhibit "B"

June 28, 2005 Appendix 7. Grant Special Conditions
Order 5100.38C Page 269 GENERAL GRANT SPECIAL CONDITIONS:

A. LETTER OF CREDIT: The Sponsor agrees to request cash drawdowns on the letter of credit only when actually needed for its disbursements and to timely reporting of such disbursements as required. It is understood that failure to adhere to this provision may cause the letter of credit to be revoked.

B. TAKEOVER INSTRUMENT LANDING SYSTEM AND ASSOCIATED EQUIPMENT IN PROJECT: When the Federal Aviation Administration has agreed to takeover the instrument landing system and associated equipment, the sponsor must check the facility prior to its commissioning to assure it meets the operational standards. The sponsor must also remove, relocate, or lower each obstruction on the approach or provide for the adequate lighting or marking of the obstruction if any aeronautical study conducted under FAR part 77 determines that to be acceptable; and mark and light the runway, as appropriate.

C. AIRPORT-OWNED VISUAL OR ELECTRONIC NAVAIDS IN PROJECT: The Sponsor must provide for the continuous operation and maintenance of any navigational aid funded under the AIP during the useful life of the equipment and check the facility prior to its commissioning to assure it meets the operational standards. The Sponsor must also remove, relocate, or lower each obstruction on the approach or provide for the adequate lighting or marking of the obstruction if any aeronautical study conducted under FAR Part 77 determines that to be acceptable, and mark and light the runway, as appropriate. The Federal Aviation Administration will not take over the ownership, operation, or maintenance of any Sponsor-acquired equipment.

D. NON-AIP WORK IN APPLICATION:It is understood and agreed by and between the parties hereto that notwithstanding the fact that the Project Application includes therein the construction , said work shall not be a part of this project and, if or to the extent accomplished by the Sponsor, such accomplishment shall be without any participation in the costs thereof by the United States under this project; it is further understood and agreed that, in the event the work which is excluded from the project is accomplished by the Sponsor, the Sponsor shall maintain as a portion of the cost records covering this project, separable cost records pertaining to the above-identified work excluded from Federal participation under this project, which records shall be made available for inspection and audit by the FAA to the end that the cost of the excluded work may be definitely determined.
It is further understood and agreed that, within 90 days of acceptance of this Offer, the Sponsor will submit a revised Program Statement/cost estimate depicting the excluded costs or a revised cost estimate depicting only those costs eligible for Federal participation in this project.

E. BUILDING AIP PRORATION:For purposes of computing the United States' share of the allowable project costs of the project, the allowable cost of the included in the project shall not exceed percent of the actual cost of the entire building.

F. UTILITIES AIP PRORATION:For purposes of computing the United States' share of the allowable project costs, the allowable cost of the included in the project shall not exceed percent.

G. UTILITY RELOCATION IN PROJECT:It is understood and agreed by and between the parties hereto that the United States shall not participate in the cost of any utility relocation unless and until the Sponsor has submitted evidence satisfactory to the FAA that the Sponsor is legally responsible for payment of such costs. FAA participation will be limited to those utilities located on private right-of-way or utilities that exclusively serve the Airport.

H. REVENUE FROM REAL PROPERY – LAND IN PROJECT: The Sponsor agrees that all net revenues produced from real property purchased in part with Federal funds in this grant shall be used on the airport for airport planning, development or operating expenses, except that all income from real property purchased for noise compatibility purposes or for future aeronautical use be used only to fund projects which would be eligible for grants under the Act. Income from noise or future use property may not be used for the Sponsor's matching share of any airport grant. Airport fiscal and accounting records shall clearly identify actual sources and uses of these funds.

Page 1 of 7Order 5100.38C Appendix 7. Grant Special Conditions June 28, 2005 Page 270I. FUTURE DEVELOPMENT LAND: The Sponsor agrees to perform within years of this Grant the airport development which requires this land acquisition, and further agrees not to dispose of the land by sale or lease without prior consent and approval of the Federal Aviation Administration. In the event the land is not used within the years for the purpose for which it was acquired, the Sponsor will refund the Federal share of acquisition cost or the current fair market value of the land, whichever is greater.

J. RUNWAY PROTECTION ZONES:The Sponsor agrees to take the following actions to maintain and/or acquire a property interest, satisfactory to the FAA, in the Runway Protection Zones:

a. Existing Fee Title Interest in the Runway Protection Zone: The Sponsor agrees to prevent the erection or creation of any structure or place of public assembly in the Runway Protection Zone, except for NAVAIDS that are fixed by their functional purposes or any other structure approved by the FAA. Any existing structures or uses within the Runway Protection Zone will be cleared or discontinued unless approved by the FAA.

b. Existing Easement Interest in the Runway Protection Zone: The Sponsor agrees to take any and all steps necessary to ensure that the owner of the land within the designated Runway Protection Zone will not build any structure in the Runway Protection Zone that is a hazard to air navigation or which might create glare or misleading lights or lead to the construction of residences, fuel handling and storage facilities, smoke generating activities, or places of public assembly, such as churches, schools, office buildings, shopping centers, and stadiums.

c. Future Interest in the Runway Protection Zone: The Sponsor agrees that it will acquire fee title or less-than-fee interest in the Runway Protection Zones for runways that presently are not under its control within ___ years of this Grant Agreement. Said interest shall provide the protection noted in above Subparagraphs a and b.

K. NOISE PROJECTS ON PRIVATELY OWNED PROPERTY: No payment shall be made under the terms of this Grant Agreement for work accomplished on privately owned land until the Sponsor submits the agreement with the owner of the property required by Assurance 5d of the Assurances, Airport Sponsors, and such agreement is determined to be satisfactory. As a minimum, the agreement with the private owner must contain the following provisions:

a. The property owner shall subject the construction work on the project to such inspection and approval during the construction or installation of the noise compatibility measures and after completion of the measures as they may reasonably be requested by the Secretary or the Sponsor.

b. The property owner shall assume the responsibility for maintenance and operation of the items installed, purchased, or constructed under this Grant Agreement. Neither the Federal Aviation Administration nor the Sponsor bears any responsibility for the maintenance and operation of these items.

c. If Federal funds for the noise compatibility measures are transferred by the sponsor to the owner of the private property, or the owner's agent, the property owner shall agree to maintain and make available to the Secretary or the Sponsor, upon reasonable request, records disclosing the amount of funds received and the disposition of those funds.

d. The property owner's right to sue the owner of Airport for adverse noise impacts will be abrogated if the property owner deliberately or willfully acts to reduce or destroy the effectiveness of the noise compatibility measures during the useful life of such measures. This obligation shall remain in effect throughout the useful life of the noise compatibility measures, but not to exceed 20 years from the date of the Sponsor's acceptance of federal aid for the project.

L. UPDATE APPROVED EXHIBIT "A" FOR LAND IN PROJECT: It is understood and agreed by and between the parties hereto that notwithstanding the fact that this Grant Offer is made and accepted upon the basis of the current Exhibit "A" Property Map, the Sponsor hereby covenants and agrees that upon completion of the land acquisition in this project, it will update said Exhibit "A" Property Map to standards satisfactory to the Federal Aviation Administration (FAA) and submit said documentation in final form to the FAA. It is further mutually agreed that the reasonable cost of developing said Exhibit "A" Property Map is an eligible administrative cost for participation within the scope of this project.

M. FRICTION MEASURING DEVICES: The Sponsor assures that it will properly calibrate, operate, and maintain the friction measuring equipment in accordance with the manufacturer's guidelines and instructions and Advisory Circular 150/5320-12. The friction measuring equipment and tow vehicle (if applicable) shall not be used for any other purpose other than for conducting friction measuring tests on airport pavement surfaces and directly related activities, such as training and calibration.

N. MULTI-YEAR GRANTS - LETTER OF AGREEMENT: The maximum obligation for the current fiscal year stated in Condition 1 of this agreement may be increased by the additional amounts, if any, added by the document issued under the subparagraph below, but may not exceed the United States' share of the total estimated cost of completion, except as provided in Section 47108(b) of the Act.

Under Section 47108 of the Act, as amended, and at the Sponsor's request, the FAA commits the United States to obligate an additional amount to this project for FY- pursuant to Section 47114 of said Act, and subject to the restrictions on the use of such apportionments now or hereafter imposed on FAA by statute now or hereafter enacted by any regulation. It is further understood by the parties that this commitment does not in itself obligate, preclude, nor restrict the FAA in the use of any funds made available for discretionary use under Section 47114 of said Act to further aid the Sponsor in meeting the cost of this project under the terms of this agreement and limitations of the law.

The exact amount of this commitment will be established for each fiscal year by the FAA in a letter to the Sponsor stating the current maximum obligation for this project. This letter will be issued to the Sponsor by FAA when such computation and obligation can be made in FY- . The parties agree that upon its issuance, this letter shall be considered incorporated by reference into, and part of, this agreement.

O. INFORMAL LETTER AMENDMENT OF AIP PROJECTS: It is mutually understood and agreed that if, during the life of the project, the FAA determines that the maximum grant obligation of the United States exceeds the expected needs of the Sponsor by $25,000.00 or five percent (5%), whichever is greater, the maximum obligation of the United States can be unilaterally reduced by letter from the FAA advising of the budget change. Conversely, if there

is an overrun in the total actual eligible and allowable project costs, FAA may increase the maximum grant obligation of the United States to cover the amount of the overrun not to exceed the statutory percent limitation and will advise the Sponsor by letter of the increase. It is further understood and agreed that if, during the life of the project, the FAA determines that a change in the grant description is advantageous and in the best interests of the United States, the change in grant description will be unilaterally amended by letter from the FAA. Upon issuance of the aforementioned letter, either the grant obligation of the United States is adjusted to the amount specified or the grant description is amended to the description specified.

P. GRANTS ISSUED ON ESTIMATES: It is understood and agreed by and between the parties hereto that this Grant Offer is made and accepted based on estimates for ; and the parties hereby covenant and agree that within days from the date of acceptance of this Grant Offer, the Sponsor shall receive bids for contained within the grant description.

Q. PRIVATE SPONSOR AUDITS: The Sponsor shall provide for an audit of this grant project to be made at the completion of the grant objective in accordance with accepted standard audit practices. Copies of the audit will be sent to the Department of Transportation Office of Inspector General designated by the Federal Aviation Administration office responsible for administering the grant.

R. PAVEMENT MAINTENANCE MANAGEMENT PROGRAM: For a project to replace or reconstruct pavement at the airport, the Sponsor shall implement an effective airport pavement maintenance management program as is required by Airport Sponsor Assurance Number C-11. The Sponsor shall use such program for the useful life of any pavement constructed, reconstructed, or repaired with federal financial assistance at the airport. As a minimum, the program must conform with the provisions outlined below:

Page 3 of 7 Order 5100.38C Appendix 7. Grant Special Conditions June 28, 2005 Page 272 PAVEMENT MAINTENANCE MANAGEMENT PROGRAM

An effective pavement maintenance management program is one that details the procedures to be followed to assure that proper pavement maintenance, both preventive and repair, is performed. An airport sponsor may use any form of inspection program it deems appropriate. The program must, as a minimum, include the following:

a. Pavement Inventory. The following must be depicted in an appropriate form and level of detail:

(1) location of all runways, taxiways, and aprons;

(2) dimensions;

(3) type of pavement, and;

(4) year of construction or most recent major rehabilitation.

For compliance with the Airport Improvement Program (AIP) assurances, pavements that have been constructed, reconstructed, or repaired with federal financial assistance shall be so depicted.

b. Inspection Schedule.

(1) Detailed Inspection. A detailed inspection must be performed at least once a year. If a history of recorded pavement deterioration is available, i.e., Pavement Condition Index (PCI) survey as set forth in Advisory Circular 150/5380-6, "Guidelines and Procedures for Maintenance of Airport Pavements," the frequency of inspections may be extended to three years.

(2) Drive-By Inspection. A drive-by inspection must be performed a minimum of once per month to detect unexpected changes in the pavement condition.

c. Record Keeping. Complete information on the findings of all detailed inspections and on the maintenance performed must be recorded and kept on file for a minimum of five years. The types of distress, their locations, and remedial action, scheduled or performed, must be documented. The minimum information to be recorded is listed below:

(1) inspection date,

(2) location,

(3) distress types, and

(4) maintenance scheduled or performed.

For drive-by inspections, the date of inspection and any maintenance performed must be recorded.

d. Information Retrieval. An airport sponsor may use any form of record keeping it deems appropriate, so long as the information and records produced by the pavement survey can be retrieved to provide a report to the FAA as may be required.

e. Reference. Refer to Advisory Circular 150/5380-6, "Guidelines and Procedures for Maintenance of Airport Pavements," for specific guidelines and procedures for maintaining airport pavements and establishing an effective maintenance program. Specific types of distress, their probable causes, inspection guidelines, and recommended methods of repair are presented.

S. PROJECTS WHICH CONTAIN PAVING WORK IN EXCESS OF $250,000: The Sponsor agrees to perform the following:

a. Furnish a construction management program to FAA prior to the start of construction which shall detail the measures and procedures to be used to comply with the quality control provisions of the construction contract,

including, but not limited to, all quality control provisions and tests required by the Federal specifications. The program shall include as a minimum:

(1) The name of the person representing the Sponsor who has overall responsibility for contract administration for the project and the authority to take necessary actions to comply with the contract.

(2) Names of testing laboratories and consulting engineer firms with quality control responsibilities on the project, together with a description of the services to be provided.

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(3) Procedures for determining that testing laboratories meet the requirements of the American Society of Testing and Materials standards on laboratory evaluation, referenced in the contract specifications (D 3666, C 1077).

(4) Qualifications of engineering supervision and construction inspection personnel.

(5) A listing of all tests required by the contract specifications, including the type and frequency of tests to be taken, the method of sampling, the applicable test standard, and the acceptance criteria or tolerances permitted for each type of test.

(6) Procedures for ensuring that the tests are taken in accordance with the program, that they are documented daily, and that the proper corrective actions, where necessary, are undertaken.

b. Submit at completion of the project, a final test and quality control report documenting the results of all tests performed, highlighting those tests that failed or that did not meet the applicable test standard. The report shall include the pay reductions applied and the reasons for accepting any out-of-tolerance material. An interim test and quality control report shall be submitted, if requested by the FAA.

c. Failure to provide a complete report as described in paragraph b, or failure to perform such tests, shall, absent any compelling justification, result in a reduction in Federal participation for costs incurred in connection with construction of the applicable pavement. Such reduction shall be at the discretion of the FAA and will be based on the type or types of required tests not performed or not documented and will be commensurate with the proportion of applicable pavement with respect to the total pavement constructed under the grant agreement.

d. The FAA, at its discretion, reserves the right to conduct independent tests and to reduce grant payments accordingly if such independent tests determine that sponsor test results are inaccurate.

T. BUY AMERICAN REQUIREMENT: Unless otherwise approved by the FAA, the Sponsor will not acquire or permit any contractor or subcontractor to acquire any steel or manufactured products produced outside the United States to be used for any project for airport development or noise compatibility for which funds are provided under this grant. The Sponsor will include in every contract a provision implementing this special condition.

U. MAXIMUM OBLIGATION INCREASE FOR NONPRIMARY AIRPORTS: In accordance with Section 47108(b) of the Act, as amended, the maximum obligation of the United States, as stated in Condition No. 1 of this Grant Offer:

a. may not be increased for a planning project;

b. may be increased by not more than 15 percent for development projects;

c. may be increased by not more than 15 percent or by an amount not to exceed 25 percent of the total increase in allowable costs attributable to the acquisition of land or interests in land, whichever is greater, based on current credible appraisals or a court award in a condemnation proceeding.

V. MAXIMUM OBLIGATION INCREASE FOR PRIMARY AIRPORTS: In accordance with Section 47108(b) of the Act, as amended, the maximum obligation of the United States, as stated in Condition No. 1 of this Grant Offer:

a. may not be increased for a planning project;

b. may be increased by not more than 15 percent for development projects;

c. may be increased by not more than 15 percent for land projects.

W. LOW EMISSION SYSTEMS: The sponsor agrees to the following conditions under the Voluntary Airport Low Emission (VALE) program:

a. Vehicles and equipment purchased with assistance from this grant shall be maintained and used for their useful life at the airport for which they were purchased. Moreover, any vehicles or equipment replaced under this program shall not be transferred to another airport or location within the same or any other nonattainment or maintenance area. No airport-owned vehicles or equipment may be transferred to, taken to, or used at another airport without the consent of the

Page 5 of 7 Order 5100.38C Appendix 7. Grant Special Conditions June 28, 2005 Page 274 Federal Aviation Administration in consultation with the United States Environmental Protection Agency and State air quality agency.

b. All vehicles and equipment purchased with assistance from this grant shall be clearly labeled using the VALE program emblem designed by the Federal Aviation Administration.

c. The sponsor shall maintain annual reporting records of all vehicles and equipment purchased with assistance from this grant. These public records shall contain detailed information involving individual vehicles and equipment, project expenditures, cost effectiveness, and emission reductions.

d. The sponsor certifies that it shall replace any disabled or seriously damaged vehicle or equipment purchased with assistance from this grant, at any time during its useful life, with an equivalent vehicle or unit that produces an equal or lower level of emissions. The sponsor assumes all financial responsibility for replacement costs. The sponsor also certifies that it shall fulfill

this replacement obligation, beyond the useful life of the affected vehicle or equipment, for the possible longer life of Airport Emission Reduction

EXHIBIT "C"

Order 5100.38C Appendix 6. Grant Agreement (FAA Form 5100-37) June 28, 2005

U.S. Department of Transportation Federal Aviation Administration

GRANT AGREEMENT

PART I – OFFER

Date of Offer
Airport/Planning Area
Project No

Contract No DUNS No
TO: (herein called the "Sponsor")
FROM: The United States of America (acting through the Federal Aviation Administration, herein called the "FAA")
WHEREAS, the Sponsor has submitted to the FAA a Project Application dated , for a grant of Federal funds for a project at or associated with the Airport (*or* Planning Area), which Project Application, as approved by the FAA, is hereby incorporated herein and made a part hereof; and
WHEREAS, the FAA has approved a project for the Airport (or Planning Area) (herein called the "Project") consisting of the following: all as more particularly described in the Project Application.
(Add the following for a Multi-Year Grant)
WHEREAS, this project will not be completed during Fiscal Year ; and the total United States' share of the estimated costs of the completion will be $.

NOW THEREFORE, pursuant to and for the purpose of carrying out the provisions of Title 49, United States Code, as amended, herein called "the Act," and in consideration of (a) the Sponsor's adoption and ratification of the representations and assurances contained in said Project Application and its acceptance of this Offer as hereinafter provided, and (b) the benefits to accrue to the United States and the public from the accomplishment of the Project and compliance with the assurances and conditions as herein provided, **THE FEDERAL AVIATION ADMINISTRATION, FOR AND ON BEHALF OF THE UNITED STATES, HEREBY OFFERS AND AGREES** to pay, as the United States share of the allowable costs incurred in accomplishing the Project, per centum thereof.
This Offer is made on and **SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS**:

CONDITIONS

1. The maximum obligation of the United States payable under this Offer shall be $. For the purposes of any future grant amendments which may increase the foregoing maximum obligation of the United States under the provisions of Section 47108(b) of the Act, the following amounts are being specified for this purpose:
$ for planning
$ for airport development or noise program implementation.
2. The allowable costs of the project shall not include any costs determined by the FAA to be ineligible for consideration as to allowability under the Act.
3. Payment of the United States' share of the allowable project costs will be made pursuant to and in accordance with the provisions of such regulations and procedures as the Secretary shall prescribe. Final determination of the United States' share will be based upon the final audit of the total amount of allowable project costs and settlement will be made for any upward or downward adjustments to the Federal share of costs.
4. The Sponsor shall carry out and complete the Project without undue delays and in accordance with the terms hereof, and such regulations and procedures as the Secretary shall prescribe, and agrees to comply with the assurances which were made part of the project application.
5. The FAA reserves the right to amend or withdraw this offer at any time prior to its acceptance by the Sponsor.
6. This offer shall expire and the United States shall not be obligated to pay any part of the costs of the project unless this offer has been accepted by the Sponsor on or before *, or such subsequent date as may be prescribed in writing by the FAA.
7. The Sponsor shall take all steps, including litigation if necessary, to recover Federal funds spent fraudulently, wastefully, or in violation of Federal antitrust statutes, or misused in any other manner in any project upon which Federal funds have been expended. For the purposes of this grant agreement, the term "Federal funds" means funds however used or dispersed by the Sponsor that were originally paid pursuant to this or any other Federal grant agreement. It shall obtain the approval of the Secretary as to any determination of the amount of the Federal share of such funds. It shall return the recovered Federal share, including funds recovered by settlement, order, or judgment, to the Secretary. It shall furnish to the Secretary, upon request, all documents and records pertaining to the determination of the amount of the Federal share or to any settlement, litigation, negotiation, or other efforts

taken to recover such funds. All settlements or other final positions of the Sponsor, in court or otherwise, involving the recovery of such Federal share shall be approved in advance by the Secretary.
8. The United States shall not be responsible or liable for damage to property or injury to persons which may arise from, or be incident to, compliance with this grant agreement.

Page 2 of 3 Order 5100.38C Appendix 6. Grant Agreement (FAA Form 5100-37) June 28, 2005 Page 267 The Sponsor's acceptance of this Offer and ratification and adoption of the Project Application incorporated herein shall be evidenced by execution of this instrument by the Sponsor, as hereinafter provided, and this Offer and Acceptance shall comprise a Grant Agreement, as provided by the Act, constituting the contractual obligations and rights of the United States and the Sponsor with respect to the accomplishment of the Project and compliance with the assurances and conditions as provided herein. Such Grant Agreement shall become effective upon the Sponsor's acceptance of this Offer.

UNITED STATES OF AMERICA FEDERAL AVIATION ADMINISTRATION

(Signature)
(Typed Name)
(Title)

PART II - ACCEPTANCE

The Sponsor does hereby ratify and adopt all assurances, statements, representations, warranties, covenants, and agreements contained in the Project Application and incorporated materials referred to in the foregoing Offer and does hereby accept this Offer and by such acceptance agrees to comply with all of the terms and conditions in this Offer and in the Project Application.

Executed this day of , .

(Name of Sponsor)

(SEAL
)

(Signature of Sponsor's Designated Official Representative)

By:

(Typed Name of Sponsor's Designated Official Representative)

Title:

Attest:

(Typed Title of Sponsor's Designated Official Representative)

CERTIFICATE OF SPONSOR'S ATTORNEY

I, , acting as Attorney for the Sponsor do hereby certify:

That in my opinion the Sponsor is empowered to enter into the foregoing Grant Agreement under the laws of the State of . Further, I have examined the foregoing Grant Agreement and the actions taken by said Sponsor and Sponsor's official representative has been duly authorized and that the execution thereof is in all respects due and proper and in accordance with the laws of the said State and the Act. In addition, for grants involving projects to be carried out on property not owned by the Sponsor, there are no legal impediments that will prevent full performance by the Sponsor. Further, it is my opinion that the said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.**Page 3 of 3 Order 5100.38C Appendix 6. Grant Agreement (FAA Form 5100-37) June 28, 2005**

EXHIBIT "D"

Appendix G ▶ Formal Compliance Inspection

1. PRELIMINARY PREPARATION. Prior to conducting a compliance inspection visit to the airport, the responsible Airports employee shall perform a preinspection office review. It should normally include the following element:

a. Preinspection Preparation. The first step is to review airport data available in the files. The inspector should review all conveyance documents and grant agreements in order to fully understand the specific commitments of the airport owner. This will include any continuing special conditions of grant agreements and the terms and conditions of release granted by the FAA. Previous inspection records should be reviewed to determine the owner's past performance in such matters as operation of the airport. Physical maintenance and financial activities. This information will assist in determining whether the existing airport condition is static, improving or deteriorating. If it has not already been done, the inspector will want to draw up a list of leases in effect showing dates of renewal or expiration. The inspector should review recent correspondence with the owner to see what follow up may be needed during the inspection. It will also be helpful to study the ALP, property use maps and land use and operating plans, if any. A review of recent grant funded projects will also be helpful. A list of known airport obstructions will be useful during the airport visit.

b. Compliance Worksheet. A standard worksheet was designed to be used as a simple, concise record of an airport's condition as observed during a "screening" inspection. It is not a statement of the owner's compliance status, but rather is a source of information for determining the compliance status.. The method to be used in collecting essential compliance data must be adapted to the situation. Thus, at larger airports with more complex factors to be considered or at those with a history of poor compliance performance, a screening inspection might be inappropriate. In such cases, a more comprehensive, locally prepared worksheet may be preferable. The choice of whether to use a worksheet at all is left to the discretion of field offices. If one is used, it usually is best not to fill it out in the owner's presence since it may cause unwarranted apprehension, thus restricting the flow of information. Regardless of the method use to collect and record data, adequate records must be maintained to clearly document what was reviewed and what was discovered.

c. Use of the Worksheet. While many of the items included in the worksheet are selfexplanatory,
the following guidance is helpful.

Item I: Entries here give the inspector's general impression as to whether the airport is developing, deteriorating, or stagnant. Observed changes which are undesirable or have an unsatisfactory general appearance should be explained on the back of the form.

Item II: Record here an evaluation of the physical condition of the airport's facilities in light of the owner's maintenance effort. This calls for a realistic appraisal of whether the facilities are being properly preserved. Any that are rated unsatisfactory should be explained on the back of the form. Other data sources, such as FAA Form 5010 inspections, other records, or FAR Part 139 inspection findings can be used to further substantiate findings

Item III: Any individual approach slope which fails to meet applicable criteria should be identified on the back of the form, together with comments on whether the owner can be required to correct the condition. Similarly, any unmarked obstruction or incompatible activity on adjacent land should be explained. Determine if clear zone interests and zoning, if any, are adequate and if not, what future requirements should be considered.
Item IV: The operations plan and land use plan listed here are discussed in paragraph 4-17. Although such plans are not a mandatory requirement, their use will facilitate effective administration of any airport. The inspector should review those that exist, together with airport regulations and minimum standards, to determine whether they can be considered satisfactory in light of the owner's obligations. If such plans are not satisfactory, the owner should be advised of necessary modifications.
Item V: Observe whether the owner is complying with exclusive rights policy and with civil rights requirements of DOT Regulations, Part 21.
Item VI: This item requires collection of data on new leases or agreements executed since the most recent past compliance inspection. Basic data to include on the back of the form are identity of lessee, date of execution, term of lease, and nature of occupancy or activity covered. If the screening inspector is not qualified to judge the acceptability of the lease or agreement or if procedure calls for review by the regional Counsel, defer the entry in Item VI.B. until a decision can be outlined. Where a contract for airport management has been entered into, it must be reviewed to assure that the owner has retained enough control to enable it to meet its continuing obligations to the federal government. Nonaviation leases of surplus airport property should be reviewed in connection with Item VIII.
Item VII: Requires the inspector to compare the ALP to existing and planned development of the airport and determine whether they are consistent. An explanation is necessary if the ALP is out of date or fails to depict accurately existing and planned facilities.
Item VIII: Calls for the inspector to review the uses being made of real surplus property and to determine whether such uses are proper. The inspector must determine if income is being realized from land conveyed for revenue production and if it is being applied to or reserved for airport purposes.
Item IX: Concerns a review of the current financial report, if available, as an indicator of the airport's financial condition. By observing recent physical improvements (or lack thereof), the inspector can verify unusual capital expenditures. By noting the presence of activities, which normally would generate revenues, the inspector should be able to judge whether all income is being reflected in the financial records. Conclusions should be entered in IX.B. The status of any funds committed as a condition of a release will be checked and noted in IX.C.
Item X: Refers primarily to any other specific commitments undertaken by the airport owner as a condition of an FAA action. Special conditions of grant agreements, although normally controlled by project payments, are included because they become compliance factors if they continue in effect beyond the closeout of the project.

2. SCOPE OF DETERMINATIONS.
To accurately determine the compliance status of an airport, the responsible FAA official must

have available comprehensive information on all compliance matters. In evaluating this data, the official will want to pay particular attention to the following:

a. Maintenance and Operation. Various federal programs fund development and improvement of airport facilities. Consequently, there must be an effective application of effort to assure the proper operation and maintenance of the airport. The FAA's responsibility requires consideration of the following:

(1) Preservation. Compare the actual conditions as noted with those of previous observations and records on the airport to determine whether the preventive maintenance measures being taken are effectively preserving the facility.

(2) Maintenance Plan. Look into plans and arrangements relied on by the airport owner to meet maintenance commitments:

☐ Do they fix responsibility?

☐ Do they adequately provide for cyclical preventive repairs on a realistic schedule?

☐ Does the airport owner actually have the capability to meet these obligations? Is there an annual budget or other evidence that adequate resources are being applied to maintenance?

(3) Acceptable Level. Develop with the owner mutually agreeable criteria for acceptable maintenance of the airport. Such an agreement may take into consideration the duration of the owner's obligation to the federal government, any plans for extending the useful life of airport facilities, and the type of aeronautical usage to which the facility is subjected. For example, we might agree that to arrest the deterioration of a runway surface, a seal coat on only certain portions of the runway would be adequate for a stated period of time. This constitutes an acknowledgment by the FAA that during such a period accomplishment of the specified seal coating would be an acceptable level of maintenance. Any such understandings should be recorded in the compliance files.

(4) Operating Procedures. Check into procedures for operating the airport:

☐ Are they adequate and effective?

☐ What arrangements are in effect to turn on any field lighting equipment; mark and light temporary airfield hazards; issue NOTAMS when required, etc.?

☐ Is use of the airfield controlled by adequate ground safety regulations?

☐ Has the owner established operating rules including appropriate restrictions to protect airfield paving from excessive wheel loads?

☐ What plans are in effect to clear the airfield of disabled aircraft?

b. Approach Protection. Each of the airport's aerial approaches must be examined to determine whether any obstructions (as defined in current FAA criteria) exist and, if so, whether they violate a compliance obligation. Many obstructions do not violate a compliance obligation. Some

have been there for many years and actually predate development of the airport. There is no obligation to remove these unless such removal was made a specific condition of a grant agreement. Some are located a considerable distance from the runway on land not controlled by the airport owner, or are otherwise not reasonably within the airport's power to correct. Still

others may have been the subject of an FAA airspace review that determined they were not a hazard or they were not a hazard if marked and lighted in accordance with FAA standards.
(1) Owner's Status. Where an approach surface is affected by an obstruction and the owner is obligated to maintain clear approaches, that owner is in noncompliance unless FAA can determine that elimination of the obstruction is not reasonably within the owner's power and/or the obstruction is not a hazard to navigation. The airport owner's primary obligation is to prevent or remove hazards.
(2) Future Outlook. Recent trends in uses of adjacent properties should be reviewed to see whether probable developments might pose a threat to any runway approaches. Measures being taken by the owner to protect these approaches should be reviewed. Is the owner doing everything that can reasonably be done to protect them?
(3) Effect of Obstructions. If obstructions exist, the records should indicate whether FAA has reviewed the object under a coordinated airspace review to determine its effect on the safe and efficient use of airspace. If FAA has determined the object is not a hazard, the airport owner will not be required to move or lower the object.
(4) Zoning. Where the airport relies on local zoning ordinances, the review should cover the effectiveness of the ordinances and the status of any legal proceedings involving them. Are the zoned areas appropriate to protect all existing and planned approaches?
c. Surplus Property Income. Income from property acquired under P.L. No. 80-289 and used to produce nonaviation revenues or funds derived from the disposal of such property must be applied to airport purposes. Thus the compliance review of a surplus property airport must include an evaluation of the owner's stewardship of properties conveyed for specific purposes. Most surplus airports conveyed under P.L. No. 80-289 contain significant areas deeded to the grantee for the purpose of generating revenue to support and further develop the aeronautical facilities. Since no other land uses were intended by the Act, it must be assumed that any property not needed for aeronautical activity was conveyed to produce revenue. There should be an agreement between the FAA and the owner as to which areas are for aeronautical activity and which for revenue production. This agreement should be reflected in the land use plan or property map or other document acceptable to FAA.
(1) Revenue Production.
(a) If a surplus airport includes revenue production property, a detailed review of available financial records shall be made. As a very minimum, these records should be carefully screened to ensure that the grantee has established an airport fund, or at least a separate airport account in which all transactions affecting the surplus property have been recorded. Where financial records are obscure or inconclusive, the grantee shall be required to produce whatever supplemental data are needed to clearly reveal the disposition of airport revenues.

(b) The grantee must make a reasonable effort to develop a net revenue (i.e., an amount over and above expenses in connection therewith) from such property. However, there is no violation if the property is not used. It may not be donated or leased for nominal consideration, but if used at all must produce reasonable net revenue. The compliance report must clearly reveal whether the current usage of the property conforms to these criteria. Where excess revenues accumulate, the guidance contained in the *Revenue Use Policy* shall be followed.
(c) Proceeds of Disposal. The law prohibits the sale or other disposal of surplus airport property

without the written consent of the FAA. When given, such consent will obligate the owner to expend an amount equal to the FMV of the property for airport purposes. Where a transaction of this kind has been authorized by an FAA release, the compliance review shall include a thorough check into the status of the funds involved. Are they fully accounted for, and are the owner's actions to properly apply them satisfactory?

d. Availability of Airport Facilities. The reviewer should note whether the full benefits of the airport are being made available to users. This requires more than the opportunity to land an aircraft on a safe, well-constructed runway. To add utility and purpose of flight and to fully realize the intended benefits of airport development, there should be, depending on the type of airport, a reasonable variety of supporting services such as aircraft fuel, storage or tie-down and minor repair capabilities. At some locations the availability of a telephone may be all that can be economically justified. There are no criteria for measuring the adequacy of essential supporting services, and the owner of a public airport has not specific obligation to provide any of them. However, there is a basic obligation to ensure that, whatever arrangements are in effect, such services as are provided are available on fair, reasonable, and nondiscriminatory terms.

e. Adherence to Airport Layout Plan.

(1) In considering the compliance status of a federally obligated airport, the FAA approved ALP or land use plan should be consulted. At some airports subject only to surplus property compliance obligations, an FAA approved ALP may not have been required. At these airports, see whether there is any comparable plan or layout, such as a master development plan, which might reveal the ultimate development objectives of the airport owner. Where appropriate, the premises should be inspected to determine whether there have been any improvements, or whether any are being considered, which might be inconsistent with such plans. If an airport includes grant acquired land, specific consideration will be given to whether all of it still is needed for airport purposes.

(2) Whenever an actual or proposed variation from an approved ALP is found, determine whether it is significant; violates design or safety criteria; precludes future expansion needed for the foreseeable aeronautical use potential of the airport; or impairs the ability of the airport owner to comply with any of the airport's obligations under agreements with the federal government.

(3) The results of these determinations shall be recorded and one of the following actions taken:

(a) Determine that the variation is not significant and requires no further action;

(b) Obtain a modified ALP incorporating required changes; or

(c) Notify the airport owner that unless adherence to the previously approved ALP is affected within a specified, reasonable time, it will be in violation of its agreement with the federal government.

(4) There is no obligation to review an ALP to reflect development recommended by the FAA if the airport owner does not propose to carry it out. FAA's opinion of what development is desirable is not incumbent on the owner. However, the ALP must reflect existing conditions and those alterations currently planned by the owner, which has received FAA approval, and the FAA must formally approve the ALP.

SPONSOR QUESTIONNAIRE - AIRPORT COMPLIANCE STATUS

AIRPORT NAME

AIRPORT OWNER

Before completing the questionnaire below, you should be familiar with and understand the attached Exhibit A *Guide to Sponsor Obligations*, and Exhibit B, *Planning Airport Pavement Maintenance*. Refer to corresponding paragraphs of Exhibit A and Exhibit B before answering each question to be sure you have covered all applicable areas to be considered. NARRATIVE COMMENTS MAY BE ATTACHED.

PLEASE COMPLETE ALL ITEMS. YOU MAY USE N/A IF THE ITEM IS NOT APPLICABLE TO YOUR AIRPORT.

SOURCES OF OBLIGATIONS (Page one of Exhibit A)

What are your airport's applicable sources of obligations?

Surplus Property Conveyances (Regulation 16 and P.L. No. 289)

Section 16/23/516 Property Conveyances

Federal Grant Sponsor Assurances

Other

A. MAINTENANCE OF THE AIRPORT (Paragraph b of Exhibit A)

1. Is the airport inspected on a regular schedule? Yes No

Weekly?_____Monthly?_____Other?

2. Are sponsor-owned visual landing aids (Visual Approach Slope Indicator (VASI), REILS, etc.) checked and calibrated on a regular schedule, at least quarterly? Yes No

Date of last calibration?

By whom?

3. Physical condition for following facilities is: (Good, Fair, Poor)

a. Paving_____

b. Nav-aids_____

c. Others_____

4. Are realistic measures being followed to preserve physical condition of paving, lighting, grading, marking

etc.? Yes No

If no, please explain:

5. Do you have a pavement maintenance program in place, with records to support maintenance activities? Yes No

If no, please explain:

B. APPROACH PROTECTION (Paragraph d of Exhibit A)

1. If obstructions are indicated:

a. Are the obstructions on land under the control of the airport (owned in fee or easement)?

Yes No

b. What plans are there for removing the obstructions?

c. If no plans for removal, why?

2. Are there obstructions (natural or manmade) existing that are not reflected on the Airport Master Record, FAA Form 5010-1? Yes No
If yes, please explain:

C. USE OF AIRPORT PROPERTY (Paragraphs h & i of Exhibit A)

1. Is each area of land being used for the purpose intended by grant agreement or land conveyance? Yes No
2. If yours is a SURPLUS PROPERTY AIRPORT, are all areas of surplus property land that are being used for NONAERONAUTICAL purposes producing income at fair market value rent? Yes No
3. What kind of documentation is maintained to support the lease amounts?
4. Has FAA approved in writing each area of SURPLUS airport property which has been disposed of or sold? Yes No

5. Do you maintain a separate account of sale proceeds from released land?
Yes No
If yes, what is balance: $
What are your plans for use of these funds?
6. Are any areas of GRANT ACQUIRED LAND being used for nonaeronautical purposes? Yes No
If yes, please explain:

D. USE OF AIRPORT REVENUES (Paragraph k of Exhibit A)

1. Is income from airport operations and revenue-producing property fully accounted for? __ Yes No
If no, please explain:
2. Are records adequate to show what use is made of airport revenue (or to reserve it for airport purposes)? Yes No
If no, please explain:
3. Is all revenue produced on the airport applied toward the operation, maintenance, and development of the airport? Yes No
If no, please provide specific information regarding use of such funds:
4. Is airport revenue used for the payment of nonairport City personnel salaries?
Yes No
If yes, is the airport deducting the amount of such nonairport salaries from their payment to the City under the cost allocation plan? Yes No
5. What evidence is available to support that the appropriate deduction to the cost allocation plan has been made?
6. What controls are used to insure that such a deduction is made?

E. EXCLUSIVE RIGHTS (Paragraph a of Exhibit A)

1. Has any operator been granted an exclusive right to conduct an aeronautical activity on the airport? Yes No
2. Are there any complaints of discrimination, based on exclusive use pending on your

airport? Yes No
3. Have any requests to conduct an aeronautical activity on the airport been denied? Yes No
If yes, please explain:

F. CONTROL AND OPERATION OF THE AIRPORT
(Paragraphs c, f, m & n of Exhibit A)

1. Is the airport available to the public under fair, equal, reasonable, and nondiscriminatory conditions? Yes No
2. Describe steps routinely taken to ensure safety of aircraft and persons?
3. Are airport facilities operated at all times in a safe and serviceable condition? Yes No
4. Is the airport ever temporarily closed for nonaeronautical purposes? Yes No
If yes, please explain when and the reason:
Was this coordinated with Airports Division prior to closing? Yes No
5. Has the airport owner entered into any agreement that deprives him of ability to carry out obligations to the U.S.? Yes No
6. For airports obligated under federal grant programs, does the fee and rental structure provide for making the airport as self-sustaining as possible under circumstances existing at the airport? Yes No
Is documentation maintained to support lease amounts? Yes No

G. CONFORMITY TO AIRPORT LAYOUT PLAN (Paragraph g of Exhibit A)

1. Do you have a copy of the latest approved ALP? Yes No
Date:
2. Is it being kept current? Yes No
3. Is all development in conformance to the approved ALP? Yes No
If no, please explain:

H. CONTINUING SPECIAL CONDITIONS (Paragraphs j.4 & k.4 of Exhibit A)

1. If your location has received an FAA grant to acquire land for noise compatibility or future aeronautical use, interim income from such land MAY be required to be used ONLY for work which would be eligible under a grant, and may not be used for matching funds as your share of a grant. Is your location affected by such a requirement? Yes No
If yes, what is the status of such funds?
2. Describe any other special conditions included in a grant agreement that remain in effect after the grant was closed.
If so, what actions have you taken?

I. DISPOSAL OF GRANT ACQUIRED LAND (FAAP/ADAP/AIP)
(Paragraph j of Exhibit A)

1. Was any airport land sold or otherwise disposed of without FAA approval? Yes No
If yes, what was amount received?
2. Has FAA approval been obtained for use of all or a portion of the proceeds realized

from sale of grant acquired land? Yes No
Date:
Amount:

J. COMPATIBLE LAND USE (Paragraph e of Exhibit A)

1. What actions have been taken to restrict use of lands in the vicinity of the airport to activities and purposes compatible with normal airport operations?

2. Are all land uses in the vicinity of the airport OVER WHICH SPONSOR HAS JURISDICTION compatible with airport use? Yes No
If no, please explain:

K. FAA FORMS 7460-1 & 7480-1

Are you aware of when it is required to submit FAA Form 7460-1, *Notice of Proposed Construction or Alteration,* and Form 7480-1, *Notice of Landing Area Proposal*?
Yes No
Date:
Name:
(Typed Name and Signature of Authorized Official of the Airport)
Title:
Telephone No.:

Exhibit A
GUIDE TO SPONSOR OBLIGATIONS

This guide provides information on the various obligations of airport sponsors through federal agreements and/or property conveyances. The obligations listed are those generally found in agreement and conveyance documents. Sponsors should be aware, however, that dissimilarities do exist, and they are therefore urged to review the actual agreement or conveyance document itself to determine the specific obligations to which they are subject.

SOURCES OF OBLIGATIONS

(1) Grant agreements issued under the Federal Airport Act of 1946, the Airport and Airway Development Act of 1970, and the Airport and Airway Improvement Act of 1982 (AAIA), as amended.
(2) Surplus airport property instruments of transfer, issued pursuant to Section 13g of the Surplus Property Act of 1944 (Reg 16 & P.O. 289).
(3) Deeds of conveyance issued under Section 16 of the Federal Airport Act of 1946, under Section 23 of the Airport and Airway Development Act of 1970, and under Section 516 of the Airport and Airway Improvement Act of 1982 (AAIA).
(4) AP-4 agreement authorized by various acts between 1939 and 1944. Note: All AP-4 agreements have expired, however, sponsors continue to be subject to the statutory exclusive rights prohibition.)
(5) Environmental documents prepared in accordance with current Federal Aviation Administration requirements that address the National Environmental Policy Act of 1969 and the Airport and Airway Improvement Act of 1982 (AAIA).

OBLIGATIONS
a. Exclusive Rights Prohibition:
(1) Airports subject to: Any federal grant or property conveyance.
(2) Obligation: To operate the airport without granting or permitting any exclusive right to conduct any aeronautical activity at the airport. (Aeronautical activity is defined as any activity which involves, makes possible, or is required for the operation of an aircraft, or which contributes to or is required for the safety of such operations; i.e., air taxi and charter operations, aircraft storage, sale of aviation fuel, etc.)
(3) An exclusive right is defined as a power, privilege, or other right excluding or debarring another from enjoying or exercising a like power, privilege, or right. An exclusive right may be conferred either by express agreement, by imposition of

unreasonable standards or requirements, or by any other means. Such a right conferred on one or more parties by excluding others from enjoying or exercising a similar right or rights would be an exclusive right.
(4) Duration of obligation: For as long as the property is used as an airport.
b. Maintenance of the Airport:
(1) Airport subject to: Any federal grant agreement, surplus property conveyance, and certain Section 16/23/516 conveyances.
(2) Obligation: To preserve and maintain the airport facilities in a safe and serviceable condition. This applies to all facilities shown on the approved ALP that are dedicated for aviation use, and includes facilities conveyed under the Surplus Property Act.
(3) Airport Pavement Maintenance: A continuing program of preventive maintenance and minor repair activities which will ensure that airport facilities are at all times in a good and serviceable condition for use in the way they were designed to be used, is required.
(4) Duration of obligation: Throughout the useful life of the facility but no longer than 20 years from the date of execution of grant agreement. For facilities conveyed under the Surplus Property Act, the obligation continues only for the useful life of the facility. In either case, FAA concurrence for discontinuance of maintenance is required.
c. Operation of the Airport:
(1) Airports subject to: Any federal grant agreement and surplus property conveyance.
(2) Obligation: To operate aeronautical and common use areas for the benefit of the public and in a manner that will eliminate hazards to aircraft and persons.
(3) Duration of obligation: Twenty years from the date of execution of the grant agreement. Obligation runs with the land for surplus property conveyance.
d. Protection of Approaches:
(1) Airports subject to: Any federal grant agreement and surplus property conveyance.
(2) Obligation: To prevent, insofar as it is reasonably possible, the growth or establishment of obstructions in the aerial approaches to the airport. (The term "obstruction" refers to natural or man-made objects that penetrate the imaginary surfaces as defined in FAR Part 77, or other appropriate citation applicable to the specific agreement or conveyance document.)
(3) Duration of obligation: Twenty years from the date of execution of the grant

agreement. Obligation runs with the land for surplus property conveyance.

e. Compatible Land Use:
(1) Airports subject to: FAAP (after 1964)/ADAP/AIP agreements.
(2) Obligation: To take appropriate action, to the extent reasonable, to restrict the use of lands in the vicinity of the airport to activities and purposes compatible with normal airport operations.
(3) Duration of obligation: Twenty years from the date of execution of the grant agreement.
f. Available on Fair and Reasonable Terms:
(1) Airports subject to: Any federal grant agreement or property conveyance.
(2) Obligation: To operate the airport for the use and benefit of the public and to make it available to all types, kinds, and classes of aeronautical activity on fair and reasonable terms and without unjust discrimination.
(3) The airport owner must allow its use by all types, kinds, and classes of aeronautical activity as well as by the general public. However, in the interest of safety and/or efficiency, restrictions on use may be imposed prohibiting or limiting a given type, kind, or class of aeronautical use of the airport. Reasonable rules or regulations to restrict use of the airport may be imposed. The reasonableness of restrictions will be determined using the assistance of local Flight Standards and Air Traffic representatives.
(4) Duration of obligation: Twenty years from the date of execution of grant agreements prior to 1964. For grants executed subsequent to the passage of the Civil Rights Act of 1964, statutory requirement prohibiting discrimination remains in effect for as long as the property is used as an airport. Obligation runs with the land for surplus property and Section 16/23/516 conveyances.
g. Adherence to the Airport Layout Plan:
(1) Airports subject to: Any federal grant agreements.
(2) Obligation: To develop, operate, and maintain the airport in accordance with the latest approved Airport Layout Plan. In addition, AIRPORT LAND DEPICTED ON THE AIRPORT PROPERTY MAP (EXHIBIT "A") TO THE LATEST GRANT AGREEMENT CANNOT BE DISPOSED OF OR OTHERWISE ENCUMBERED WITHOUT PRIOR FAA APPROVAL.
(3) Duration of obligation: Twenty years from the date of execution of grant agreement.
h. Use of Surplus Property:

(1) Airports subject to: Surplus property conveyances.
(2) Obligation: Real property conveyed under the Surplus Property Act must be used to support the development, maintenance, and operation of the airport. If not needed to directly support an aviation use, such property must be available for use to produce income for the airport. Such property may not be leased or rented for discount or for nominal consideration to subsidize non airport objectives. Airport property cannot be used, leased, sold, salvaged, or disposed of for other than airport purposes without FAA

approval.
(3) Duration of obligation: Runs with the land.
i. Use of Section 16/23/516 lands:
(1) Airports subject to: Section 16/23/516 conveyances.
(2) Obligation: Real Property must be used for airport purposes; i.e., uses directly related to the actual operation or the foreseeable aeronautical development of the airport. Incidental use of the property must be approved by the FAA.
(3) Duration of obligation: Runs with the land.
j. Sale or Other Disposal of Property Acquired Under Federal Grant Agreements.
(1) Airports subject to: Any federal grant agreements.
(2) Obligation: To obtain FAA approval for the sale or other disposal of property acquired with federal funds under the various grant programs, as well as approval for the use of any net proceeds realized.
(3) Duration of obligation:
(a) At locations where the most recent grant agreement was executed prior to January 2, 1979, all land acquired under FAAP/ADAP (regardless of the project under which it was acquired) and designated as airport property on the latest Exhibit "A", is subject to the above obligation for 20 years from the date of execution of that most recent grant.
(b) At locations with grant agreements executed on or after January 2, 1979, all land acquired under FAAP/ADAP/AIP (regardless of the project under which it was acquired) and designated as airport property on the latest Exhibit "A", remains subject to the above obligation without time limitation. The standard 20-year grant obligation period does not apply.
(4) Special Condition Affecting Noise Land: Locations with grant agreements involving land acquired for noise compatibility must dispose of such land at the earliest practicable

time following designation by FAA, with the net proceeds of the sale returned to the airport.
k. Use of Airport Revenue:
(1) Airports subject to: Any federal grant agreement or property conveyance.
(2) Obligation: To apply revenue derived from the use of airport property toward the operation, maintenance, and development of the airport. Diversion of airport revenue to a non airport purpose must be approved by the FAA. (NOTE: Airports that have received AIP funds in some cases may expend airport revenue for the capital or operational 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 directly related to the actual transportation or passengers or property. Contact your FAA airports district office for additional information and approval.)
(3) Duration of obligation: Twenty years from the date of the grant agreement. Obligation runs with the land for surplus property and Section 16/23/516 conveyances.
(4) Special Condition Affecting Noise Land and Future Aeronautical Use Land: Locations with grant agreements including noise land or future aeronautical use land must apply revenue derived from interim use of the property to projects eligible for

funding under the AIP. Income may not be used for the matching share of any grant.
l. National Emergency Use Provision:
(1) Airports subject to: Surplus property conveyances (where sponsor has not been released from this clause.)
(2) Obligation: During any war or national emergency, the federal government has the right of exclusive possession and control of the airport.
(3) Duration of obligation: Runs with the land (unless released from this clause of the FAA.)
m. Fee and Rental Structure:
(1) Airports subject to: Any federal grant agreement.
(2) Obligation: To maintain a fee and rental structure for the facilities and services being provided the airport users which will make the airport as self-sustaining as possible. (Sponsors are directed by the FAA to assess fair market value rent for all leases.)
(3) Duration of obligation: Twenty years from the date of execution of the grant agreements.
n. Preserving Rights and Powers:

(1) Airports subject to: Any federal grant agreements.
(2) Obligation: To not enter into any transaction which would operate to deprive it of any of the rights and powers necessary to perform any or all of the sponsor assurances without FAA approval, and to 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. To not dispose of or encumber its title or other interests in the site and facilities for the duration of the terms, conditions, and assurances in the grant agreement without FAA approval.
(3) Duration of obligation: Twenty years from the date of execution of the grant agreements.
o. Environmental Requirements: The Airport Airway Improvement Act of 1982 (AAIA) requires that for certain types of projects, an environmental review be conducted. The review can take the form of an environmental assessment or an environmental impact statement. These environmental documents often contain commitments related to mitigation of environmental impacts. FAA approval of environmental documents containing such commitments have the effect of requiring that these commitments be fulfilled before FAA grant issuance or as part of the grant.
p. The above obligations represent the more important and potentially most controversial of the obligations assumed by an airport sponsor. Other obligations that may be found in grant agreements are:

☐ Use of Federal Government Aircraft

☐ Land for Federal Facilities

☐ Standard Accounting Systems

☐ Reports and Inspections

☐ Consultation with Users

☐ Terminal Development Prerequisites

☐ Construction Inspection and Approval

☐ Minimum Wage Rates

☐ Veterans Preference

☐ Audits and Record keeping Requirements

☐ Audit Reports

☐ Local Approval

☐ Civil Rights

☐ Construction Accomplishment

☐ Planning Projects

☐ Good Title

☐ Sponsor Fund Availability

Exhibit B

Planning Airport Pavement Maintenance

Maintenance of airport pavements consists of two distinct categories. The most commonly performed and easiest to understand is remedial maintenance. Remedial maintenance is simply the repair of deteriorated pavement. The most important and often overlooked is preventive maintenance. Preventive maintenance requires obtaining a history of pavement performance and planning for future pavement needs. Proper preventive maintenance can extend the serviceable life of the pavement and reduce the amount of required remedial maintenance. There are several necessary steps to begin a preventive and remedial pavement maintenance program. By following these steps, a maintenance program can be constructed to forecast future maintenance needs and determine when rehabilitation outside of normal daily maintenance is required and justified.

Mapping and Categorization

Develop a system of maps whereby the condition and special requirements of given pavement areas can be recorded. Not all pavement structures are constructed alike nor do all pavement structures perform identically, therefore, it is necessary to monitor the maintenance requirements of each general type of pavement. By monitoring the performance of pavement sections of similar construction and usage, we can develop sufficient information to forecast future maintenance requirements.

It may not be necessary to monitor all pavement sections if several sections are representative of the grouping. Inspection of all sections may require considerable cost and effort. Sampling plans have been devised so that an adequate portion of a pavement is inspected and the results are representative of the entire group.

Pavement categories and grouping should be determined with respect to the following:

☐ Pavement type

☐ Pavement material

☐ Base characteristics, depth, material type, soil type

☐ Drainage characteristics - edge drains, subdrains

☐ Age of the pavement

☐ Pavement usage

☐ Allowable pavement loading (pavement strength)

Pavement type refers to the stress distribution mechanism provided by the pavement structure. Typically, pavement types can be categorized in three classes; Rigid, Flexible, and Overlays. Rigid pavements are normally constructed of Portland Cement concrete and use the stiffness of the concrete slab to distribute the applied loads. Flexible pavements are usually constructed using bituminous products and depend upon the bearing capacity of the structural layers to distribute applied load. Overlays are simply combinations of pavement types.

All pavement structures are designed in layers of progressively stronger materials. These layers usually consist of the surface course, base, subbase(s), and subgrade. The surface course is defined as the uppermost layer that makes direct contact with wheel loads. The layer of material directly under the surface course is considered as the base course. Under the base course is the subbase, and under the subbase is the subgrade (natural soils). The type of material in each layer and the thickness of the layer will directly affect the strength of the pavement. Sections of pavement that have an identical surface course but different base materials may perform differently and should not be categorized together unless additional information is available to indicate that the pavement structures are similar. Likewise, different subgrade soils may perform differently and should be considered when categorizing pavement sections.

The amount of moisture within a pavement layer will greatly affect the strength and thereby the performance of the layer. As the moisture content of a layer increases, the strength decreases. If subsurface drainage is provided, the overall strength of the pavement section will be higher. Some pavement sections have drainable layers built into the structure for additional drainage capacity. These drainage features should be strongly considered when grouping pavement sections. Due to variations in construction and material quality, the age of a pavement structure may not accurately indicate the condition or the performance of the pavement. However, the age of the pavement may be used to further categorize pavement sections and can provide a relative condition of those sections.

Other than deterioration from the adverse affects of weather, the loadings applied to a pavement are the most destructive force that the pavement must withstand. Areas of high and low usage will ultimately determine areas requiring the most or least maintenance. Additionally, areas of high usage readily indicate critical pavements that should receive a high priority in the maintenance schedule. By determining and mapping the pavement loading restrictions, destructive overloads can be avoided. Gross overloads can do unseen damage to a pavement structure that will require substantial repair at a later date. By routing traffic over the proper pavements, maintenance repairs can be reduced.

Initial Condition Survey

After the pavement sections have been grouped together, an initial condition survey should be conducted to determine the extent of distress and the amount of deterioration for each pavement group. This initial survey should be a detailed observation of the pavement with specific types of distress noted and probable causes given. Following an accepted pavement rating method is recommended, but is not necessary. If a widely accepted rating system is used, the values assigned to the pavement can be compared to pavements at other locations. In addition to the present condition of the pavement, a history of any maintenance, repair, or reconstruction should be determined. The history should gather as much information as possible about the initial construction of the pavement and its performance.

Economic Analysis and Prioritizing System

The most common reason that proper maintenance is not accomplished is the seemingly high cost of doing maintenance. It is a well known fact that it is much cheaper to perform remedial maintenance than to perform early reconstruction. Early detection and repair of pavement defects is the most cost effective use of pavement dollars. In all cases of pavement distress, the cause of the distress should be determined first, then repairs can be made to not only correct the present damage, but to prevent or retard its progressive occurrence. All repairs should consider the long term effects rather than short term fixes. It is much cheaper to make the correct repair once than to continually make the wrong repair. Track the cost of maintenance for each pavement group over time. As the condition of the pavement deteriorates over time, the cost of doing maintenance will increase. Eventually, it will be more cost effective to rehabilitate or reconstruct a section of pavement than to perform continual maintenance. Cost comparisons should include both initial and anticipated costs of the alternatives throughout the expected life of the pavement.

Since maintenance dollars are often limited, a fair and comprehensive prioritizing system should be outlined. Areas of high traffic should receive a higher priority since the additional traffic will cause additional damage, and the additional traffic indicates user needs. Areas of low traffic may not deteriorate as rapidly and may require less overall maintenance. This does not implicate that areas of low usage can be ignored. The maintenance performed on any section of pavement should meet the preventive maintenance requirements for that section.

Regularly Scheduled Inspections

After the initial condition surveys are completed and the maintenance program has been implemented, a regular schedule of inspections should be followed to track the condition of the pavement. Regular inspection schedules may be broken down with respect to the degree of inspection and interval of inspection. A typical schedule could include daily inspections for minor surface defects that could present a safety problem, weekly inspections for intermediate defects, and monthly or semi-monthly inspections for major pavement distress. It should be remembered that any or all schedules may require adjustment depending upon the performance of the pavement in question. The regularly scheduled inspections should be well documented and resulting action noted. By developing a checklist or fill in the blank form, some of the individual differences between inspectors are eliminated. Properly completed forms will provide uniformity and consistency to the inspection reports.

Summary

Most airport pavements do not fail because of load-induced damage, but rather, are eventually

destroyed by the elements. If protected from weather-induced damage, the service life of the pavement can be prolonged indefinitely. The most destructive element to any properly constructed pavement section is excess moisture. Regardless of how strong the pavement material, or how well the construction, excess moisture in the pavement layers will speed up the deterioration process. Ironically, keeping pavement cracks and joints sealed is the most neglected maintenance item. Far too often, sponsors feel that they can save money by putting off regular sealing of cracks. Cracks and joints must be sealed and resealed to keep excess moisture

out of the pavement structure, and they must be sealed in a timely manner. Likewise, subdrain systems must be kept operable. Periodic inspection and cleaning of subdrain pipes and outlets must be performed to prevent trapping water in the pavement structure. Pavement maintenance is not an exact science, and how to properly maintain each individual pavement section is not easily put in words. As experience is gained in maintaining pavement structures, the necessary and proper maintenance items will become self-evident. Regardless of the extent or amount of maintenance that is performed, the rewards will be readily visible.

EXHIBIT "E"

Department of Transportation Federal Aviation Administration Policy and Procedures Concerning the Use of Airport Revenue; Notice

7696 Federal Register / Vol. 64, No. 30 / Tuesday, February 16, 1999 / Notices

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration [Docket No. 28472]

Policy and Procedures Concerning the Use of Airport Revenue

AGENCY: Federal Aviation Administration (FAA) DoT

ACTION: Policy statement.

SUMMARY: This document announces the final publication of the Federal Aviation Administration policy on the use of airport revenue and maintenance of a self-sustaining rate structure by Federally-assisted airports. This statement of policy (''Final Policy'') was required by the Federal Aviation Administration Authorization Act of 1994, and incorporates provisions of the Federal Aviation Administration Reauthorization Act of 1996. The Final Policy is also based on consideration of comments received on two notices of proposed policy issued by the FAA in February 1996, and December 1996, which were published in the **Federal Register** for public comment. The Final Policy describes the scope of airport revenue that is subject to the Federal requirements on airport revenue use and lists those requirements. The Final Policy also describes prohibited and permitted uses of airport revenue and outlines the FAA's enforcement policies and procedures. The Final Policy includes an outline of applicable recordkeeping and reporting requirements for the use of airport revenue. Finally, the Final Policy includes the FAA's interpretation of the obligation of an airport sponsor to maintain a selfsustaining rate structure to the extent possible under the circumstances existing at each airport.

DATES: This Final Policy is effective February 16, 1999.

FOR FURTHER INFORMATION CONTACT: J. Kevin Kennedy, Airport Compliance Specialist, Airport Compliance Division, AAS–400, Office of Airport Safety and Standards, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8725; Barry L. Molar, Manager, Airport Compliance Division, AAS–400, Office of Airport Safety and Standards, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3446.

SUPPLEMENTARY INFORMATION:

Outline of Final Policy

The Final Policy implements the statutory requirements that pertain to the use of airport revenue and the maintenance of an airport rate structure that makes the airport as self-sustaining as possible. The Final Policy generally represents a continuation of basic FAA policy on airport revenue use that has been in effect since enactment of the Airport and Airway Improvement Act of 1982 (AAIA), currently codified at 49 U.S.C. § 47107(b). The FAA issued a comprehensive statement of this policy in the Notice of Proposed Policy dated February 26, 1996 (Proposed Policy), and addressed four particular issues in more detail in the Supplemental Notice of Proposed Policy dated December 18, 1996 (Supplemental Notice). The Final Policy includes provisions required by the Federal Aviation Administration Authorization Act of 1994, Public Law 103–305 (August 23, 1994) (FAA Authorization Act of 1994), and the Airport Revenue Protection Act of 1996, Title VIII of the Federal Aviation Administration Reauthorization Act of 1996, Public Law 104–264 (October 9, 1996), 110 Stat. 3269 (FAA Reauthorization Act of 1996). The Final Policy also includes changes adopted in response to comments on the Proposed Policy and Supplemental Notice.

The Final Policy contains nine sections. Section I is the Introduction, which explains the purpose for issuing the Final Policy and lists the statutory authorities under which the FAA is acting.

Section II, ''Definitions,'' defines federal financial assistance, airport revenue and unlawful revenue diversion.

Section III, ''Applicability of the Policy,'' describes the circumstances that make an airport owner or operator subject to this Final Policy.

Section IV, ''Statutory Requirements for the Use of Airport Revenue,'' discusses the statutes that govern the use of airport revenue.

Section V, ''Permitted Uses of Airport Revenue,'' describes categories and examples of uses of airport revenue that are considered to be permitted under 49 U.S.C. 47107(b). The discussion is not intended to be a complete list of all permitted uses but is intended to provide examples for practical guidance.

Section VI, ''Prohibited Uses of Airport Revenue,'' describes categories and examples of uses of airport revenue not considered to be permitted under 49 U.S.C. 47107(b). The discussion is not intended to be a complete list of all prohibited uses but is intended to provide examples for practical guidance.

Section VII, ''Policies Regarding Requirement for a Self-Sustaining Airport Rate Structure,'' describes policies regarding the requirement that an airport maintain a self-sustaining airport rate structure. This is a new section of the policy, which provides more complete guidance on the subject than appeared in either the Proposed Policy or Supplemental Notice.

Section VIII, ''Reporting and Audit Requirements,'' addresses the requirement for the filing of annual airport financial reports and the requirement for a review and opinion on airport revenue use in a single audit conducted under the Single Audit Act,

31 U.S.C. §§ 7501–7505.
Section IX, ''Monitoring and Compliance,'' describes the FAA's activities for monitoring airport sponsor compliance with the revenue-use requirements and the requirement for a self-sustaining airport rate structure and the range of actions that the FAA may take to assure compliance with those requirements. Section IX also describes the sanctions available to FAA when a sponsor has failed to take corrective action to cure a violation of the revenueuse
requirement.

Background

Governing Statutes

Four statutes govern the use of airport revenue: the AAIA; the Airport and Airway Safety and Capacity Expansion Act of 1987; the FAA Authorization Act of 1994; and the FAA Reauthorization Act of 1996. These statutes are codified at 49 USC 47101, *et seq.*
Section 511(a)(12) of the AAIA, part of title V of the Tax Equity and Fiscal Responsibility Act, Public Law 97–248, (now codified at 49 USC 47107(b)) established the general requirement for use of airport revenue. As originally enacted, the revenue-use requirement directed public airport owners and operators to ''use all revenues generated by the airport * * * 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 directly related to the actual transportation of passengers or property.''
The original revenue-use requirement also contained an exception, or ''grandfather'' provision, permitting certain uses of airport revenue for nonairport
purposes that predate the AAIA.
The Airport and Airway Safety and Capacity Expansion Act of 1987, Public Law 100–223 (December 30, 1987), narrowed the permitted uses of airport revenues to nonairport facilities that are ''substantially'' as well as directly related to actual air transportation; required local taxes on aviation fuel enacted after December 30, 1987, to be

spent on the airport or, in the case of state taxes on aviation fuel, state aviation programs or noise mitigation on or off the airport; and slightly modified the grandfather provision.
The FAA Authorization Act of 1994 Act included three sections regarding airport revenue.
Section 110 added a policy statement to Title 49, Chapter 471, ''Airport Development,'' concerning the preexisting requirement that airports be as self-sustaining as possible, 49 USC § 47101(a)(13).
Section 111 added a new sponsor assurance requiring airport owners or operators to submit to the Secretary and to make available to the public an annual report listing all amounts paid by the airport to other units of government, and the purposes for the payments, and a listing of all services and property provided to other units of government and the amount of compensation received. Section 111 also requires an annual report to the Secretary containing information on airport finances, including the amount of any revenue surplus and the amount of concession-generated revenue.
Section 112(a) requires the Secretary to establish policies and procedures that will assure the prompt and effective enforcement of the revenue-use requirement and the requirement that airports be as self-sustaining as possible.
Section 112(b) amends 49 USC § 47111, ''Payments under project grant agreements,'' to provide the Secretary, with certain limitations, to withhold approval of a grant application or a new application to impose a Passenger Facility Charge (PFC) for violation of the revenue-use requirement. Section 112(c) authorizes the Secretary to impose civil penalties up to a maximum of $50,000 on airport sponsors for violations of the revenue retention requirement. Section 112(d) requires the Secretary, in administering the 1994 Authorization Act's revenue diversion provisions and the AIP discretionary grants, to consider the amount being lawfully diverted pursuant to the grandfathering provision by the sponsor compared to the amount being sought in discretionary grants in reviewing the grant application. Consequently, in addition to the prohibition against awarding grants to airport sponsors that have illegally diverted revenue, the FAA considers the lawful diversion of airport revenues by airport sponsors under the grandfather provision as a factor militating against the distribution of discretionary grants to the airport, if the amounts being lawfully diverted exceed the amounts so lawfully diverted in the airport's first year after August 23, 1994.
Section 112(e), which amended the Anti-Head Tax Act, 49 USC § 40116(d)(2)(A), prohibits a State, political subdivision, or an authority acting for a State or political subdivision from collecting a new tax, fee, or charge which is imposed exclusively upon any business located at a commercial service airport or operating as a permittee of the airport, other than a tax, fee, or charge utilized for airport or aeronautical purposes.
Title VIII of the FAA Reauthorization Act of 1996 included new provisions on the use of airport revenue. Among other things, section 804 codifies the preexisting grant-assurance based revenue-use requirement as 49 U.S.C. § 47133. Section 804 also expands the application of the revenue-use restriction to any airport that is the subject of Federal assistance.
Section 805, codified as 49 U.S.C. § 47107(m) *et seq.*, requires recipients of Federal assistance for airports who are subject to the Single Audit Act to include a review and opinion on airport revenue use in single audit reports.
Under section 47107(n), the Secretary, acting through the Administrator of the FAA, will perform fact finding and conduct hearings in certain cases; may withhold funds that would have otherwise been made available under Title 49 of the U.S. Code to a sponsor including another public entity of which the sponsor is a member entity,

and may initiate a civil action under which the sponsor shall be liable for a civil penalty, if the Secretary receives a report disclosing unlawful use of airport revenue. Section 47107(n) also includes a statute of limitations that prevents the recovery of funds illegally diverted more than six years after the illegal diversion occurs. The Secretary is also authorized to recover civil penalties in the amount of three times the unlawfully diverted airport revenue under 49 U.S.C. § 46301(n)(5).

Section 47107(o) requires the Secretary to charge a minimum annual rate of interest on the amount of any illegal diversion of revenues. Interest is due from the date of the illegal diversion.

Section 47107(l)(5) imposes a statute of limitation of six years after the date on which the expense is incurred for repayment of sponsor claims for reimbursement of past expenditures and contributions on behalf of the airport. A sponsor may claim interest on the amount due for reimbursement, but only from the date the Secretary determines that the airport owes a sponsor.

Procedural History

In response to provisions in the 1994 Authorization Act, the FAA issued the Proposed Policy. (61 FR 7134, February 26, 1996) After reviewing all comments received in response to the notice, the FAA issued the Supplemental Notice on December 11, 1996, and requested further public comment. (61 FR 66735, December 18, 1996) Although the FAA published both documents as proposed policies, both notices stated that the FAA would apply the policies in reviewing revenue-use issues pending publication of a final policy.

The Department received 32 comments on the Proposed Policy and received 50 comments on the Supplemental Notice. Comments were received from airport owners and operators, airline organizations, transit authorities, and affected businesses and organizations. Most of the commenters were airport owners and operators. The Airport Council International-North America and the American Association of Airport Executives also provided comments supporting the sponsor/operator positions. Two major groups commented on behalf of the airlines—the Air Transport Association of America and the International Air Transport Association.

The Aircraft Owners and Pilots Association and the National Air Transportation Association commented on behalf of the general aviation and private aircraft owners. AOPA was primarily concerned with sponsor/airport accountability and the prompt and effective enforcement of the revenue diversion prohibitions.

Several port authorities, transit authorities, environmental groups, other public interest groups, trade associations, private businesses and individuals commented on a variety of specific issues.

The following discussion of comments is organized by issue rather than by commenter. Issues are discussed in the order they arise in the Final Policy. Airport proprietors and their representatives who took similar positions on an issue are collectively referred to as "airport operators." Airlines and airline trade associations are referred to as "air carriers" when the organizations took common positions. The summary of comments is intended to represent the general divergence or correspondence in commenters' views on various issues. It is not intended to be an exhaustive restatement of the comments received.

In addition, many comments on the original notice of proposed policy were addressed in the supplemental notice.

Those comments are not addressed again in this discussion.

The FAA considered all comments received, even if they are not specifically identified in this summary.

Discussion of Comments by Issue

1. Applicability

a. Applicability of Policy to Privately Owned Airports

In accordance with the statutes in effect at the time it was published, the Proposed Policy applied only to public agencies that had received AIP grants for airport development. The Proposed Policy included a specific statement that it did not apply to privately owned airports that had taken AIP grants while under private ownership. The Supplemental Notice did not modify these provisions.

The Comments: A public interest group concerned about reducing airport noise and mitigating its impacts recommended that the policy should apply to operators of privately owned airports.

Final Policy: The new statutory provision added by the Reauthorization Act of 1996, governing the restriction on the use airport revenue, 49 U.S.C. § 47133, does not differentiate between publicly or privately owned airports. The statute applies to all airports that have received Federal assistance. Under the AAIA certain privately-owned airports that are available for public use are eligible to receive airport development grants. As a result, any privately owned airport that receives an AIP grant after October 1, 1996, (the effective date of the FAA Reauthorization Act of 1996), is subject to the revenue use requirements. The applicability section of the Final Policy, Section III, is modified to reflect the expansion of the revenue-use requirement to include privately-owned airports.

b. Applicability of Policy to Publicly and Privately Owned Airports Subject to Federal Assistance

As a result of the same change in the law, recipients of Federal assistance provided after October 1, 1996, other than AIP grants, are also subject to the revenue-use restrictions. However, the Reauthorization Act of 1996 did not define Federal assistance, and the legislative history does not provide guidance on the meaning of this term. In addition, it did not explicitly address the status of airports that received Federal assistance other than AIP airport development grants before October 1, 1996, and therefore were not

already bound by the revenue use restrictions. These issues are addressed in the Final Policy, based on the FAA's review of the statute, its legislative history and relevant judicial decisions.

Applicability of the revenue-use requirement under § 47133 depends on the definition of the term ''Federal assistance.'' In the absence of guidance in the statute and legislative history, the FAA has relied on the interpretation given to the similar term ''Federal financial assistance'' in Federal regulations and court decisions. 28 CFR part 41, ''Implementation of Executive Order 12250, Non-discrimination on the Basis of Handicap in Federally Assisted Programs,'' section 41.4(e) establishes the definition of ''Federal financial assistance'' for all Federal agencies implementing § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794. That definition is in turn subject to the limitation of the Department of Transportation v. Paralyzed Veterans, 477 U.S. 597 (1986) (Paralyzed Veterans), which specifically addressed the issue of whether certain facilities and services provided by the FAA in managing the national airspace system constituted federal assistance. That decision held that the provision of air navigation services and facilities to airlines by the FAA did not make the commercial airline passenger service a Federally assisted program within the meaning of § 504.

The FAA's interpretation of the term ''Federal assistance'' is included in Section II of the Final Policy, Definitions. The Final Policy's definition of ''Federal assistance'' adapts the generalized language of 28 CFR § 41.4(e) to the specific circumstances of airports receiving Federal support and reflects the holding of the Paralyzed Veterans decision. The definition lists as Federal Assistance the following:

(1) Airport development and noise mitigation grants;

(2) Transfers, under various statutory provisions, of Federal property at no cost to the airport sponsors; and

(3) Planning grants related to a specific airport.

Under this definition, FAA installation and operation of navigational aids and FAA operation of control towers are not considered Federal assistance, based on the Supreme Court decision in Paralyzed Veterans. Similarly, the FAA does not consider passenger facility charges (PFCs) to be Federal assistance even though PFCs may be collected only with approval of the FAA.

Airport development and noise mitigation grants are considered Federal assistance because they apply to a specific airport, and that airport is, therefore, ''subject to Federal assistance'' under the statute. Transfers of Federal property to an airport are considered Federal assistance because they also apply to a specific airport. Planning grants may apply to a specific airport or may be more general in nature. Under § 47133, the FAA considers only planning grants related to a specific airport to be Federal assistance.

However, not all airports that are the subject of Federal assistance are necessarily bound to the revenue-use assurance simply by the passage of § 47133. Established Federal grant law prevents a statute from being construed to modify unilaterally the terms of preexisting grant agreements absent a clear showing of legislative intent to do so. *Bennett* v. *New Jersey* 470 U.S. 632 (1985), 84 L.Ed 2d 572, 105 S.Ct. 1555. Neither the statutory language nor its legislative history indicates an intent by Congress to apply § 47133 to impose the revenue-use requirement on airports that were not already subject to it. By contrast, a recent example of Congressional intent to modify preexisting grant agreements exists in § 511(a)(14) of the Airport and Airway Improvement Act of 1982, 49 USC App. 2210(a)(14), which was recodified at 49 USC 47107(c)(2)(B). That subsection, which was added to the AAIA in 1987, established requirements for the disposal of land acquired with Federal grants that is no longer needed for airport purposes. The statute by its terms applied to an ''airport owner or operator [who] receives a grant before on or after December 31, 1987'' for the purchase of land for airport development purposes. This language demonstrated a clear Congressional intent to modify preexisting grant agreements. The language of § 47133 and its legislative history lacks any such express direction.

Therefore, the FAA does not interpret § 47133 to impose the revenue-use requirements on an airport that was not already subject to the revenue-use assurance on October 1, 1996. An airport that had accepted Surplus Property from the Federal government, but did not have an AIP grant in place on October 1, 1996, would not be subject to the revenue-use requirement by operation of § 47133. If that airport accepted additional Federal property or accepted an AIP grant on or after October 1, 1996, the airport would be subject to the revenue-use requirement. As discussed below, by operation of § 47133, the revenue-use requirement would remain in effect as long as the airport functioned as an airport.

For airports that were already subject to the revenue-use requirement on October 1, 1996, and those that become subject to the requirement after that date, the effect of § 47133 is to extend the duration of the requirement indefinitely. This application is not explicit in the statute and reference to the legislative history of the statute is necessary to determine congressional intent and the specific meaning and application of the statutory language. The legislative history of § 47133 makes it clear that Congress enacted § 47133 to extend the duration of the revenue-use requirement for airports that are already subject to it. In describing an earlier version of § 47133, the Committee on Transportation and Infrastructure of the House of Representatives stated that the reason for the change was because ''revenue diversion burdens interstate commerce even if the airport is no

longer receiving grants. In recognition of this fact, the bill applies the exact same revenue diversion prohibition to airports that have a FAA certificate [modified to airports that are subject to Federal assistance in conference] as now applied to airports that receive AIP grants. For the most part, these will be the same airports." H.R. Rep. 104–714 (July 26, 1996) at 38, reprinted at 1996 US Code, Congressional and Administrative News at 3675. The report further stated that broadening the prohibition would "make it clear that an airport cannot escape this prohibition [on revenue diversion] by refusing to accept AIP grants[;]" remove "this perverse incentive to refuse AIP grants * * *[;]." and "once again [encourage] all airports to use available Federal money to increase safety, capacity, and reduce noise." *Id.*

Any airport that had an outstanding AIP grant agreement in effect on October 1, 1996, was already bound to the same revenue use assurance that is contained in § 47133. Because § 47133 is extending the duration of an existing obligation, there is no conflict with the principle of Federal grant law outlined above.

c. Relationship of Final Policy to Airport Privatization

In the applicability and definition section of the Proposed Policy, the FAA stated that proceeds from the sale of the entire airport as well as from individual parcels of land would be considered as airport revenue. The FAA also stated that it did not intend "to effectively bar airport privatization initiatives," and that the FAA would take into account "the special conditions and constraints imposed by the fact of a change in ownership of the airport." 61 Fed. Reg. at 7140. The FAA proposed to remain "open and flexible in specifying conditions on the use of revenue that will protect the public interest and fulfill the requirements and objectives of § 47107(b) without unnecessarily interfering with the appropriate privatization of airport infrastructure." *Id.*

Airport operators: A number of airport operators expressed concern that the guidance in the Proposed Policy was too ambiguous to encourage privatization and might discourage privatization initiatives. One operator suggested that the FAA should take a flexible approach to the proceeds of a privatization transaction when an airport's concession revenues are sufficient to allow a public owner to use some sales proceeds for nonairport purposes without increasing fees charged to aeronautical users and without continuing a need for Federal subsidy. Another airport operator suggested that the financial terms of a transaction would reflect the local circumstances in which the transaction was negotiated and recommended that the FAA account for this fact in reviewing revenue diversion claims.

Air carriers: ATA adamantly opposed the sale or transfer of a public use airport in a situation when such an action would cause airport revenue to be taken off the airport. ATA believes that the FAA does not have the flexibility or the statutory authority to require anything less than 100% compliance under 49 USC § 47107(b).

General aviation: The AOPA is concerned that the policy gives the impression that airport privatization is a fully resolved issue. The AOPA believes that the policy must avoid any implication that the issue is resolved or that the FAA endorses privatization.

Other commenters: Three public interest organizations addressed the issue of privatization from different perspectives. A group concerned with preventing and mitigating airport noise suggests that the FAA must ensure that adequate funds remain available to meet current and future airport noise mitigation needs. This group recommended that, before approving a transfer, the FAA should conduct a thorough audit of the airport's compliance with noise compatibility requirements, plans, and promises, and that the FAA should assess the adequacy of resources to address noise compatibility problems. The FAA should also require enforcement mechanisms to ensure implementation of noise compatibility and mitigation measures as a condition of the sale or transfer.

Two other groups supported a policy that does not discourage airport privatization. One of these suggested that the FAA consider defederalization of airports. The comments regarding defederalization are beyond the scope of this proceeding, because they would require statutory changes.

Final Policy: The Final Policy adopts the basic approach of the Proposed Policy toward privatization, with some language changes for clarity and readability. In addition, the Final Policy explicitly acknowledges the Airport Privatization Pilot Program.

Guidance on the process for obtaining FAA approval of the sale or lease of an airport is contained in FAA Order 5190.6a, Airport Compliance Requirements. The Final Policy is not intended to modify the process in any way. FAA approval is required for any transfer, including those between government entities. The Final Policy makes clear, however, that in processing an application for approval the FAA will: (a) treat proceeds from the sale or lease as airport revenue; and (b) apply the revenue-use requirement flexibly, taking into consideration the special conditions and constraints imposed by a change in ownership of the airport. For example, as is noted in the Final Policy, if the owner of a single airport is selling the airport, it may be inappropriate to require the seller to simply return the proceeds to the private buyer to use for operation of the airport.

The FAA requires the transfer document to bind the new operator to all the terms and grant assurances in the sponsor's grant agreement. The FAA retains sufficient authority and power through its grant assurances to ensure compliance by the new owner with all of its obligations, including any grantbased obligations relating to mitigation of environmental impacts of the airport; to conduct sponsor audits and to take other appropriate action to ensure that

the airport is self-sustaining.
The Final Policy's approach to privatization does not represent, as ATA suggests, less than 100 percent compliance with the revenue-use requirement. The FAA agrees with the ATA that we cannot waive that requirement. Rather, the FAA has committed to exercise its authority to interpret the requirement in a flexible way to account for the unique circumstances presented by a change of ownership.
The Final Policy is not an endorsement of privatization and it does not resolve the policy debate about privatization. FAA will continue to review the sale or lease of an airport on

a case-by-case basis, including transfers proposed under the Airport Privatization Pilot Program, 49 U.S.C. 47134, created by § 149 of the FAA Reauthorization Act of 1996. The demonstration program authorizes the FAA to exempt five airports from Federal statutory and regulatory requirements governing the use of airport revenue. Under the program, the FAA can exempt an airport sponsor from its obligations to repay Federal grants, to return property acquired with Federal assistance, and to use the proceeds of the sale or lease exclusively for airport purposes. The latter exemption is also subject to approval by the air carriers serving the airport.
The FAA notes the concerns that the revenue-use requirement may discourage privatization. Congress addressed this prospect by enacting the Privatization Pilot Program, which authorizes the FAA to grant exemptions from sections 47107(b) and 47133 to permit the sponsor to use sales or lease proceeds for nonairport purposes, on certain conditions. That exemption would not be required unless sales or lease proceeds were airport revenue. In addition, the FAA will consider the unique circumstances—financial and otherwise—of individual transactions in determining compliance with section 47107(b), and this should address to some degree the commenters' concerns about privatization.
d. Effect of § 47133 on Return on Investment for Private Airport Owners or Operators That Accept Federal Assistance
By extending the revenue-use requirement to privately-owned airports, § 47133 requires the FAA to consider a new issue—the extent to which a private owner that assumes the revenue-use obligation may be compensated from airport revenue for the ownership of the airport. Section 47133 prohibits all such private airport owners or operators from using airport revenue for any purpose other than the capital and operating costs of the airport. However, the FAA does not consider section 47133 to preclude private owners or operators from being paid or reimbursed reasonable compensation for providing airport management services. Private operators, presently, provide airport management services at a number of airports. In many cases, these airports are publicly owned and subject to the revenue-use requirement. The private operator is providing these services under some form of contract with the public owner. These services are considered part of the operating cost of the airport owner, and the fees can be paid from airport revenue.
It is reasonable to equate private operators managing publicly owned airports with private owner/operators managing privately owned or leased airports. To avoid any confusion of the issue, reasonable compensation for management services provided by the owner of a privately-owned airport is identified as a permitted use of airport revenue in the Final Policy.
Private airport owners may typically expect a return on their capital investment. Such investment could be considered a capital cost of the airport. In the case of private owners or operators of airports who have assumed the revenue-use obligation, that obligation would limit the ability to use the return on capital invested in the airport for nonairport purposes. In particular, the FAA expects private owners to be subject to the same requirements governing a self-sustaining airport rate structure and the recovery of unreimbursed capital contributions and operating expenses from airport revenue as public sponsors. Under section 47107(l)(5), private sponsors—like public sponsors—may recover their original investment within the six-year statute of limitation. In addition, they are entitled to claim interest from the date the FAA determines that the sponsor is entitled to reimbursement under section 47107(p). Any other profits generated by a privately-owned airport subject to section 47133 (after compensating the owner for reasonable costs of providing management services) must be applied to the capital and operating costs of the airport.
This interpretation is required by provisions of 49 U.S.C. 47134, the airport privatization pilot program. Section 47134 authorizes the FAA to grant exemptions from the revenue-use requirement to permit the private operator to "earn compensation from the operations of the airport." This exemption would not be necessary if section 47133 did not restrict the freedom of the private owner of a Federally-assisted airport to use the profits from the investment in the airport for nonairport purposes. This interpretation does not unreasonably burden private owners, because they receive a benefit (in the form of either Federal property added to the airport or Federal grant funds) in exchange for assuming the restrictions on the use of their profit.
e. Grandfather Provisions
The Proposed Policy included a discussion of the grandfather provisions of section 47107(b) in the section on permitted uses of airport revenue. That discussion included a list of examples of financing obligations and statutory provisions that had been previously found by the Department of Transportation to confer grandfather status.
The Comments: Two airport operators

commented on this issue. One is an airport operator whose status under the grandfather provisions was under consideration by the FAA when the Proposed Policy was published. Its concerns were addressed by the FAA's consideration of its individual situation. The second commenter is airport operator already established as a grandfathered airport operator. This commenter recommends that the Final Policy continue to recognize the rights of grandfathered airports.

Final Policy: The Final Policy continues to recognize the rights of grandfathered airport owners set forth at title 49 U.S.C. 47107(b)(2) and 47133. To qualify an airport for grandfathered status, the statute requires that local covenants, assurances or governing laws pre-dating September 2, 1982, must specifically pledge the use of airport generated revenues to support not only the airport but also the general debt obligations or other facilities of the owner or operator. However, the Final Policy is modified to reflect the requirement in the 1996 FAA Reauthorization Act that the FAA consider the increase in grandfathered payments of airport revenue as a factor militating against the award of discretionary grants.

f. Applicability to Non-municipal Airport Authorities

Lehigh-Northampton Airport Authority (LNAA): LNAA asserted that the airport revenue-use requirement does not allow FAA to regulate airport transactions with non-governmental parties and does not empower FAA to override state and local laws governing the use of airport revenue for airport marketing and promotional activities. The commenter advanced a number of arguments as to why FAA does not have authority to restrict such transactions. First, Congress has shaped the revenue diversion statute to identify financial irregularities in dealings between an airport enterprise account and another unit of government. The statute does not contemplate FAA regulation of airport financial relationships with nongovernment parties. Second, Congress did not intend the "capital or operating costs" language in the revenue diversion statute to authorize a new Federal regulatory scheme to narrow the types or levels of airport expenditures beyond

what is legal under applicable state and local law. Third, there is not a statutory requirement for FAA to regulate airport expenditures for community events or charitable contributions in the absence of facts suggesting that such expenditures are the result of undue influence by a governmental unit. The LNAA currently has a case pending before the FAA under FAR Part 13, in which certain expenditures that LNAA characterizes as marketing and promotional expenses are being examined for consistency with the revenue-use requirement. LNAA's assertions with respect to its own promotional activities will be addressed by the FAA in that proceeding. To the extent that LNAA's practices were inconsistent with this Final Policy, LNAA will have an opportunity to argue that the Final Policy should not be applied to its situation.

The general issues of the use of airport revenue for marketing and promotional expenses and charitable donations are discussed separately below.

The FAA is not modifying the applicability of the Final Policy based on LNAA's other concerns. The language of section 47107(b) explicitly states that revenue generated by the airport may only be expended for the capital or operating costs of the airport or local airport system; it contains no limiting language concerning "financial irregularities." The statute further defines expenditures for general economic development and promotion as unlawful use of airport revenue, providing specific authority over transactions that do not involve transfers of airport revenue to other governmental entities. See 49 U.S.C. 47107(l)(2). This provision grants authority for regulation of expenditures for charitable and community-use purposes.

In addition, the Congressional mandate to establish policies and procedures to "assure the prompt and effective enforcement" of the revenue use and self-sustainability requirements (49 U.S.C. 47107(l)(1)) provides statutory authority to adopt more detailed guidance on permitted and prohibited uses of airport revenue. Many airport operators have expressed concern over the difficulty of responding to OIG findings of unlawful revenue use without clear and specific FAA guidance on permitted and prohibited practices.

Finally, the grandfathering provision establishes Congressional intent to prohibit certain airport revenue practices authorized by state or local law that do not satisfy the specific requirements of the grandfather provisions of the AAIA.

2. Definition of Airport Revenue

a. Proceeds From Sale of Airport Property

The Proposed Policy included proceeds from the sale of airport property in the proposed definition of airport revenue. No distinction was made between property acquired with airport revenue and property acquired with other funds provided by the sponsor. In the explanatory statement, the FAA discussed alternatives it had considered, including limiting the definition to property acquired with airport revenue. (61 FR 7138) The FAA also stated that a sponsor would be able to recoup any funds it contributed to finance the acquisition of airport property as an unreimbursed capital contribution.

Airport operators: Airport operators objected to defining proceeds from the sale of airport property as airport revenue. ACI/AAAE argued that the definition would reduce incentives for airport sponsors to pursue legitimate airport endeavors. One airport operator argued that the definition constitutes a transfer of wealth from the taxpayers to the airport users, and that cities would

be less willing to contribute to future airport projects. Another individual operator argued that the policy should not apply to property acquired with the sponsor's own funds and to property acquired with airport revenue before 1982. This airport operator further argues that application of the policy to property acquired before 1982 amounts to a taking of airport property without just compensation and without Congressional authorization. Finally, this operator argued that the proposed definition appears to contradict a portion of the FAA Compliance Handbook, Order 5190.6A (October 2, 1989), Paragraph 7–18, that states there is no required disposition of net revenues from sale or disposal of land not acquired with Federal assistance.

Air carriers: The ATA commented that the use of airport revenue for repayment of contributions from prior years should be limited. According to ATA, reimbursements should be permitted only when the sponsor and airport enter into a written agreement concerning the terms of reimbursement before the service or expenditure is provided.

Other commenters: A public interest organization opposed the treatment of proceeds from the sale of airport property as airport revenue. This commenter argued that the sponsor, as the principal provider of airport's land and capital, has a legitimate claim to cash-out the value of its investments and to use the proceeds for other purposes.

The Final Policy: The Final Policy does not modify the treatment of proceeds from the sale, lease or other disposal of airport property. Proceeds from the sale lease or other disposal of all airport property are considered airport revenue subject to the revenueuse requirement and this policy, unless the property was acquired with Federal funds or donated by the Federal government. While proceeds from disposal of Federally-funded and Federally-donated property are also airport revenue, these proceeds are subject to separate legal requirements that are even more restrictive than the revenue-use requirement.

As discussed in the Proposed Policy, this definition is consistent with the language of the original version of section 47107(b), which applies to "all revenues generated by the airport."

In addition, the Airport Privatization Pilot Program, 49 U.S.C. 47134, permits the FAA to grant exemptions from the revenue-use requirements to permit a sponsor to keep the proceeds from a sale or lease transaction, but only to the extent approved by 65 percent of the air carriers. An exemption would not be required unless the proceeds from the sale or lease of the entire airport were airport revenue within the meaning of section 47107(b) and 47133. Since the proceeds from the sale of an entire airport are airport revenue, it follows that the proceeds from the sale of individual pieces of airport property are also airport revenue.

Further, section 47107(l)(5)(A) establishes a six-year period during which sponsors may claim reimbursement for their capital and operating contributions. This limitation on seeking reimbursement could be avoided through the process of disposing of airport property, if the proceeds of sales were not themselves considered airport revenue. Through section 47107(l)(5)(A) Congress has defined the rights of airport owners and operators to recover their investments in airport property for use for nonairport purposes. Subject to the six-year statute of limitations, the sponsor is entitled to use airport revenues for reimbursement of such contributions. Section 47107(p) provides that a sponsor may also claim interest if the FAA determines that a sponsor is entitled to reimbursement, but interest runs only from the date on which the FAA makes the determination. As discussed below, the Final Policy provides flexibility to

structure future contributions to permit reimbursement over a longer period of time in order to promote the financial stability of the airport. The six-year limitation, which is incorporated in the Final Policy, also addresses ATA's request for a time limit on the airport owner or operator's ability to claim recoupment for past unreimbursed requests.

The FAA does not accept the suggestion that the definition is an unauthorized taking of sponsor property without just compensation. First, as noted, the definition is supported by the 1996 FAA Reauthorization Act, which included an express provision for an exemption from the revenue use restriction for sale and lease proceeds. Second, all airport sponsors, including the airport commenters, voluntarily agreed to their restrictions on the use of airport revenue when they accepted grants-in-aid under the AIP program. Finally, the definition does not deprive the commenter of its property. The proceeds from the disposal will still flow to the commenter sponsor to be used for a legitimate local public purpose—operation and development of the commenter's airport.

The FAA acknowledged in the Proposed Policy that existing FAA internal orders contain provisions on the status of proceeds from the disposal of airport property that are inconsistent with this Final Policy. As stated in the Proposed Policy, this inconsistency does not preclude the FAA from defining proceeds from the disposal of airport property as airport revenue in this Final Policy. Rather, "the Policy takes precedence, and the orders will be revised to reflect the policies in this statement." 61 FR 7138. In addition, the provisions in the FAA internal orders are in conflict with the 1996 FAA Reauthorization Act. Because of this statutory conflict, the FAA cannot continue to apply them.

b. Revenue Generated by Off-airport Property

The Proposed Policy defined as airport revenue the revenue received for the use of property owned and controlled by a sponsor and used for airport-related purposes, but not located on the airport.

Airport operators: The ACI–NA/AAAE and two individual airport operators objected to this definition of airport revenue. The ACI–NA/AAAE stated that revenues received from offairport activities should ordinarily not be counted as airport revenue. One airport operator argued that this definition is inconsistent with the statutory definition of airport in the AAIA. The other airport operator (the State of Hawaii) is especially concerned about revenue generated by off-airport duty fee shops.

No other comments were received.

Final Policy: The Final Policy does not modify the definition of airport revenue as it pertains to off-airport revenue. This definition is consistent with FAA's prior interpretation, which has defined as airport revenue the revenues received by the airport owner or operator from remote airport parking lots, downtown airport terminals, and off-airport duty free shops.

After enactment of the original revenue-use requirement, the FAA initiated an administrative action to require the State of Hawaii to use its revenue from off-airport duty free sales in a manner consistent with section 47107(b). In response, Congress amended the revenue-use requirement to provide a specific and limited exemption to the State of Hawaii to permit up to $250 million in off-airport duty-free sales revenue to be used for construction of highways that are part of the Federal-Aid highway system and that are located in the vicinity of an airport. See, 49 U.S.C. § 47107(j). The statutory exemption would only be necessary if the revenue from off-airport duty free shops is airport revenue within the meaning of the statute.

c. Royalties From Mineral Extraction

The Proposed Policy included royalties from mineral extraction on airport property earned by a sponsor as airport revenue.

Airport operators: One airport operator objected to including revenue from the sale of sponsor-owned mineral, natural, or agricultural products or water to be taken from the airport in the definition of airport revenue. The operator stated that the retention of mineral rights as airport property would represent a windfall to the airport at the sponsor's expense; that the Proposed Policy is contrary to congressional intent and that it would take, without compensation, valuable property rights from the sponsor. The operator also cited a prior decision where FAA concluded the production of natural gas at Erie, Pennsylvania, does not serve either the airport or any air transportation purpose. The royalties generated by such production were determined to be outside the scope of the revenue-use requirement.

Final Policy: The Final Policy retains the proposed definition of airport revenue to include the sale of sponsorowned mineral, natural, agricultural products or water to be taken from the airport. On further review of the Erie interpretation in this proceeding, the FAA no longer considers the analogy drawn in that interpretation—between mineral extraction and operation of a convention center or water treatment plant—to be appropriate. Rather, mineral and water rights represent a part of the airport property and its value. Just as proceeds from the sale or lease of airport property constitute airport revenue, proceeds from the sale or lease of a partial interest in the property—i.e. water or mineral rights—should also be considered airport revenue. The FAA will not require an airport owner or operator to reimburse the airport for past mineral royalty payments used for nonairport purposes based on the Erie interpretation. However, all airport owners and operators will be required to treat these payments as airport revenue prospectively, starting on the publication date of the Final Policy. With respect to agricultural products, the FAA has always treated lease revenue from agricultural use of airport property as airport revenue, even if that revenue is calculated as a portion of the revenue generated by the crops grown on the airport property. The definition in the Final Policy will assure that the airport gets the full benefit of agricultural leases of airport property, regardless of the form of compensation it receives for agricultural use of airport property.

The FAA does not consider this interpretation to create a taking of airport owner or operator property. As discussed in other contexts, the limitation on the use of airport revenue was voluntarily undertaken by the airport operator upon receiving AIP grants. In addition, the revenues generated by these activities will still flow to the sponsor for its use for a legitimate local governmental activity, the operation and development of its airport.

d. Other Issues

The Final Policy includes a discussion of the requirement of 49 U.S.C. § 40116(d)(2)(A). This provision requires that taxes, fees or charges first taking effect after August 23, 1994, assessed by a governmental body exclusively upon businesses at a commercial service airport or upon businesses operating as a permittee of the airport be used for aeronautical, as well as airport purposes. This addition is included, at the suggestion of a commenter, to comply with the statutory provision, which was enacted as section 112(d) of the 1994 FAA Authorization Act.

3. Permitted Uses of Airport Revenue

a. Promotion/marketing of the Airport

Congress, in the FAA Authorization Act of 1994, permitted the use of airport revenues for promotion of the airport by expressly prohibiting "use of airport revenues for general economic development, marketing, and promotional activities unrelated to airports or airport systems." The Supplemental Proposed Policy cited this law and recognized that many airport sponsors engage in some form of promotional effort, to encourage use of the airport and increase the level of

service. Accordingly, the Supplemental Notice provided that "[a]irport revenue may be used for * * * [c]osts of activities directed toward promoting public and industry awareness of airport facilities and services, and salary and expenses of employees engaged in efforts to promote air service at the airport." 61 FR 66470.

However, the preamble to the Supplemental Notice stated that promotional/marketing expenditures directed toward regional economic development, rather than specifically toward promotion of the airport, would not be considered a permitted use of airport revenue. In addition, the FAA proposed to prohibit the use of airport revenue for a direct purchase of air service or subsidy payment to air carriers because the FAA does not consider these payments to be capital or operating costs of the airport.

Airport operators: In their comments to the original proposed policy, ACI–NA/AAAE requested that FAA establish a "safe harbor," or a maximum dollar amount (perhaps based on a percentage of airport costs), under which an airport could spend airport revenue on certain promotional and marketing activities. Greater percentage amounts would be allowed for the costs of airport-specific activities, while lower amounts would be allowed for joint efforts for campaigns and organizations that have broader, regional marketing missions. Several airport operators supported this "safe harbor" concept in their comments to the docket for the original Proposed Policy. One such commenter, without reference to ACI/AAAE's remarks, suggested a cap of 5% of an airport's budget as a "safe harbor" for marketing expenses that are not directly related to the airport or airport system. Furthermore, this commenter would limit the use of airport revenue to a maximum share of 20 percent of the overall cost of any joint-project budget. ACI/AAAE did not pursue the concept of "safe harbor" in their comments to the docket for the Supplemental Policy, focusing instead on the discretion of the airport operator to use reasonable business judgment to determine potential benefits to the airport. Several airports concurred with the ACI–NA/AAAE position, and one airport operator added that jointmarketing expenses, if reasonable and clearly related to aviation, should be considered an operating cost of the airport.

The ACI/AAAE and several individual airport operators commented that an airport cannot be distinguished from the region served by the airport. ACI/AAAE commented that the policy should permit reasonable spending for marketing of communities and regions because airports are not ultimate destinations of passengers. Therefore, airport operators must be free to make a reasonable attempt to increase revenues by investing in the promotion of their community as a destination. Some airports specifically opposed the ATA's suggestion of a cap, described below.

Air carriers: In its comments to the Supplemental Notice, the ATA mentioned the concept of a maximum or "cap" under which expenditures would be considered reasonable, but would apply it to efforts to promote the services of the airport itself. The ATA would have the policy prohibit entirely the use of airport revenue for the promotion of regional development, because "expenditures by an airport to promote local or regional economic development—as opposed to the services and functionality of an airport—should not be considered legitimate airport costs." In regard to cooperative or joint-marketing expenses, the ATA focused on airport participation in joint-marketing of new airline services, suggesting that these activities be limited to a 60-day promotional period. ATA also warned against abuses of cooperative marketing, in particular programs that result in promotion of a particular airline.

The ATA rejected the airport position that use of airport revenue to fund regional promotional activities is acceptable, because airports themselves are not destinations. They stated, "[l]ocal governments that are also airport sponsors should not be permitted to pass off local and regional promotional activities in order to charge such costs to an airport. Indeed, many civic organizations and chambers of commerce undertake such activities directly, since continued economic development directly benefits the local businesses that constitute such organizations."

The Final Policy: The FAA has modified the provisions on permitted uses of airport revenue in regard to promotion and marketing in the Final Policy. The FAA has applied the sections 47107(b) and 47107(l) to determine to what extent various kinds and amounts of promotional and marketing activities can be considered legitimate operating costs of the airport. The permitted uses of airport revenue for marketing and promotion are split into two paragraphs, V.A.2 and V.A.3., in the Final Policy—one addressing costs that may be fully paid with airport revenue, and one addressing costs that may be shared. The issues of general economic development, direct subsidies of air carriers, the waiving of fees to airport users and airport participation in airline marketing and promotion is further addressed in Section VI.

The Final Policy provides, under V.A.2, that expenditures for the promotion of an airport, promotion of new air service and competition at the airport, and marketing of airport services are legitimate costs of an airport's operation. These expenditures may be financed entirely with airport revenue, and the expenditures may include the costs of employees engaged in the promotion of airport services. In addition, cooperative airport-airline advertising of air service at the airport may be financed with airport revenue, with or without matching funds. The FAA is prepared to rely on airport management to assure that the level of expenditures for such purposes would be reasonable in relation to the airport's specific financial situation. In addition, cooperative airport-airline advertising of air service must be conducted in

compliance with applicable grant assurances prohibiting unjust discrimination in providing access to the airport.

For other advertising and promotional activities, such as regional or destination marketing, airport revenue may be used to pay a share of the costs only if the advertising or promotional material includes a specific reference to the airport. The share must be reasonable, based on the benefits to the airport of participation in the activity. The FAA construes the prohibition on "use of airport revenues for general economic development, marketing, and promotional activities unrelated to airports or airport systems' to preclude the reliance on airport management judgment to support the use of airport revenue for general destination advertising containing no references to the airport. Likewise, the prohibition precludes adoption of a safe-harbor

provision for general promotional expenses.

Except as discussed above, the Final Policy does not limit the amounts of airport revenue that can be spent for all permitted promotional marketing and advertising activities. The FAA expects that expenditure of airport revenues for these purposes would be reasonable in relation to the airport's specific financial situation. Disproportionately high expenditures for these activities may cause a review of the expenditures on an *ad hoc* basis to verify that all expenditures actually qualify as legitimate airport costs. Examples of permissible and prohibited expenditures are included in the Final Policy itself.

b. Reimbursement of Past Contributions

The Proposed Policy permitted airport revenue to be used to reimburse a sponsor for past unreimbursed capital or operating costs of the airport. The Proposed Policy did not include a limit on how far back in time a sponsor could go to claim reimbursement, in accordance with the law in effect at the time. In addition, the Preamble noted that the FAA had not to date permitted a sponsor to claim reimbursement for more than the principal amount actually contributed to the airport. The FAA requested comment on whether the FAA should permit recoupment of interest or an inflationary adjustment or whether, in the case of contributed land, recoupment should be based on current land values.

Airport operators: ACI–NA/AAAE and a number of individual airport operators supported recoupment of interest or inflation adjustment on previous contributions or subsidies to the airport.

Air carriers: The ATA objected to the Proposed Policy and commented that recoupment should be subject to a number of requirements to prevent abuses.

The Final Policy: After the proposed policy was issued, Congress enacted legislation to limit the use of airport revenue for reimbursement of past contributions, and to limit claims for interest on past contributions. 49 U.S.C. §§ 47107(l)(5), 47107(p). The Final Policy incorporates these statutory provisions. Based on Congressional intent evidenced by the legislative history of these provisions, airport revenue may be used to reimburse a sponsor only for contributions or expenditures for a claim made after October 1, 1996, when the claim is made within six years of the contribution or expenditure. In addition, a sponsor may claim interest only from the date the FAA determines that the sponsor is entitled to reimbursement, pursuant to section 47107(p). The FAA interprets these statutory provisions to apply to contributions or expenditures made before October 1, 1996, so long as the claim is made after that date.

If an airport is unable to generate sufficient funds to repay the airport owner or operator within six years, the Final Policy permits repayment over a longer period, with interest, if the contribution is structured and documented as an interest bearing loan to the airport when it is made. The interest rate charged to the airport should not exceed a rate that the sponsor received for other investments at the time of the contribution.

c. Donations of Airport Revenue to Charitable/Community Service Organizations

The Supplemental Proposed Policy addressed the use of airport property for public recreational purposes, and addressed the use of airport funds to support community activities and for participation in community events. The FAA proposed that the use of airport revenue for such donations would not be considered a cost of operating the airport, unless the expenditure is directly related to the operation of the airport. For example, expenditures to support participation in the airport's federally approved disadvantaged business enterprise program would be considered permissible as supporting a use directly related to the operation of the airport. In contrast, expenditures to support a sponsor's participation in a community parade would not be considered to be directly related to the operation of the airport.

Airport operators: ACI–NA/AAAE contended that the expenditure of airport revenue for community or charitable purposes is appropriate and should be recognized as legitimate. Airports, regardless of their size, type, and certification or lack thereof, are important members of their local communities and, therefore, must be able to maintain their prominent, highly visible roles in their respective communities. Airports are regarded by their communities as local business enterprises and, consequently, are expected to contribute to local nonprofit charitable concerns in the same manner as other local business enterprises.

Individual airport operators generally supported the position of ACI–NA/AAAE, although some individual operators acknowledged that some limitation on the expenditures may be appropriate. One suggested a *de minimis* standard; another proposed a

''safe harbor'' based on a percentage of the airport's total budget. Another urged that airport owners/operators be allowed leeway to make contributions of airport funds, in reasonable amounts and consistent with the local circumstances, and to use airport property for charitable purposes on the same basis.

Other airport operators commented that the Final Policy should give comparable treatment to the use of airport funds and airport property for community goodwill by recognizing the limited use of airport revenue to support charitable and community organizations as a legitimate operating cost of the airport.

Air carriers: Air carriers did not comment specifically on charitable contributions, although they commented extensively on the use of airport property for community or charitable purposes. Generally the air carriers suggested that use of airport property should be subject to strict conditions to avoid abuse.

Other commenters: An advocacy group in support of a particular airport commented that, in order for an airport to be as self-sustaining as possible, the use of each income dollar is critical, and that federally assisted airports must be fully responsive to the citizens of the community by providing information on the use of airport funds.

Final Policy: The Final Policy generally follows the approach of the Supplemental Notice. Airport funds may be used to support community activities, or community organizations, if the expenditures are directly and substantially related to the operation of the airport. In addition, the policy provides explicitly that where the amount of the contribution is minimal, the airport operator may consider the ''directly and substantially related to air transportation'' standard to be met if the contribution has the intangible benefit of enhancing the airport's acceptance in local communities impacted by the airport.

Expenditures that are directly and substantially related to the operation of the airport qualify inherently as operating costs of the airport. The FAA recognizes that contributions for community or charitable purposes can provide a direct benefit to the airport through enhanced community acceptance, but that benefit is intangible and not quantifiable. Where the amount of the contribution is minimal, the value of the benefit will not be questioned as long as there is a reasonable connection between the recipient organization and

the benefit of community acceptance for the airport.

However, if there is no clear relationship between the charitable or community expenditure and airport operations, the use of airport revenue may be an expenditure for the benefit of the community, rather than an operating cost of the airport. The different treatment of the use of airport funds (direct payments to charitable and community organizations) and the use of airport property (less than FMV leases for charitable or community purposes) is grounded in the applicable laws: the revenue-use requirement (section 47107(b)), which governs the use of airport funds, provides far less flexibility than the requirement for a self-sustaining rate structure (section 47107(a)(13)), which applies to the use of airport property.

Examples of permitted and prohibited expenditures are included in the Final Policy.

d. Use of Airport Revenue to Fund Mass Transit Airport Access Projects

The Supplemental Proposed Policy addressed in Part VII.C., the circumstances in which an airport sponsor could provide airport property at less than fair market value to a transit operator. The Supplemental Proposed Policy did not address the use of airport revenue to finance the construction of transit facilities. That issue, however, was raised in the comments.

Airport Operators: Two airport operators supported the use of airport revenue for the construction of transit facilities. One commenter stated that an airport should be permitted to use airport revenues and assets to provide mass transit service to on-airport commercial uses. Another commenter referred to the AIP Handbook, FAA Order 5100.38A § 555, which provides AIP project eligibility for rapid transit facilities.

Air carriers: Air carriers did not specifically discuss the use of airport revenue to finance transit facilities. However, as discussed below, they objected to providing airport property for transit facilities at nominal lease rates.

Other Commenters: Two commenters representing transit operator interests supported the expenditure of airport revenues to finance transit facilities. A transit operator stated that in order to create a better balance between transit and highway interests, transit facilities should be totally eligible expenses, paid for in the same manner as other road and parking enhancements. A transit trade association urged the FAA to take appropriate actions to ensure that passenger fees and other airport revenues are widely eligible to fund a range of airport surface transportation modes, including public transportation. The FAA also received extensive comments on providing airport property for use by transit providers at less than FMV rents. These comments are addressed separately below.

Final Policy: The Final Policy has been modified to provide guidance on the use of airport revenues to finance airport ground access projects. The Final Policy states that airport revenue may be used for the capital or operating costs of such a project if it can be considered an airport capital project, or is part of a facility owned or operated by the airport sponsor and directly and substantially related to air transportation of passengers or property, relying directly on the statutory language of § 47107(b).

As an example, the Final Policy summarizes the FAA's decision on the use of airport revenue to finance construction of the rail link between

San Francisco International Airport and the Bay Area Rapid Transit (BART) rail system extension running past the airport. In that decision, the FAA approved the use of airport revenues to pay for the actual costs incurred for structures and equipment associated with an airport terminal building station and a connector between the airport station and the BART line. The structures and equipment were located entirely on airport property, and were designed and intended exclusively for use of airport passengers. The BART extension was intended for the exclusive use of people travelling to or from the airport and included design features to discourage use by through passengers. Based on these considerations, the FAA determined that the possibility of incidental use by nonairport passengers did not preclude airport revenues from being used to finance 100 percent of the otherwise eligible cost items. For purposes of this analysis, the FAA considered ''airport passengers'' to include airport visitors and employees working at the airport.

4. Accounting Issues

a. Principles for Allocation of Indirect Costs

Based on the comments to the Proposed Policy, the FAA addressed the principles of indirect cost allocation in its Supplemental Notice. The Supplemental Notice made clear that the allocation of indirect costs is allowable under 49 USC § 47107(b), and that no particular method of cost allocation will be required, including OMB Circular A–87. To ensure, however, that indirect costs are limited to allowable capital and operating costs, the FAA proposed to apply certain general principles and prohibitions to the allocation of costs. The Supplemental Notice did not limit significantly the development of local cost allocation methodologies, or interfere with the application of Generally Accepted Accounting Principles (GAAP) and other accounting industry recognized standards.

In the Supplemental Notice, the FAA stated that it would expect that a Federally approved cost allocation plan that complied with OMB Circular A–87 or other Federal guidance and was consistent with GAAP would be reasonable and transparent, and would generally meet the requirements of section 47107(b). However, the use of a Federally approved cost allocation plan does not rule out the possibility that a particular cost item allowable under that guidance would be in violation of the airport revenue retention requirement if allocated to the airport. The Supplemental Notice also required specifically that indirect cost allocations be applied consistently across departments to the sponsoring government agency, and not unfairly burden the airport account. The general sponsor cost allocation plan could not result in an over-allocation to an enterprise fund. In addition, the sponsor would have to charge comparable users, such as enterprise accounts, for indirect costs on a comparable basis.

Lastly, the Supplemental Notice proposed to prohibit the allocation of general costs of the sponsoring government to the airport. However, this prohibition would not affect direct or indirect billing for actual services provided to the airport by local government.

Airport Operators: Generally, airport operators agreed with the proposal to acknowledge that the allocation of indirect costs as allowable under 49 USC § 47107(b), and to provide that no particular allocation methodology, including OMB Circular A–87, be required.

One airport operator requested the FAA to further clarify that it is not imposing on airport sponsors all of the specific elements of OMB CircularA–87. The operator was concerned that the statement in the Supplemental Notice that the FAA ''believe[s] the specific principles identified by the OIG are an appropriate construction of the revenue retention requirement'' may lead to confusion over whether adherence to OMB Circular A–87 is mandatory for allocating costs to be paid by airport revenue.

Several airport operators were concerned that the FAA would not accept the allocation of costs in accordance with a Federally-approved cost allocation plan, but could review the plan to ensure that allocation of specific cost items meet the special revenue retention requirements. For example, one airport operator commented that the FAA's approach would impose on airport sponsors burdens and requirements in excess of the detailed requirements of OMBCircular A–87, which are designed to ensure a reasonable and consistent cost allocation system. The airport proprietor proposed that such compliance with a federally-approved cost allocation plan be considered sufficient to satisfy the revenue retention requirement.

Another airport operator proposed that the FAA revise the policy to clarify that a specific cost, as opposed to a type of cost, cannot be treated as both a direct and an indirect cost. The airport operator offered as an example a cityowned and operated airport at which some police services are provided by officers assigned exclusively to the airport and other services are provided by general duty police officers. The commenter suggested that it should be permissible to charge the airport for the officers assigned exclusively to the airport as a direct cost and to charge for the general duty officers as an indirect cost allocation.

Additionally, this commenter proposed revising the policy to clarify that costs that are chargeable to one city department on a direct basis may be charged to other city departments on an indirect basis. The airport operator offered an example in which police are exclusively assigned to a city-owned airport, but are not exclusively assigned to other city departments. The commenter argued that it would be

reasonable to charge the airport for police services as a direct cost, and to charge the other departments as an indirect cost allocation.

Several airport operators were also concerned that the supplemental policy implied that a local cost allocation plan must provide that all users for a service be billed equally. For example, ACI-NA and AAAE suggested that the requirement for consistent application should be interpreted to require the local government to go through the exercise of assessing indirect costs against all governmental departments, including those wholly funded by that governmental entity. Likewise, an airport operator requested that the FAA clarify that the supplemental policy does not mean that an airport sponsor must actually bill all of its General Fund agencies for certain municipal costs in order to be able to charge such costs to its airports. All of those airport proprietors that expressed concern over this proposed policy generally commented that this issue was considered and rejected by the Department of Transportation in the Second Los Angeles International Airport Rates Proceeding, Docket OST–95–474. According to the airport proprietors, the DOT recognized that in many cases sponsor agency operations are paid from a common General Fund. Under those circumstances, it is illogical and unnecessary for one General Fund agency to bill another General Fund agency for municipal services.

One airport operator proposed that the word ''equally'' be removed from VII.B.4 of the proposed policy. The commenter urged that the FAA allow airport sponsors the flexibility to allocate costs to various users on a reasonable, equitable basis relative to the benefits received, even though specific users may sometimes be treated differently. Returning to its example of police services, the commenter suggested that if the sponsor chooses not to charge a housing authority for costs of a special police unit assigned to that authority, it should be of no concern to the FAA as long as those costs are not then charged to the airport. Another airport operator argued that each of its proprietary departments are unique and governed by different City Charter provisions; that they make different uses of city services; and have different financial arrangements with the sponsor's general fund. This commenter argued that treating the departments the same for cost allocation purposes because the departments are enterprise funds would, therefore, serve no valid purpose.

Several airport operators disagreed with FAA's proposed policy to prohibit the indirect cost allocation of general costs of government. Several commenters stated that the proposed policy would reverse longstanding practice at many airports and could be inconsistent with federally-approved cost allocation plans, which provide for the allocation of a share of indirect costs of various local government functions. One airport operator argued that there is no statutory basis for prohibiting the allocation of general costs of government, other than costs for particular identified services.

Finally, one airport operator commented that the proposed policy does not sufficiently clarify the appropriate allocations for fire and police stations that do not serve the airport exclusively. The airport operator proposed that policy explicitly permit a sponsor to allocate costs based on the intended purpose and value of the station to the airport, not its actual use. The airport operator argues that a more flexible approach could better implement the applicable statutory provision that prohibits ''direct payments or indirect payments, other than payments reflecting the value of services and facilities provided to the airport.''

Airlines: ATA supports the proposed policy clarification that no particular cost allocation methodology for indirect costs is preferred.

The Final Policy: The Final Policy reflects a different and simplified approach to indirect cost allocation that is intended to facilitate development of permissible cost allocation plans and the review of those plans in the single audit process. The Final Policy specifies that the cost allocation plans must be consistent with Attachment A of OMB Circular A–87. Attachment A sets forth general principles for developing cost allocation plans. Those principles are essentially a restatement of the principles proposed in the Supplemental Policy. By referring to Attachment A, the Final Policy establishes a standard that is well understood by airport cost accountants and by airport operators' independent auditors. The Final Policy does not require compliance with the other attachments to OMB Circular A–87, which include more rigid requirements and defines categories of grant recipient costs that are eligible and ineligible for reimbursement with Federal grant funds.

The Final Policy continues to specify that the costs allocated must themselves be eligible for expenditure of airport revenue under section 47107(b). Attachment A to OMB Circular A–87 provides principles for cost allocation methodologies. The cost items that may be charged to airport revenue are determined by the requirements of section 47107(b). Therefore, sponsors, and the FAA, cannot rely solely on compliance with OMB Circular A–87 to assure that the costs items charged to the airport in a Federally approved cost allocation plan are consistent with section 47107(b).

The Final Policy continues to specify that the airport must not be charged directly and indirectly for the same costs. The FAA is not persuaded that the example of police services offered by an airport sponsor requires a modification of this requirement. This

provision is not intended to preclude both the direct and indirect billing in the situation cited by the commenter—where police services are provided to the airport on both an exclusive-use and

a shared-use basis. In the cited example, it would be preferable to bill for police exclusively assigned to the Airport on a direct cost basis. It would be impossible, however, to bill for the shared-use police without engaging in some form of indirect cost allocation. The FAA did not intend the supplemental policy to preclude treatment of police services as both direct and indirect costs in these circumstances, only to preclude double billing on both a direct and indirect basis, for the same police costs.
Similarly, with respect to the second example of police services where the airport receives exclusive-use police services and other sponsor departments receive shared-use police services, the FAA did not intend the Supplemental Notice to preclude disparate billing methodologies. Inherent in Attachment A is that comparable units of a sponsoring government making comparable uses of the sponsor's services should have costs allocated and billed in a comparable fashion. The clarification noted above should address this situation as well. In the second example sited, the FAA would consider the sponsor departments receiving shared-use police services not to be comparable to the airport receiving exclusive use police services.
The Final Policy also provides that the allocation plan must not burden the airport with a disproportionate share of allocated costs, and requires that all comparable units of the airport owner or operator be billed for indirect costs billed to the airport. The FAA is unwilling to accept the suggestion that comparable users of a service may sometimes be treated differently for billing purposes, so long as the costs attributed to one unit of government are not then charged to the airport. The FAA believes that such practices would result in an unfair burden being placed upon the airport simply because of the airport's ability to pay.
This provision, however, is not intended to require a sponsor's General Fund activities to bill other General Fund activities for indirect costs that are properly allocable to those activities, if the airport is billed. The policy is clear that comparable billing for services is required only for comparable users. Enterprise funds need not be treated as comparable to units of a sponsoring government financed from the sponsor's general fund, and comparable billing between enterprise funds and other units of government is not required. While the FAA may presume that enterprise funds are comparable to each other, an airport sponsor is free to demonstrate that particular enterprise funds are sufficiently different in material ways—such as the way they consume sponsor services or their overall financial relationships with the sponsor—to justify different practices in charging for indirect costs. The Final Policy does not further define comparability because decisions on comparability will depend on the specific circumstances of a sponsor. The Final Policy also explicitly permits the allocation of general costs of government and central services costs to the airport, if the cost allocation plans meets the Final Policy's requirements. As specified in the Final Policy, however, the allocation of these costs to the airport may require special scrutiny to assure that the airport is not being burdened with a disproportionate share of the allocated costs.
In addition, the FAA continues to recognize that use of airport revenue to pay some expenses not normally considered to be allowable pursuant to OMB Circular A–87, such as fire and police services, is consistent with the revenue retention requirement. If such costs are allocated as an indirect cost in accordance with the Final Policy, they will be considered by the FAA as acceptable charges.
The Final Policy is modified to permit the allocation of certain categories of a sponsor's general cost of government as an indirect charge to the airport. Such charges include indirect expenses of the Office of Governor of a State, State legislatures, offices of mayors, county supervisors, city councils, etc. An airport owner's or operator's central service costs may also be allocated to the airport. The Final Policy specifies that allocation of these categories of costs to the airport may require special scrutiny to assure that the airport is not being burdened with a disproportionate share of the costs.
The FAA proposed to prohibit the allocation of all general costs to the airport on the grounds that the payment of such costs with airport revenue would be inconsistent with the purpose of the revenue use restriction—to avoid subsidy of general sponsor governmental activity. It is clear from the comments that airports routinely pay for a share of the general costs the legislative and executive branches of the governmental unit of which the airport is a part under cost allocation plans prepared in accordance with GAAP. Further, the comments demonstrate that the payment of legislative and executive branch costs by airport revenue can be justified as a cost of the airport because the legislative and executive branches have direct, tangible oversight and control responsibilities for the airport, and their activities provide direct benefits to the airport, such as in the areas of funding, capital development, and marketing.
In addition, under the Final Policy, the costs of shared-use facilities must be allocated to all users of the facility, even if the original purpose of constructing the facility was to provide exclusive use or benefit to the airport. While a sponsor-owned facility may have originally been established for the benefit of the airport, the FAA believes that the purpose of the facility can change from time to time based on local circumstances and that allocation of costs should be based on current purpose, as well as use. The FAA may consider a number of factors in determining current purpose, including current use, design and functionality.
b. Standard of Documentation for the Reimbursement of Cost of Services and Contributions to Government Entities
In its administration of airport agreements, the FAA is not normally concerned with the internal management or accounting procedures

used by airport owners. As a matter of policy and procedure, the FAA has consistently required that reimbursement of capital and operating costs of an airport made by a government entity must be clearly supportable and documented.
Neither the Proposed Policy nor the Supplemental Notice explicitly discussed a standard of documentation that must be achieved for a sponsor to claim reimbursement for services and/or contributions it provided to the airport. However, events subsequent to the issuance of both documents indicate a need for FAA to provide specific guidance on the standard of documentation that will support the expenditure of airport revenues.
In the examination of a possible diversion of airport revenue by the City of Los Angeles at Los Angeles International, Ontario, Van Nuys and Palmdale Airports (FAA Docket No. 16–01–96), the FAA reviewed the underlying documentation which the City of Los Angeles offered to support the payment of approximately $31 million in airport revenue to the Los Angeles' general fund as the reimbursement of sponsor contributions and services provided to the airport. In the Director's Determination dated March 17, 1997, the FAA stated its standard of documentation to justify such reimbursements. Accordingly, the

FAA is including that standard in the Final Policy.
The Final Policy requires that reimbursements for capital and operating costs of the airport made by a government entity, both direct and indirect, be supported by adequate documentary evidence. Adequate documentation consists of underlying accounting records and corroborating evidence, such as invoices, vouchers and cost allocation plans, to support all payments of airport revenues to other government entities. If this underlying accounting data is not available, the Final Policy allows reimbursement to a government entity based on audited financial statements, if such statements clearly identify the expenses as having been incurred for airport purposes consistent with the Final Policy statement. In addition, the Final Policy provides that budget estimates are not a sufficient basis for reimbursement of government entities. Budget estimates are just that—estimates of projected expenditures, not records of actual expenditures. Therefore, budget estimates cannot be relied on as documentary evidence to show that the funds claimed for reimbursement were actually expended for the benefit of the airport.
Indirect cost allocation plans, however, may use budget estimates to establish pre-determined indirect cost allocation rates. Such estimated rates must, however, be adjusted to actual expenses in the subsequent accounting period.
5. Prohibited Uses of Airport Revenue
a. Impact Fees/Contingency Fees
The Proposed Policy prohibited the payment of impact fees assessed by a nonsponsoring governmental body that the airport sponsor is not obligated to pay or that exceed such fees assessed against commercial or other governmental entities. The Supplemental Notice did not modify this provision. The term ''impact fees'' was not defined in the Proposed Policy.
Airport operators: One Florida airport sponsor stated that impact fees should be allowable to either a sponsoring or non-sponsoring governmental body. Another commented that the language referring to a ''non-sponsoring'' governmental body was vague and confusing. Within the state of Florida, impact fees are typically administered by a non-sponsoring government body. It was stated that the wording did not seem to prohibit impact fee payments when assessed by a ''sponsoring'' agency, or impact fees that an airport sponsor is obligated to pay.
The Final Policy: For clarity, the Final Policy is modified to delete the reference to ''non-sponsoring'' governmental body and to delete the reference to fees the sponsor is not obligated to pay. In addition, the FAA is adding a statement that in appropriate circumstances, airport revenue may be used to reimburse a governmental body for expenditures that the imposing government will incur as a result of onairport
development, based on actual expenses incurred.
The effect of the deletions is to broaden the prohibition to all impact fees, within the meaning of the term used in the policy statement. As such, the deletions are consistent with the statutory prohibition on payment of airport revenues that do not reflect the value of services or facilities actually provided to the airport. Until a governmental unit undertakes the activity for which the impact fee is intended to compensate, it is impossible to know with certainty whether the impact fee is an accurate reflection of the cost of the activity attributable to the airport or its value to the airport, or even that the activity will occur. This situation is true regardless of both the status of the governmental unit as airport sponsor and the status of the fee as discretionary. The FAA understands that many local laws or regulations authorizing impact fees do not require the fees to be spent to mitigate or accommodate the results of the airport action that triggers the fee. The FAA has no basis for assuring the payment of impact fees would be consistent with the purpose of section 47107(b)—to prevent an airport sponsor who received Federal assistance from using airport revenues for expenditures unrelated to the airports.
The broader prohibition is consistent with applicable FAA policies. Longstanding FAA policy has permitted a sponsor to claim reimbursement from airport revenue only for ''clearly supportable and documented charges, * * * supported by documented evidence.'' FAA Order 5190.6A, par. 4–20.a(2)(c)(ii). An impact fee assessed before the imposing government incurred any expenses to accommodate airport growth would not meet this

standard.
In addition, a standard of documentation required by the Final Policy applies to all expenditures of airport revenues subject to section 47107(b), including impact fee payments. That standard requires that expenditures of airport revenues be supported by data on the actual costs incurred for the benefit of the airport, not by budget or other estimates, which impact fees essentially are. The Final Policy will allow submission of those assessed fees resulting from the proposed development when the amount of the fees become fully quantifiable, as provided for in Section IV of the Final Policy, following implementation by the imposing government of the mitigation measures for which the impact fee is assessed. At that time, the FAA can best determine whether the fees assessed against airport revenue satisfy the requirements of section 47107(b) and this policy. In unusual circumstances, the FAA may permit a prepayment of estimated impact fees at the commencement of a mitigation project, if the funds are necessary to permit the mitigation project to go forward, so long as there is a reconciliation process that assures the airport is reimbursed for any overpayments, based on actual project costs, plus interest.
However, the Final Policy does take into account the potential that an airport operator may be required by state or local law to finance the costs of mitigating the impact of certain airport development projects undertaken by the airport sponsor. Therefore, where airport development causes a government agency to take an action, such as constructing a new highway interchange in the vicinity of the airport, airport revenues may be used equal to the prorated share of the cost. In all cases, the action must be shown to be necessitated by the airport development. In the case of infrastructure projects, such impact mitigation must also be located in the vicinity of the airport. This proximity requirement is not being applied to all mitigation measures because some mitigation measures—especially certain environmental mitigation measures—may not occur in the vicinity of the airport.
The Final Policy also acknowledges the possibility that an airport operator may be bound by local or state law to use airport revenue to pay an impact fee that is prohibited by this policy. The Final Policy states that the FAA will consider any such local circumstances in determining appropriate corrective action.
b. Subsidy of Air Carriers
As discussed in Section V "Permitted Uses," the Supplemental Notice acknowledged the fact that Congress, in the 1994 FAA Authorization Act, effectively authorized the use of airport revenue for promotion of the airport by expressly prohibiting "use of airport revenues for general economic development, marketing, and

promotional activities unrelated to airports or airport systems." At the same time, that statutory provision also limited the scope of acceptable promotional activity.
In the Supplemental Notice, the FAA proposed new policy language that more clearly addressed the kinds of promotional and marketing activities that are and are not legitimate operating costs of the airport under 47107(b). In the Supplemental Notice, Section VIII(I), the FAA proposed that "[d]irect subsidy of air carrier operations" is a prohibited use of airport revenue because it is not considered a cost of operating the airport. The FAA drew a distinction between methods of encouraging new service. Supplemental Notice proposed to allow the use of airport revenue to encourage passengers to use the airport through promotional activities, including cooperative promotional activities with airlines and to allow airport operators to enhance the viability of new service through fee incentives, on the one hand. As noted, the FAA proposed to prohibit the use of airport revenue to simply buy increased use of the airport by paying an air carrier to operate aircraft, on the other. The FAA considered the former activities to be a permitted expenditure for the promotion and marketing of the airport and the latter to be a prohibited expenditure for general economic development. The FAA explained in the preamble to the Supplemental Notice that neither promotional activities nor promotional fee discounts would be considered a prohibited direct subsidy of airline operations. 61 FR at 66738.
Airport operators: In their comments on the Supplemental Notice, ACI–NA/AAAE state that, generally, an expenditure or activity should not be considered revenue diversion if there is a reasonable expectation that such an expenditure or activity will benefit the airport. Furthermore, they note that the law does not single out direct air carrier subsidy or fee waivers for more stringent scrutiny than other marketing activities. This argument in favor of the reasonable business judgement of the airport management should be applied to the use of airport revenue for promotion and marketing not unrelated to the airport, including direct air carrier subsidies and fee waivers. ACI/AAAE stated "both forms of financial assistance should be permitted, if an airport has a reasonable expectation that the subsidy will benefit the airport and the subsidy or discount is made available on a non-discriminatory basis."
ACI/AAAE further stated that there is no real distinction between direct subsidy and fee waivers, as well as none between direct subsidy and the residual airport costing methodologies, making the distinction in the policy illogical. They predicted that the proposed policy is likely to promote detrimental effects, including eliminating air service to some small airports, increasing congestion at dominant hubs at the expense of medium-sized airports, reducing potential competition and raising fares.
Several individual airport operators concurred with the ACI–NA/AAAE

position. One operator commented that any subsidies should be permitted, as long as the airport remains selfsustaining and the subsidies are not included in airline costs in calculating landing fees, terminal rents and other user charges.

Another airport operator, the LNAA, which is engaged as a party in a 14 CFR Part 13 investigation regarding its former air carrier subsidy program, commented that there is no real difference between an airport making a direct subsidy to an air carrier or waiving fees.

Two airport operators expressed different views. One operator agreed that airport revenues should not be used to subsidize new air carrier service because the practice of subsidization could lead to destructive competition for air service among airports. Another airport operator stated that it ''does not currently engage in nor does it contemplate any form of direct subsidy to air carriers in exchange for air service.'' This operator considers the Supplemental Notice to provide adequate flexibility to airport operators to foster and promote air service development.

Air carriers: The ATA strongly opposed the assertion that direct subsidies of airline operations with airport revenue may be considered to be operating costs of the airport and would extend the prohibition to indirect subsidies. They argued that the distinction in the proposed policy that allows fee waivers under certain circumstances, but prohibits direct subsidy is illogical. Both result in revenue diversion, whether the beneficiary is ''a start up carrier, a new entrant in a market, or an existing carrier at an airport.'' The ATA further commented, in connection with joint marketing endeavors, that the permissible ''promotional period'' should be defined, as should the scope of permissible marketing activities.

The Final Policy: The FAA has clarified the policy provision on the direct subsidy of air carriers with airport revenue; however, the prohibition remains, as does the distinction between direct subsidy and the waiving of fees and the joint promotion of new service. The FAA has applied the test of section 47107(b) to determine to what extent various kinds and amounts of promotional and marketing activities can be considered legitimate operating costs of the airport.

In pursuit of uniformity, the FAA has integrated references to the section on the permitted uses of airport revenue, as well as to the section on selfsustainability, to assist airport operators in pursuing reasonable strategies to promote the airport and provide incentives to encourage new air service. Among other things, marketing of air service to the airport, and expenditures to promote the airport to potential air service providers can be treated as operating costs of the airport. Of course, support for marketing of air service to the airport must be provided consistently with grant assurances prohibiting unjust discrimination.

The setting of fees is a recognized management task, based on a number of considerations, including the airport management's assessment of the services needed by airport consumers, and the airport management's assessment of the financial arrangements necessary to secure that service. The FAA has consistently maintained that fee waivers or discounts involving no expenditure of airport funds raise issues of compliance with the self-sustaining rate structure requirement, not the revenue-use requirement. The Final Policy therefore, permits fee waivers and discounts during a promotional period. The waiver or discount must be offered to all users that are willing to provide the type and level of new service that qualifies for the promotional period. The Policy limits the fee waiver or discount to promotional periods because of the requirement that the airport maintain a self-sustaining airport rate structure. In addition, indefinite fee waivers or discounts could raise questions of compliance with grant assurances prohibiting unjust discrimination. The Final Policy does not define a permitted promotional period. There is too much variation in the circumstances of individual airports throughout the country to permit adoption of a single national definition of a suitable promotional period.

In contrast, the direct payment of subsidies to airline involves the expenditure of airport funds and hence raises questions under the revenue-use requirements. The FAA continues to believe that the costs of operating aircraft, or payments to air carriers to

operate certain flights, are not reasonably considered an operating cost of an airport. In addition, payment of subsidy for air service can be viewed as general regional economic development and promotion, rather than airport promotion. Use of airport revenue for these purposes is expressly prohibited under the terms of the 1994 FAA Authorization Act. The Final Policy does not preclude a sponsor from using funds other than airport revenue to pay airline subsidies for new service, and it does not preclude other community organizations— such as chambers of commerce or regional economic development agencies—from funding a program to support new air service. Therefore, the Final Policy maintains the distinction between direct subsidy of air carriers and the waiving of fees, and prohibits the former.

6. Policies Regarding the Requirement for a Self-Sustaining Rate Structure

As noted in the summary, the Final Policy contains a separate section on the requirement that an airport maintain a rate structure that makes the airport as self-sustaining as possible under the circumstances at the airport, to provide more comprehensive guidance in a single document. The 1994 FAA Authorization Act directed the FAA to adopt policies and procedures to assure compliance with both the revenue uses and self-sustaining airport rate structure requirement. The general guidance

repeats the guidance appearing in the Department of Transportation Policy Statement Regarding Airport Rates and Charges, 61 FR 31994 (June 21, 1996). The Final Policy interprets the basic requirement and addresses exceptions to the basic rule for leases of airport property at nominal or less-than fair market value (FMV) to specific categories of users.

Each federally assisted airport owner/operator is required by statute and grant assurance to have an airport fee and rental structure that will make the airport as self-sustaining as possible under the particular airport circumstances, in order to minimize the airport's reliance on Federal funds and local tax revenues. The FAA has generally interpreted the self-sustaining assurance to require airport sponsors to charge FMV commercial rates for nonaeronautical uses of airport property. However, in the case of aeronautical uses, user charges are also subject to the standard of reasonableness. In applying the two standards together for aeronautical property, the FAA has considered it acceptable for an airport operator to charge fees to aeronautical users that are less than FMV, but more than nominal charges. The FAA defines ''aeronautical use'' as any activity which involves, makes possible, or is required for the operation of aircraft, or which contributes to or is required for the safety of such operations. Policy Statement Regarding Airport Fees, Statement of Applicability, 61 FR at 32017.

Many entities lease airport property for aeronautical and nonaeronautical uses at nominal lease rates. The FAA has determined that nominal leases to many of these entities is consistent with the requirement to maintain a selfsustaining
airport rate structure. The
Final Policy provides specific guidance regarding nominal leases for six categories of users. This guidance is discussed below.

a. Use of Property at Less Than FMV for Community/Charitable/Recreational Use

Airport operators: The ACI–NA/AAAE agree with the general conclusion that use of airport property for community and charitable purposes at less than FMV should be permissible. However, they argued that the criteria listed in the Supplemental Notice are too narrow. Other criteria should be considered, and an airport should be required to provide no more than one justification. The ACI–NA/AAAE specifically mentioned aeronautical higher education institutions and notfor-profit air and space museums as additional permitted uses, based on H.R. Rep. 104–714, 104th Cong. 2nd Sess. at 39 (1996) reprinted in 1996 USCC.A.N. 3676.

Individual airport operators also requested more flexibility in various forms. One operator suggested that the Supplemental Notice establishes an unnecessary two-part test which many community uses of airport property will fail to satisfy. Another operator argued that such airport property use should not be limited to temporary arrangements, e.g., parks and baseball fields, which indicates that only uses that allow property to be returned rather quickly to the airport inventory would be permitted.

In contrast, another airport operator suggested that, in order to place less burden on the airport operator, such uses should be limited in scope and that the below-market value amount that an airport operator could charge for such usage should be established as some percentage of the appraised value of the property.

Air carriers: The ATA agrees in principle with the concept of limited use of airport property for certain specified community purposes at less than FMV. However, ATA stated that the Supplemental Notice lacks specificity and that its application would consequently be inconsistent with the self-sustaining and revenue-use requirements. The ATA proposed to narrow the first element of the standard to permit contribution of property if the property is put to a general public use desired by the local community and the use does not adversely affect the capacity, safety or operations of the airport. The ATA would narrow the second test by permitting the use of property that is expected to generate no more than minimal revenue, which the ATA would define as minimal revenue equal to or less than 20 percent of revenue that could be earned by similar airport property in commercial or air carrier use. When the property could be expected to earn more than this defined minimal amount, the ATA would permit less than FMV rental if the revenue earned by the community use approximates the revenue that would otherwise be generated.

The ATA would also require that the community use be subject to periodic review and renewed justification and that the airport proprietor retain absolute discretion to reclaim the property for airport use.

Other commenters: A member of the United States House of Representatives expressed concern that the policy, if adopted as proposed, does not provide sufficient flexibility to airport operators to be good neighbors within their community. This commenter suggested that in rural areas, requiring community organizations to pay FMV could reduce airport revenue as paying community organizations are forced off of the airport by higher rents and no new tenants are found.

Final Policy: The Final Policy generally permits below-FMV-rental of airport property for community uses, but generally limits the uses to property that is not potentially capable of producing substantial income and not needed for aeronautical use. Consistent with the suggestions of the ATA, the permitted community uses of such property will be limited to those that are compatible with the safe and efficient operation of the airport and which are for general local use. In addition, the community use should not preclude reuse of the property for airport purposes, if the airport operator determines that such reuse will provide greater benefits to the airport than the continued community use. Leases to

private, non-profit organizations generally will be required to be at market rates unless the sponsor can demonstrate a ''community goodwill''

purpose to the lease, or can demonstrate a benefit to aviation and the airport, as discussed below.

While the Final Policy states that property provided for community use at no charge should be expected to produce no more than minimal revenue, we are not adopting a definition of minimal. For property that is capable of generating more than minimal revenue, a sponsor could charge less than FMV rental rates for community use, if the revenue earned from the community use approximates that revenue that could otherwise be generated. Providing such property for community use at no charge would not be appropriate.

The FAA has determined that this approach to community use strikes an appropriate balance between the needs of the airport to be a good neighbor and the Federal requirements on the use of airport revenue and property. This formulation provides substantial flexibility to airport operators. At the same time, the self-sustaining requirement and the policy goal of the revenue-use requirement justify some limitation on local discretion in this area.

The requirement that community use not preclude reversion to airport use is based on both the self-sustaining requirement and the airport sponsor's basic AIP obligation to operate a grantobligated
airport as an airport.

Under the Final Policy, the lease of airport property to a unit of the sponsoring government for nonaeronautical use at less than fair market value is considered a prohibited revenue diversion unless one of the specific exceptions permitting belowmarket
rental rates applies. If a
sponsor's use of airport property qualifies as community use, and the other requirements for community-use leases are satisfied, the FAA would not object to a lease at less than fair market value. Qualified uses could include park or recreational uses or other public service functions. However, such use would be subject to special scrutiny to ensure that the requirements for below-FMV community use is satisfied. The community use provision of the Final Policy does not apply to airport property used by a department or subsidiary agency of the sponsoring government seeking an alternative site for the sponsor's general governmental purposes at less-than-commercial value. For example, a city cannot claim the community use exception for a nominal value lease of airport property for a municipal vehicle maintenance garage. Such usage, while beneficial to the taxpaying citizens of the sponsoring government, would be difficult to justify as benefiting the airport by improving the airport's acceptance in the community.

b. Not for Profit Aviation Museums

The DOT OIG has cited instances in which an aviation museum at a federally assisted airport is leasing airport property at less than a fair market rental rate. In clarifying the revenue diversion prohibitions recommended for inclusion in the FAA Authorization Act of 1996, the House Transportation and Infrastructure Committee urged the FAA to take a flexible approach to the lease of airport property at below-market rates to notfor-profit air and space museums
located on airport property. H.R. Rep. No. 104–714, 104th Cong. 2nd Sess. at 39 (1996) reprinted in 1996 U.S.C.C.A.N. 3676 (House Report). The Committee recommended that this type of rental arrangement should not be considered revenue diversion because of the contribution that such museums make to the understanding and support of aviation.

One airport operator commented that long-term, less-than-market value rental arrangements, particularly for leaseholds encompassing permanent facilities, should be permitted when such arrangements serve a clear and valuable aviation-related purpose. This comment could include aviation museums.

One operator of a not-for-profit aviation museum urged the FAA to permit nominal rate leases. This operator stated that a FMV-based lease for its museum property would double its current operating budget.

The Final Policy: The Final Policy permits airport operators to charge reduced rental rates and fees, including nominal rates, to not-for-profit aviation museums, to the extent that the reduction is reasonably justified by the tangible and intangible benefits to the airport or civil aviation. This provision recognizes the potential for aviation museums to provide benefits to the airport by stimulating understanding and support of aviation, consistent with the suggestion contained in the House Report, U.S.C.C.A.N. 3676. Benefits to the airport may include any in-kind services provided to the airport and airport users by the aviation museum. The limitation to not-for profit museums is consistent with the requirement for a self-sustaining airport rate structure, because there is no reason to give forprofit
aviation museums preferential treatment over other commercial aeronautical activities. All for-profit aeronautical activities provide some benefit to the airport, by making it more attractive for potential airport users. If this benefit were a sufficient reason to permit reduced rental rates to commercial aviation businesses on a routine basis, the requirement for a selfsustaining
airport rate structure would
be virtually unenforceable.

The Final Policy permits but does not require below-market rental rates, including nominal rates. The airport operator is free to treat a qualified aviation museum as it would any other aeronautical activity in setting rental rates and other fees to be paid by the museum.

c. Aeronautical Higher Education Programs

The DOT OIG has cited instances in which aeronautical secondary and postsecondary education programs at federally assisted airports are leasing airport property at less than a fair market rental rate.

In the House Report, 1996 U.S.C.C.A.N. 3676, the House Transportation and Infrastructure Committee also urged the FAA to take a flexible approach to aeronautical higher education programs located on airports. The Committee recognized that some federally obligated airports have leased property to non-profit, accredited collegiate aviation programs, and that facilitating these programs will help build a base of support for airport operations by giving students, who will be the future users of the national airspace system, easy access to aviation facilities.

The Final Policy: The Final Policy permits reduced rental rates, including nominal rates, to not-for-profit aeronautical secondary and postsecondary education programs conducted by accredited educational institutions, to the extent that the reduction is justified by tangible or intangible benefits to the airport or to civil aviation. This treatment is justified for the same reason that reduced rental rates and fees to certain aviation museums are permitted. Again, the benefits may include in-kind services provided to the airport and airport users. As with aviation museums, the educational institution and education program must be not-for-profit. Forprofit aviation education, such as flighttraining, is a standard commercial aeronautical activity at many airports. Permitting reduced rental rates and fees to for-profit aviation education programs would seriously undermine compliance with the self-sustaining requirement and could raise questions of compliance with the grant assurances prohibiting unjust discrimination.

The Final Policy permits but does not require below-market rental rates, including nominal rates. The airport operator is free to treat a qualified notfor-profit aeronautical education program as it would any other aeronautical activity in setting rental rates and other fees to be paid by the education program.

d. Civil Air Patrol Leases

Reduced-rental leases, including nominal leases, to the Civil Air Patrol/ United States Air Force Auxiliary (CAP) at a number of airports have also been criticized in OIG audits. As a result of this criticism, some airport operators have been seeking higher rents from the CAP when leases have come up for renewal.

In its comments, the CAP contends that the current standard airport industry practice of permitting CAP use of airport property for a nominal rent confers substantial benefits to the airport and, in general, to the aviation community. The CAP, therefore, requests that a policy be adopted which would formally permit CAP units to continue to occupy facilities on federally obligated airports at a nominal rent, whether under formal lease arrangements, or otherwise, at the discretion of the airport owner/operator.

The Final Policy: The Final Policy permits reduced rental rates and fees to CAP units operating at the airport, in recognition of the benefits to the airport and benefits to aviation similar to those provided by not-for-profit aviation museums and aeronautical secondary education programs. As with other notfor profit-aviation entities, the reduction must be reasonably justified by benefits to the airport or to civil aviation. In-kind services to the airport and airport users may be considered in determining the benefits that the CAP unit provides. In addition, this treatment of the CAP, which has been conferred with the status of an auxiliary to the United States Air Force, is not identical to the treatment provided to military units in the Final Policy, as discussed below, but is consistent with that treatment.

The reduced rental rates and fees are available only to those CAP units operating aircraft at the airport. For CAP units without aircraft, a presence at the airport is not critical. The airport operator can accommodate those CAP units with property that is not subject to Federal requirements on maintaining a self-sustaining rate structure, without compromising the effectiveness of the CAP units. Of course, if such units provide in-kind services that benefit the airport, the value of those services may be recognized as an offset to FMV rates.

The Final Policy permits but does not require nominal rental rates. The airport operator is free to treat a qualified notfor-profit aeronautical CAP lease as it would any other aeronautical activity in setting rental rates and other fees to be paid by the education program.

e. Police/Firefighting Units Operating Aircraft at the Airport

Many airports host police or firefighting units operating aircraft (often helicopters). The OIG has frequently criticized reduced rate or no-cost leases to these units of government as inconsistent with the self-sustaining and revenue-use requirements.

The Final Policy requires the airport operator to charge reasonable rental rates and fees to these units of government. In effect, these units of government must be treated the same as other aeronautical tenants of the airport. This treatment is consistent with the policy's general approach toward dealings between units of government—fees should be set at the level that would be produced by arm's-length bargaining. The treatment is also justified because police and fire-fighting aircraft units provide benefits to the community as a whole, and not necessarily to the airport. However, as with other police and fire-fighting units located at an airport, the policy does allow rental payments to be offset to reflect the value of services actually provided to the airport by the police and fire-fighting aircraft units.

f. Use of Property by Military Units

The US Air Force Reserve and the Air National Guard both have numerous flying units located on federally

obligated, public-use airports. The majority of these aircraft-operating units are located on leased property at civilian airports established on former military airport land transferred by the US Government to the airport owner/ operator under the Surplus Property Act of 1944, as amended, or under other statutes authorizing the conveyance of surplus Federal property for use as a public airport. Frequently, the favorable lease terms were contemplated in connection with the transfer of the former military property and may have been incorporated in property conveyance documents as obligations of the civilian airport sponsor. As with other reduced-rate leases, these arrangements have been criticized in individual OIG audits.

The Final Policy: The Final Policy provides that leasing of airport property at nominal lease rates to military units with aeronautical missions is not inconsistent with the requirement for a self-sustaining rate structure. The Department of Defense (DOD) has a substantial investment in facilities and infrastructure at these locations, and its operating budgets are based on the existence of these leases. Moving those facilities upon expiration of a lease or the payment of FMV rent for facilities to support military aeronautical activities required for national defense and public safety would be beyond the capability of the DOD without additional legislation and enlargement of the DOD operating budget. In all of the enactments on the self-sustaining rate structure requirement and use of airport revenue and the accompanying legislative history, the FAA can find no indication that Congress intended the airport revenue requirements to be applied in a way to disrupt the United States' defense capabilities or add significantly to the cost of maintaining those capabilities. Moreover, Congress specifically charged the FAA, in 49 U.S.C. § 47103, with developing a national plan of integrated airport systems (NPIAS) to meet, among other things, the country's national defense needs. Inclusion in the NPIAS is a prerequisite for eligibility for AIP funding. Thus, Congress clearly contemplated a military presence at civil airports. Therefore, the FAA will not construe the requirement for a selfsustaining airport rate structure to prohibit nominal leases to military units operating aircraft at an airport.

The Final Policy permits but does not require nominal rental rates. The airport operator is free to treat a qualified military unit as it would any other aeronautical activity in setting rental rates and other fees to be paid by the military unit.

7. Lease of Airport Property at Less Than FMV for Mass Transit Access to Airports

The Supplemental Notice proposed that airport property could be made available at less than fair rental value for public transit terminals, rights-of-way, and related facilities, without being considered in violation of the requirements governing airport finances, under certain conditions. The transit system would have to be publicly owned and operated (or privately operated by contract on behalf of the public owner) and the transit facilities directly related to the transportation of air passengers and airport visitors and employees to and from the airport. Twenty-one responses addressed this issue.

Airport commenters: The airport operators concur with the principle of making airport land available for mass

transit at rates below fair market value. ACI–NA/AAAE stated that the determination to use airport property for a transit terminal, transit right-of-way, or related facilities at less than fair rental value is consistent with the grant assurance requiring airports to be selfsustaining.

Air carriers: The ATA asserted that FAA has exceeded its statutory authority in the proposal. ATA's considers transit facilities to be like commercial business enterprises, because they occupy airport property and charge their customers for their services. ATA also stressed that airport transit facilities are non-aeronautical facilities which are not "directly and substantially related to the air transportation of passengers or property."

Other commenters: Transit operators, including a transit operator trade association generally supported the position in the Supplemental Notice. Another commenter stated that making airport property available at less than fair market rental value or making airport revenue available for transit facilities equates to the airport paying a hidden taxation. This commenter argued that it was not the intention of Congress, when it passed the AAIA, to have grant funds used to subsidize, either directly or indirectly, any activity that provides no benefit to air travel.

The Final Policy: The Final Policy incorporates the provision proposed in the Supplemental Notice, with a technical correction to include transit facilities use for the transportation of property to or from the airport. The FAA does not consider public transit terminals to be the equivalent of commercial business enterprises. Rather, they are more like public and airport roadways providing ground access to the airport. Generally speaking, the FAA does not construe the self-sustaining assurance to require an airport owner or operator to charge for roadways and roadway rights-of-way at FMV.

Moreover, even though publiclyowned transit systems charge passengers for their services, they generally operate at a loss and are subsidized by general taxpayer revenue. Charging fair market value for on airport facilities would thus burden general taxpayers with the costs of providing facilities used exclusively by transit passengers visiting the airport. Therefore, a requirement to charge FMV would not further the purpose of the self-sustaining assurance—to avoid burdening local taxpayers with the cost of operating the airport system.

a. Private Transit
ACI–NA/AAAE and four airport operators commented that private transit operators should have treatment equal to public transit operators. They argued that the concepts of publicprivate partnerships, and privatization of transportation facilities, may be realities in the not-too-distant future. Moreover, private ownership would not detract in the least from the functions identified in the Notice for these facilities, such as bringing passengers to and from the airport. They also noted that the language in the AIP Handbook (Order 5100.38A, Section 6) does not specifically exclude private operators. The language states transit facilities will be allowable provided they will primarily serve the airport.
One state Department of Transportation also urged that reduced rental rates should be offered to privately-owned and operated transit systems on the same basis as publiclyowned systems.
Final Policy. The Final Policy retains some distinctions between privately and publicly owned systems. In general, privately-owned systems are more analogous to other ground transportation providers—private taxis and limousine services, rental car companies—and even private parking lot operators. These entities are commercial enterprises that operate for profit and are a significant source of revenue for the airport. Most importantly, they are not supported by general taxpayer funds, and charging FMV would not raise questions of burdening local taxpayers with the cost of the airport.
However, the FAA is aware that, in many communities with no publiclyowned bus systems or very limited systems, privately-owned bus systems fulfill the role of providing public transit services to the airport. Accordingly, the FAA is revising the Final Policy to permit an airport operator to provide airport property at less than FMV rates to privately-owned systems in these limited circumstances.
b. Airport Passengers
Nine airport commenters addressed the proposed requirement that transit facilities be directly related to the transportation of air passengers and airport visitors and employees to and from the airport to qualify for less-than-FMV rentals. The commenters argue that the provision is too narrow by restricting the transit service to airpassengers and airport visitors and employees. One airport operator states that airport sponsors must have the flexibility to build airport transit systems that principally serve airport passengers, employees and other users but which may also secondarily transport some nonairport users. Two airport operators with general-use rail transit systems planned or operating on or near their airports argue that the airport benefits from improved ground access, reduced traffic congestion and improved air quality of general use systems and that rent-free property should, therefore, be provided to general use systems.
Final Policy: The Final Policy incorporates the language of the Supplemental Notice. That language does not preclude any use of transit facilities constructed on airport property by nonairport passengers if the property is to be leased at less-than-FMV. The requirement that the facilities be ''directly related'' to the airport does not equate to a requirement that the facilities be ''exclusively used'' for airport purposes. However, if the intended use of a facility is not exclusive airport use, some rental charge may be necessary to reflect the benefits provided to the general public. The determination on whether the facilities are ''directly related'' will be made on a case-by-case basis.
It appears that some of the concern about this issue was generated by the language in the preamble, which referred to transit facilities ''necessary for the transportation of air passengers, airport visitors and airport employees to and from the airport.'' The preamble offered a maintenance/repair facility as an example of facilities that would not qualify. The FAA is not convinced that the benefits to the airport of having such facilities on the airport is sufficient to justify less-than-FMV rental rates. However, as noted, the FAA does not construe the policy language ''facilities directly related the transportation of [airport passengers]'' to require that the facilities be used exclusively by airport passengers.
8. Military Base Conversions Issues
In its comments to the Proposed Policy, one airport operator argued that using airport revenue to assist in development of revenue-generating properties on former military bases that are converted to civil airports should not be considered a prohibited use of revenue.
In addition, ACI–NA/AAAE state that a base closure and conversion to civilian use often results in the existence of significant recreational facilities on property owned by an airport. In regard to these facilities on converted military bases, ACI/AAAE stated, ''[a] leasing

arrangement whereby a municipality assumes all liability and operating expenses in exchange for a no-revenue lease is beneficial to the airport and should not be prohibited.''
Final Policy: The Final Policy provides for no special treatment of converted military bases with respect to airport revenue use, and no special provisions are included in the final policy.
The FAA policy on the use of public and recreational use of property will be consistently applied to airports whether or not they are former military bases. Ordinarily, airport revenue may not be used to finance the costs of public and recreational facilities at the airport, just as airport revenue may not be used to develop other facilities not needed for the airport, even if those facilities will generate revenue for the airport. In addition, unless the recreational facilities qualify under the communityuse

exception, the airport operator would be expected to receive FMVbased rental payments for the recreational or public property. Operational costs borne by a municipality as a result of a base conversion can be considered in the analysis of whether a reduced rent is justified by tangible or intangible benefits to the airport.

9. Enforcement Policy, Whether to Impose Civil Penalty Even if Funds are Returned

The Proposed Policy provided that if the FAA received information that improper use of airport revenue had occurred, the FAA would investigate the matter and attempt to resolve the issue informally. The matter could be resolved if the sponsor persuaded the FAA that the use of airport revenue was not improper, or if the sponsor took corrective action (which usually would involve crediting the diverted amount to the airport account with interest). The proposed policy provided that the FAA would propose enforcement action only if the FAA made a preliminary finding of noncompliance and the sponsor had failed to take corrective action. The Proposed Policy outlined the enforcement actions available to the FAA as of the date of publication. The actions included: (1) withholding of new AIP grants and payments under existing grants (49 USC §§ 47111(e) and (d), respectively); (2) withholding of new authority to impose PFCs (49 USC 47111(e)); (3) withholding of all Federal transportation funds appropriated in Fiscal Years 1994 and 1995 (as provided in the Department of Transportation appropriation legislation for those years); (4) assessment of civil penalties not to exceed $50,000 (49 USC § 46301); and (5) initiation of a civil action to compel compliance with the grant assurances (49 USC § 47111(f)).

The Proposed Policy outlined the administrative procedural rules applicable to airport compliance matters at the time of publication, 14 C.F.R., Part 13 "Investigation and Enforcement Procedures."

Airport operators: ACI–NA and AAAE strongly urged the FAA to provide in the final policy that remittance of any diverted amounts, together with associated interest, should be sufficient to "cure" instances of revenue diversion, regardless of how those instances come to the attention of the FAA. In particular, a non-airport party should not be given the capacity, through the filing of a formal compliant, to eliminate an airport's ability to cure the problem.

Air carriers: ATA suggested that the proposed policy should be strengthened, backed up by a stronger enforcement policy and aggressive monitoring and vigorous enforcement action. ATA additionally argued that FAA should promulgate one rule that sets forth in detail the substantive requirements regarding revenue retention and diversion and a separate compliance and enforcement policy document.

ATA objected that the proposed policy continues to provide a passive monitoring procedure and this approach is not sufficient to provide prompt and efficient enforcement. IATA objected that the Proposed Policy does not promote prompt or effective enforcement.

ATA suggested that the FAA establish a formal compliance monitoring and inspection program that includes compliance monitoring and audits/ inspections similar to those it conducts at certificated airlines, such as for drug and alcohol testing. Further, ATA stated that FAA's enforcement policy should result in civil penalties being assessed with the same vigor with which they are assessed against airlines for alleged regulatory violations. In addition, ATA urged that FAA should maintain the threat of assessing civil penalties for each day an airport or sponsor is in violation of the revenue-use requirement and for each day a sponsor fails to repay amounts determined to have been diverted unlawfully. IATA similarly supported assessment of the maximum civil penalty for each instance of unlawful revenue use.

The Final Policy: After publication of the Proposed Policy, the FAA Reauthorization Act of 1996 mandated new remedies for improper use of airport revenues and new compliance monitoring programs. The Final Policy has been modified to reflect the new requirements. Implementation of the requirements will result in more active and systematic monitoring of airport revenue use and more systematic resolution of questionable airport practices, as requested by the ATA and the IATA. It should be noted that the FAA had already assumed a more active role in monitoring through the implementation of the financial reporting requirements of the 1994 FAA Authorization Act.

In accordance with the requirements of the 1996 FAA Reauthorization Act, the Final Policy reflects the clear congressional intent that the FAA focus compliance efforts on the lawful use of airport revenue. The FAA will use all means at its disposal to monitor and enforce the revenue-use requirements and will take appropriate action when a potential violation is brought to the FAA's attention by any means. To detect whether airport revenue has been diverted from an airport, the FAA will use four primary sources of information: (1) the annual airport financial reports submitted by the sponsor; (2) findings from a single audit conducted in accordance with OMB Circular A–133 (including the audit review and opinion required by the 1996 Reauthorization Act); (3) investigation following a thirdparty complaint, and, (4) DOT Office of Inspector General audits.

The FAA will seek penalties for the diversion of airport funds if the airport sponsor is not willing to correct the diversion and make restitution, with interest, in a timely manner. This approach is consistent with the FAA's objective of achieving compliance with a sponsor's obligations. Moreover, it is consistent with section 805 of the 1996 Reauthorization Act, which provides for imposition of administrative and civil penalties only after a sponsor has been given an opportunity to take corrective

action and failed to do so.

10. Form of Policy

As is reflected in the Proposed Policy and Supplemental Notice, the FAA proposed to implement section 112 of the 1994 Act by publishing a policy statement, rather than adopting a regulation.

The Comments: The ATA argued that the FAA should promulgate a regulation establishing substantive requirements for use of airport revenue and a separate enforcement policy. The ATA argued that a substantive regulation will provide more clarity on prohibited and permitted practices and be less

susceptible to conflicts over interpretation.

The AOPA also raised concerns over the prompt and effective enforcement of airport revenue diversion within the terms of this Proposed Policy.

The Final Policy: The FAA will publish policy guidance on airport revenue use and enforcement as a policy rather than as a regulation. Section 112 of the 1994 FAA Authorization Act directs the Secretary to ''establish policies and procedures'' to assure ''prompt and effective enforcement'' of the revenue retention grant assurances, which clearly contemplates the issuance of a policy statement for this purpose. As discussed in connection with specific issues, the wide variation in airport situations makes it impractical for the FAA to promulgate standards with the specificity and inflexibility urged by ATA. Moreover, a regulation is not required to obtain compliance with the revenue-use requirement. Airports are obligated by the statutory assurance in AIP grant agreements pursuant to § 47107(b)(2), or directly under § 47133, and rulemaking is not required to implement those statutes.

On the issue raised by ATA and AOPA concerning the prompt and effective enforcement mechanism to address specific revenue diversion issues, the FAA had been using 14 CFR Part 13. However, on December 16, 1996, 14 CFR Part 16, Rules of Practice for Federally Assisted Airport Proceedings, took effect. Part 16 established new investigation and enforcement procedures for airport compliance matters, including compliance with the revenue-use requirement. Part 16 includes time deadlines and processes to assure that FAA promptly and effectively investigates and adjudicates specific airport compliance matters involving Federally Assisted Airports. The FAA considers the procedural requirements of the Reauthorization Act of 1996 to be self-executing and will apply the statutory provisions in the case of any conflict with Part 16. However, the FAA is in the process of revising Part 16 to incorporate those new procedural requirements.

Paperwork Reduction Act Requirements

The Office of Management and Budget (OMB) has previously approved, pursuant to the Paperwork Reduction Act, the annual airport financial reports described in Section VIII.A of the Final Policy under OMB Number 2120–0569.

Policy Statement

For the reasons discussed above, the Federal Aviation Administration adopts the following statement of policy concerning the use of airport revenue:

Policies and Procedures Concerning the

Use of Airport Revenue

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Section I.—Introduction

The Federal Aviation Administration (FAA) issues this document to fulfill the statutory provisions in section 112 of the Federal Aviation Administration Authorization Act of 1994, Pub.L. No. 103–305, 108 Stat. 1569 (August 23, 1994), 49 USC 47107(l), and Federal Aviation Administration Reauthorization Act of 1996, Public Law

104–264, 110 Stat. 3213 (October 9, 1996), to establish policies and procedures on the generation and use of airport revenue. The sponsor assurance prohibiting the unlawful diversion of airport revenues, also known as the revenue-use requirement, was first mandated by Congress in 1982. Simply stated, the purpose of that assurance, now codified at 49 USC §§ 47107(b) and 47133, is to provide that an airport owner or operator receiving Federal financial assistance will use airport revenues only for purposes related to the airport. The Policy Statement implements requirements adopted by Congress in the FAA Reauthorization Acts of 1994 and 1996, and takes into consideration comments received on the interim policy statements issued on February 26, 1996, and December 18, 1996.

Section II—Definitions

A. Federal Financial Assistance

Title 49 USC § 47133, which took effect on October 1, 1996, applies the airport revenue-use requirements of § 47107(b) to any airport that has received "Federal assistance." The FAA considers the term "Federal assistance" in § 47133 to apply to the following Federal actions:

1. Airport development grants issued under the Airport Improvement Program and predecessor Federal grant programs;
2. Airport planning grants that relate to a specific airport;
3. Airport noise mitigation grants received by an airport operator;
4. The transfer of Federal property under the Surplus Property Act, now codified at 49 USC § 47151 *et seq.*; and
5. Deeds of conveyance issued under Section 16 of the Federal Airport Act of 1946, under Section 23 of the Airport and Airway Improvement Act of 1970, or under Section 516 of the Airport and Airway Improvement Act of 1982 (AAIA).

B. Airport Revenue

1. All fees, charges, rents, or other payments received by or accruing to the sponsor for any one of the following reasons are considered to be airport revenue:

a. Revenue from air carriers, tenants, lessees, purchasers of airport properties, airport permittees making use of airport property and services, and other parties. Airport revenue includes all revenue received by the sponsor for the activities of others or the transfer of rights to others relating to the airport, including revenue received:

i. For the right to conduct an activity on the airport or to use or occupy airport property;

ii. For the sale, transfer, or disposition of airport real property (as specified in the applicability section of this policy statement) not acquired with Federal assistance or personal airport property not acquired with Federal assistance, or any interest in that property, including transfer through a condemnation proceeding;

iii. For the sale of (or sale or lease of rights in) sponsor-owned mineral, natural, or agricultural products or water to be taken from the airport; or

iv. For the right to conduct an activity on, or for the use or disposition of, real or personal property or any interest therein owned or controlled by the sponsor and used for an airport-related purpose but not located on the airport (e.g., a downtown duty-free shop).

b. Revenue from sponsor activities on the airport. Airport revenue generally includes all revenue received by the sponsor for activities conducted by the sponsor itself as airport owner and operator, including revenue received:

i. From any activity conducted by the sponsor on airport property acquired with Federal assistance;

ii. From any aeronautical activity conducted by the sponsor which is directly connected to a sponsor's ownership of an airport subject to 49 U.S.C. §§ 47107(b) or 47133; or

iii. From any nonaeronautical activity conducted by the sponsor on airport property not acquired with Federal assistance, but only to the extent of the fair rental value of the airport property. The fair rental value will be based on the fair market value.

2. State or local taxes on aviation fuel (except taxes in effect on December 30, 1987) are considered to be airport revenue subject to the revenue-use requirement. However, revenues from state taxes on aviation fuel may be used to support state aviation programs or for noise mitigation purposes, on or off the airport.

3. While not considered to be airport revenue, the proceeds from the sale of land donated by the United States or acquired with Federal grants must be used in accordance with the agreement between the FAA and the sponsor. Where such an agreement gives the FAA discretion, FAA may consider this policy as a relevant factor in specifying the permissible use or uses of the proceeds.

C. Unlawful Revenue Diversion

Unlawful revenue diversion is the use of airport revenue for purposes other than the capital or operating costs of the airport, the local airport system, or other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property, when the use is not "grandfathered" under 49 U.S.C. § 47107(b)(2). When a use would be diversion of revenue but is grandfathered, the use is considered lawful revenue diversion. See Section VI, Prohibited Uses of Airport Revenue.

D. Airport Sponsor

The airport sponsor is the owner or operator of the airport that accepts Federal assistance and executes grant agreements or other documents required for the receipt of Federal assistance.

Section III—Applicability of the Policy

A. Policy and Procedures on the Use of Airport Revenue and State or Local Taxes on Aviation Fuel

1. With respect to the use of airport revenue, the policies and procedures in the Policy Statement are applicable to all public agencies that have received a grant for airport development since September 3, 1982, under the Airport and Airway Improvement Act of 1982 (AAIA), as amended, recodified without substantive change by Public Law 103–

272 (July 5, 1994) at 49 § U.S.C. 47101, et seq., and which had grant obligations regarding the use of airport revenue in effect on October 1, 1996 (the effective date of the FAA Authorization Act of 1996). Grants issued under that statutory authority are commonly referred to as Airport Improvement Program (AIP) grants. The Policy Statement applies to revenue uses at such airports even if the sponsor has not received an AIP grant since October 1, 1996.

2. With respect to the use of state and local taxes on aviation fuel, this Policy Statement is applicable to all public agencies that have received an AIP development grant since December 30, 1987, and which had grant obligations regarding the use of state and local taxes on aviation fuel in effect of October 1, 1996.

3. Pursuant to 49 U.S.C. § 47133, this Policy Statement applies to any airport for which Federal assistance has been received after October 1, 1996, whether or not the airport owner is subject to the airport revenue-use grant assurance, and applies to any airport for which the airport revenue-use grant obligation is in effect on or after October 1, 1996. Section 47133 does not apply to an airport that has received Federal assistance prior to October 1, 1996, and does not have AIP airport development grant assurances in effect on that date.

4. Requirements regarding the use of airport revenue applicable to a particular airport or airport operator on or after October 1, 1996, as a result of the provisions of 49 U.S.C. § 47133, do not expire.

5. The FAA will not reconsider agency determinations and adjudications dated prior to the date of this Policy Statement, based on the issuance of this Policy Statement.

B. Policies and Procedures on the Requirement for a Self-Sustaining Airport Rate Structure

1. These policies and procedures apply to the operators of publicly owned airports that have received an AIP development grant and that have grant obligations in effect on or after the effective date of this policy.

2. Grant assurance obligations regarding maintenance of a selfsustaining airport rate structure in effect on or after the effective date of this policy apply until the end of the useful life of each airport development project or 20 years, whichever is less, except obligations under a grant for land acquisition, which do not expire.

C. Application of the Policy to Airport Privatization

1. The Airport Privatization Pilot Program, codified at 49 U.S.C. § 47134, provides for the sale or lease of general aviation airports and the lease of air carrier airports. Under the program, the FAA is authorized to exempt up to five airports from Federal statutory and regulatory requirements governing the use of airport revenue. The FAA can exempt an airport sponsor from its obligations to repay Federal grants, in the event of a sale, to return property acquired with Federal assistance and to use the proceeds of the sale or lease exclusively for airport purposes. The exemptions are subject to a number of conditions.

2. Except as specifically provided by the terms of an exemption granted under the Airport Privatization Pilot

Program, this policy statement applies to a privatization of airport property and/or operations.

3. For airport privatization transactions not subject to an exemption under the Pilot Program:

FAA approval of the sale or other transfer of ownership or control, of a publicly owned airport is required in accordance with the AIP sponsor assurances and general government contract law principles. The proceeds of a sale of airport property are considered airport revenue (except in the case of property acquired with Federal assistance, the sale of which is subject to other restrictions under the relevant grant contract or deed). When the sale proposed is the sale of an entire airport as an operating entity, the request may present the FAA with a complex transaction in which the disposition of the proceeds of the transfer is only one of many considerations. In its review of such a proposal, the FAA would condition its approval of the transfer on the parties' assurances that the proceeds of sale will be used for the purposes permitted by the revenue-use requirements of 49 U.S.C. §§ 47107(b) and 47133. Because of the complexity of an airport sale or privatization, the provisions for ensuring that the proceeds are used for the purposes permitted by the revenue-use requirements may need to be adapted to the special circumstances of the transaction. Accordingly, the disposition of the proceeds would need to be structured to meet the revenue-use requirements, given the special conditions and constraints imposed by the fact of a change in airport ownership. In considering and approving such requests, the FAA will remain open and flexible in specifying conditions on the use of revenue that will protect the public interest and fulfill the objectives and obligations of revenue-use requirements, without unnecessarily interfering with the appropriate privatization of airport infrastructure.

4. It is not the intention of the FAA to effectively bar airport privatization initiatives outside of the pilot program through application of the statutory requirements for use of airport revenue. Proponents of a proposed privatization or other sale or lease of airport property clearly will need to consider the effects of Federal statutory requirements on the use of airport revenue, reasonable fees for airport users, disposition of airport property, and other policies incorporated in Federal grant agreements. The FAA assumes that the proposals will be structured from the outset to comply with all such requirements, and this proposed policy is not intended to add to the considerations already involved in a transfer of airport property.

Section IV—Statutory Requirements for

the Use of Airport Revenue

A. General Requirements, 49 U.S.C. §§ 47107(b) and 47133

1. The current provisions restricting the use of airport revenue are found at 49 U.S.C. §§ 47107(b), and 47133. Section 47107(b) requires the Secretary, prior to approving a project grant application for airport development, to obtain written assurances regarding the use of airport revenue and state and local taxes on aviation fuel. Section 47107(b)(1) requires the airport owner or operator to provide assurances that local taxes on aviation fuel (except taxes in effect on December 30, 1987) and the revenues generated by a public airport will be expended for the capital or operating costs of—

a. The airport;

b. The local airport system; or

c. Other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property.

B. Exception for Certain Preexisting Arrangements (Grandfather Provisions)

Section 47107(b)(2) provides an exception to the requirements of Section 47107(b)(1) for airport owners or operators having certain financial arrangements in effect prior to the enactment of the AAIA. This provision is commonly referred to as the ''grandfather'' provision. It states:

Paragraph (1) of this subsection does not apply if a provision enacted not later than September 2, 1982, in a law controlling financing by the airport owner or operator, or a covenant or assurance in a debt obligation issued not later than September 2, 1982, by the owner or operator, provides that the revenues, including local taxes on aviation fuel at public airports, from any of the facilities of the owner or operator, including the airport, be used to support not only the airport but also the general debt obligations or other facilities of the owner or operator.

C. Application of 49 U.S.C. § 47133

1. Section 47133 imposes the same requirements on all airports, privatelyowned or publicly-owned, that are the subject of Federal assistance. Subsection 47133(a) states that:

Local taxes on aviation fuel (except taxes in effect on December 30, 1987) or the revenues generated by an airport that is the subject of Federal assistance may not be expended for any purpose other than the capital or operating costs of—

(a) the airport;

(b) The local airport system; or

(c) Other local facilities owned or operated by the person or entity that owns or operates the airport that is directly and substantially related to the air transportation of persons or property.

2. Section 47133(b) contains the same grandfather provisions as section 47107(b).

3. Enactment of section 47133 resulted in three fundamental changes to the revenue-use obligation, as reflected in the applicability section of this policy statement.

a. Privately owned airports receiving Federal assistance (as defined in this policy statement) after October 1, 1996, are subject to the revenue-use requirement.

b. In addition to airports receiving AIP grants, airports receiving Federal assistance in the form of gifts of property after October 1, 1996, are subject to the revenue-use requirement.

c. For any airport or airport operator that is subject to the revenue-use requirement on or after October 1, 1996, the revenue-use requirement applies indefinitely.

4. This section of the policy refers to the date of October 1, 1996, because the FAA Authorization Act of 1996 is by its terms effective on that date.

D. Specific Statutory Requirements for the Use of Airport Revenue

1. In section 112 of the FAA Authorization Act of 1994, 49 U.S.C. § 47107(l)(2) (A–D), Congress expressly prohibited the diversion of airport revenues through:

a. Direct payments or indirect payments, other than payments reflecting the value of services and facilities provided to the airport;

b. Use of airport revenues for general economic development, marketing, and promotional activities unrelated to airports or airport systems;

c. Payments in lieu of taxes or other assessments that exceed the value of services provided; or

d. Payments to compensate nonsponsoring governmental bodies for lost tax revenues exceeding stated tax rates.

2. Section 47107(l)(5), enacted as part of the FAA Authorization Act of 1996, provides that:

(A) Any request by a sponsor to any airport for additional payments for services conducted off of the airport or for reimbursement for capital contributions or operating expenses shall be filed not later than 6 years after the date on which the expense is incurred; and

(B) Any amount of airport funds that are used to make a payment or

reimbursement as described in subparagraph (a) after the date specified in that subparagraph shall be considered to be an illegal diversion of airport revenues that is subject to subsection (n).

3. 49 U.S.C. § 40116(d)(2)(A) provides, among other things, that a State, political subdivision of a State or authority acting for a State or a political subdivision may not: ''(iv) levy or collect a tax, fee or charge, first taking effect after August 23, 1994, exclusively upon any business located at a commercial service airport or operating as a permittee of such an airport other than a tax, fee or charge wholly utilized for airport or aeronautical purposes.''

E. Passenger Facility Charges and Revenue Diversion

The Aviation Safety and Capacity Expansion Act of 1990 authorized the imposition of a passenger facility charge (PFC) with the approval of the Secretary.

1. While PFC revenue is not characterized as ''airport revenue'' for purposes of this Policy Statement, specific statutory and regulatory guidelines govern the use of PFC revenue, as set forth at 49 U.S.C. 40117,

''Passenger Facility Fees,'' and 14 CFR Part 158, ''Passenger Facility Charges.'' (For purposes of this policy, the terms ''passenger facility fees'' and ''passenger facility charges'' are synonymous.) These provisions are more restrictive than the requirements for the use of airport revenue in 49 U.S.C. 47107(b), in that the PFC requirements provide that PFC collections may only be used to finance the allowable costs of approved projects. The PFC regulation specifies the kinds of projects that can be funded by PFC revenue and the objectives these projects must achieve to receive FAA approval for use of PFC revenue.

2. The statute and regulations prohibit expenditure of PFC revenue for other than approved projects, or collection of PFC revenue in excess of approved amounts.

3. As explained more fully below under enforcement policies and procedures in Section IX, ''Monitoring and Compliance,'' a final FAA determination that a public agency has violated the revenue-use provision prevents the FAA from approving new authority to impose a PFC until corrective action is taken.

Section V—Permitted Uses of Airport Revenue

A. Permitted Uses of Airport Revenue

Airport revenue may be used for:

1. The capital or operating costs of the airport, the local airport system, or other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property. Such costs may include reimbursements to a state or local agency for the costs of services actually received and documented, subject to the terms of this policy statement. Operating costs for an airport may be both direct and indirect and may include all of the expenses and costs that are recognized under the generally accepted accounting principles and practices that apply to the airport enterprise funds of state and local government entities.

2. The full costs of activities directed toward promoting competition at an airport, public and industry awareness of airport facilities and services, new air service and competition at the airport (other than direct subsidy of air carrier operations prohibited by paragraph VI.B.12 of this policy), and salary and expenses of employees engaged in efforts to promote air service at the airport, subject to the terms of this policy statement. Other permissible expenditures include cooperative advertising, where the airport advertises new services with or without matching funds, and advertising of general or specific airline services to the airport. Examples of permitted expenditures in this category include: (a) a Superbowl hospitality tent for corporate aircraft crews at a sponsor-owned general aviation terminal intended to promote the use of that airport by corporate aircraft; and (b) the cost of promotional items bearing airport logos distributed at various aviation industry events.

3. A share of promotional expenses, which may include marketing efforts, advertising, and related activities designed to increase travel using the airport, to the extent the airport share of the promotional materials or efforts meets the requirements of V.A.2. above and includes specific information about the airport.

4. The repayment of the airport owner or sponsor of funds contributed by such owner or sponsor for capital and operating costs of the airport and not heretofore reimbursed. An airport owner or operator can seek reimbursement of contributed funds only if the request is made within 6 years of the date the contribution took place. 49 U.S.C. 47107(l).

a. If the contribution was a loan to the airport, and clearly documented as an interest-bearing loan at the time it was made, the sponsor may repay the loan principal and interest from airport funds. Interest should not exceed a rate which the sponsor received for other investments for that period of time.

b. For other contributions to the airport, the airport owner or operator may seek reimbursement of interest only if the FAA determines that the airport owes the sponsor funds as a result of activities conducted by the sponsor or expenditures by the sponsor for the benefit of the airport. Interest shall be determined in the manner provided in 49 U.S.C. 47107(o), but may be assessed only from the date of the FAA's determination.

5. Lobbying fees and attorney fees to the extent these fees are for services in support of any activity or project for which airport revenues may be used under this Policy Statement. See Section VI: Prohibited Uses of Airport Revenue.

6. Costs incurred by government officials, such as city council members, to the extent that such costs are for services to the airport actually received and documented. An example of such costs would be the costs of travel for city council members to meet with FAA officials regarding AIP funding for an airport project.

7. A portion of the general costs of government, including executive offices and the legislative branches, may be allocated to the airport indirectly under a cost allocation plan in accordance with V.B.3. of this Policy Statement.

8. Expenditure of airport funds for support of community activities, participation in community events, or support of community-purpose uses of airport property if such expenditures are directly and substantially related to the operation of the airport. Examples of permitted expenditures in this category include: (a) the purchase of tickets for an annual community luncheon at which the Airport director delivers a speech reviewing the state of the airport; and (b) contribution to a golf tournament sponsored by a ''friends of the airport'' committee. The FAA recognizes that contributions for community or charitable purposes can provide a direct benefit to the airport through enhanced community acceptance, but that a benefit of that nature is intangible and not quantifiable. Where the amount of contribution is minimal, the value of the benefit will not be questioned as long as there is a reasonable connection between the recipient organization and the benefit of local community

acceptance for the airport. An example of a permitted expenditure in this category was participation in a local school fair with a booth focusing on operation of the airport and career opportunities in aviation. The expenditure in this example was $250.
9. Airport revenue may be used for the capital or operating costs of those

portions of an airport ground access project that can be considered an airport capital project, or of that part of a local facility that is owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property, including use by airport visitors and employees. The FAA has approved the use of airport revenue for the actual costs incurred for structures and equipment associated with an airport terminal building station and a rail connector between the airport station and the nearest mass transit rail line, where the structures and equipment were (1) located entirely on airport property, and (2) designed and intended exclusively for the use of airport passengers.

B. Allocation of Indirect Costs

1. Indirect costs of sponsor services may be allocated to the airport in accordance with this policy, but the allocation must result in an allocation to the airport only of those costs that would otherwise be allowable under 49 U.S.C. § 47107(b). In addition, the documentation for the costs must meet the standards of documentation stated in this policy.
2. The costs must be allocated under a cost allocation plan that meets the following requirements:
a. The cost is allocated under a cost allocation plan that is consistent with Attachment A to OMB Circular A–87, except that the phrase ''airport revenue'' should be substituted for the phrase ''grant award,'' wherever the latter phrase occurs in Attachment A;
b. The allocation method does not result in a disproportionate allocation of general government costs to the airport in consideration of the benefits received by the airport;
c. Costs allocated indirectly under the cost allocation plan are not billed directly to the airport; and
d. Costs billed to the airport under the cost allocation plan must be similarly billed to other comparable units of the airport owner or operator.
3. A portion of the general costs of government, such as the costs of the legislative branch and executive offices, may be allocated to the airport as an indirect cost under a cost allocation plan satisfying the requirements set forth above. However, the allocation of these costs may require special scrutiny to assure that the airport is not paying a disproportionate share of these costs.
4. Central service costs, such as accounting, budgeting, data processing, procurement, legal services, disbursing and payroll services, may also be allocated to the airport as indirect costs under a cost allocation plan satisfying the requirements set forth above. However, the allocation of these costs may require special scrutiny to assure that the airport is not paying a disproportionate share of these costs.

C. Standard of Documentation for the Reimbursement to Government Entities of Costs of Services and Contributions Provided to Airports

1. Reimbursements for capital and operating costs of the airport made by a government entity, both direct and indirect, must be supported by adequate documentary evidence. Documentary evidence includes, but is not limited to:
a. Underlying accounting data such as general and specialized journals, ledgers, manuals, and supporting worksheets and other analyses; and corroborating evidence such as invoices, vouchers and indirect cost allocation plans, or
b. Audited financial statements which show the specific expenditures to be reimbursed by the airport. Such expenditures should be clearly identifiable on the audited financial statements as being consistent with section VIII of this policy statement.
2. Documentary evidence to support direct and indirect charges to the airport must show that the amounts claimed were actually expended. Budget estimates are not sufficient to establish a claim for reimbursement. Indirect cost allocation plans, however, may use budget estimates to establish predetermined indirect cost allocation rates. Such estimated rates should, however, be adjusted to actual expenses in the subsequent accounting period.

D. Expenditures of Airport Revenue by Grandfathered Airports

1. Airport revenue may be used for purposes other than capital and operating costs of the airport, the local airport system, or other local facilities owned or operated by the sponsor and directly and substantially related to the air transportation of passengers or property, if the ''grandfather'' provisions of 49 U.S.C. § 47107(b)(2) are applicable to the sponsor and the particular use. Based on previous DOT interpretations, examples of grandfathered airport sponsors may include, but are not limited to the following:
a. A port authority or state department of transportation which owns or operates other transportation facilities in addition to airports, and which have pre-September 3, 1982, debt obligations or legislation governing financing and providing for use of airport revenue for non-airport purposes. Such sponsors may have obtained legal opinions from their counsel to support a claim of grandfathering. Previous DOT interpretations have found the following examples of pre-AAIA legislation to provide for the grandfather exception:
b. Bond obligations and city ordinances requiring a five percent ''gross receipts'' fee from airport revenues. The payments were instituted in 1954 and continued in 1968.
c. A 1955 state statute for the assessing of a five percent surcharge on all receipts and deposits in an airport revenue fund to defray central service expenses of the state.
d. City legislation authorizing the transfer of a percentage of airport

revenues, permitting an airport-air carrier settlement agreement providing for annual payments to the city of 15 percent of the airport concession revenues.
e. A 1957 state statutory transportation program governing the financing and operations of a multimodal transportation authority, including airport, highway, port, rail and transit facilities, wherein state revenues, including airport revenues, support the state's transportationrelated, and other, facilities. The funds flow from the airports to a state transportation trust fund, composed of all "taxes, fees, charges, and revenues" collected or received by the state department of transportation.
f. A port authority's 1956 enabling act provisions specifically permitting it to use port revenue, which includes airport revenue, to satisfy debt obligations and to use revenues from each project for the expenses of the authority. The act also exempts the authority from property taxes but requires annual payments in lieu of taxes to several local governments and gives it other corporate powers. A 1978 trust agreement recognizes the use of the authority's revenue for debt servicing, facilities of the authority, its expenses, reserves, and the payment in lieu of taxes fund.
2. Under the authority of 49 U.S.C. § 47115(f), the FAA considers as a factor militating against the approval of an application for AIP discretionary funds, the fact that a sponsor has exercised its rights to use airport revenue for nonairport purposes under the grandfather clause, when in the airport's fiscal year preceding the date of application for discretionary funds, the FAA finds that the amount of airport revenues used for nonairport purposes exceeds the amount used for such purposes in the airport's first fiscal year ending after August 23, 1994, adjusted by the Secretary for changes in the Consumer Price Index of All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

Section VI—Prohibited Uses of Airport Revenue

A. Lawful and Unlawful Revenue Diversion

Revenue diversion is the use of airport revenue for purposes other than the capital or operating costs of the airport, the local airport system, or other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property, unless that use is grandfathered under 49 U.S.C. § 47107(b)(2) and the use does not exceed the limits of the 'grandfather' clause. When such use is so grandfathered, it is known as lawful revenue diversion. Unless the revenue diversion is grandfathered, the diversion is unlawful and prohibited by the revenue-use restrictions.

B. Prohibited Uses of Airport Revenue

Prohibited uses of airport revenue include but are not limited to:
1. Direct or indirect payments that exceed the fair and reasonable value of those services and facilities provided to the airport. The FAA generally considers the cost of providing the services or facilities to the airport as a reliable indicator of value.
2. Direct or indirect payments that are based on a cost allocation formula that is not consistent with this policy statement or that is not calculated consistently for the airport and other comparable units or cost centers of government.
3. Use of airport revenues for general economic development.
4. Marketing and promotional activities unrelated to airports or airport systems. Examples of prohibited expenses in this category include participation in program to provide hospitality training to taxi drivers and funding an airport operator's float containing no reference to the airport, in a New Years Day parade.
5. 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 comparable units or cost centers of government;
6. Payments to compensate nonsponsoring governmental bodies for lost tax revenues to the extent the payments exceed the stated tax rates applicable to the airport;
7. Loans to or investment of airport funds in a state or local agency at less than the prevailing rate of interest.
8. Land rental to, or use of land by, the sponsor for nonaeronautical purposes at less than fair rental/market value, except to the extent permitted by SectionVII.D of this policy.
9. Use of land by the sponsor for aeronautical purposes rent-free or for nominal rental rates, except to the extent permitted by Section VII.E of this policy.
10. Impact fees assessed by any governmental body that exceed the value of services or facilities provided to the airport. However, airport revenue may be used where airport development requires a sponsoring agency to take an action, such as undertaking environmental mitigation measures contained in an FAA record of decision approving funding for an airport development project, or constructing a ground access facility that would otherwise be eligible for the use of airport revenue. Payments of impact fees must meet the general requirement that airport revenue be expended only for actual documented costs of items eligible for use of airport revenue under this Policy Statement. In determining appropriate corrective action for an impact fee payment that is not consistent with this policy, the FAA will consider whether the impact fee was imposed by a non-sponsoring governmental entity and the sponsor's ability under local law to avoid paying the fee.
11. Expenditure of airport funds for support of community activities and participation in community events, or for support of community-purpose uses

of airport property except to the extent permitted by this policy. See Section V, Uses of Airport Revenue. Examples of prohibited expenditures in this category include expenditure of $50,000 to sponsor a local film society's annual film festival; and contribution of $6,000 to a community cultural heritage festival.

12. Direct subsidy of air carrier operations. Direct subsidies are considered to be payments of airport funds to carriers for air service. Prohibited direct subsidies do not include waivers of fees or discounted landing or other fees during a promotional period. Any fee waiver or discount must be offered to all users of the airport, and provided to all users that are willing to provide the same type and level of new services consistent with the promotional offering. Likewise prohibited direct subsidies do not include support for airline advertising or marketing of new services to the extent permitted by Section V of this Policy Statement.

Section VII—Policies Regarding Requirement for a Self-Sustaining Airport Rate Structure

A. Statutory Requirements

49 U.S.C. § 47107(a)(13) requires airport operators to maintain a schedule of charges for use of the airport: "(A) that will make the airport as selfsustaining as possible under the circumstances existing at the airport, including volume of traffic and economy of collection."

The requirement is generally referred to as the "self-sustaining assurance."

B. General Policies Governing the Self-Sustaining Rate Structure Assurance

1. Airport proprietors must maintain a fee and rental structure that in the circumstances of the airport makes the airport as financially self-sustaining as possible. In considering whether a particular contract or lease is consistent with this requirement, the FAA and the Office of the Inspector General (OIG) generally evaluate the individual contract or lease to determine whether the fee or rate charged generates sufficient income for the airport property or service provided, rather than looking at the financial status of the entire airport.

2. If market conditions or demand for air service do not permit the airport to be financially self-sustaining, the airport proprietor should establish long-term goals and targets to make the airport as financially self-sustaining as possible.

3. At some airports, market conditions may not permit an airport proprietor to establish fees that are sufficiently high to recover aeronautical costs and sufficiently low to attract and retain commercial aeronautical services. In such circumstances, an airport proprietor's decision to charge rates that are below those needed to achieve a self-sustaining income in order to assure that services are provided to the public is not inherently inconsistent with the obligation to make the airport as selfsustaining as possible in the circumstances.

4. Airport proprietors are encouraged, when entering into new or revised agreements or otherwise establishing rates, charges, and fees, to undertake reasonable efforts to make their particular airports as self sustaining as possible in the circumstances existing at such airports.

5. Under 49 U.S.C. § 47107(a)(1) and the implementing grant assurance, charges to aeronautical users must be reasonable and not unjustly discriminatory. Because of the limiting effect of the reasonableness requirement, the FAA does not consider the self-sustaining requirement to require airport sponsors

to charge fair market rates to aeronautical users. Rather, for charges to aeronautical users, the FAA considers the self-sustaining assurance to be satisfied by airport charges that reflect the cost to the sponsor of providing aeronautical services and facilities to users. A fee for aeronautical users set pursuant to a residual costing methodology satisfies the requirement for a self-sustaining airport rate structure.

6. In establishing new fees, and generating revenues from all sources, airport owners and operators should not seek to create revenue surpluses that exceed the amounts to be used for airport system purposes and for other purposes for which airport revenues may be spent under 49 U.S.C. § 47107(b)(1), including reasonable reserves and other funds to facilitate financing and to cover contingencies. While fees charged to nonaeronautical users are not subject to the reasonableness requirement or the Department of Transportation Policy on airport rates and charges, the surplus funds accumulated from those fees must be used in accordance with 49 U.S.C. § 47107(b).

C. Policy on Charges for Nonaeronautical Facilities and Services

Subject to the general guidance set forth above and the specific exceptions noted below, the FAA interprets the self-sustaining assurance to require that the airport receive fair market value for the provision of nonaeronautical facilities and services, to the extent practicable considering the circumstances at the airport.

D. Providing Property for Public Community Purposes

Making airport property available at less than fair market rental value for public recreational and other community uses, for the purpose of maintaining positive airport-community relations, can be a legitimate function of an airport proprietor in operating the airport. Accordingly, in certain circumstances, providing airport land for such purposes will not be considered a violation of the selfsustaining requirement. Generally, the circumstances in which below-market use of airport land for community purposes will be considered consistent with the grant assurances are:

1. The contribution of the airport property enhances public acceptance of the airport in a community in the

immediate area of the airport; the property is put to a general public use desired by the local community; and the public use does not adversely affect the capacity, security, safety or operations of the airport. Examples of acceptable uses include public parks, recreation facilities, and bike or jogging paths. Examples of uses that would not be eligible are road maintenance equipment storage; and police, fire department, and other government facilities if they do not directly support the operation of the airport.

2. The property involved would not reasonably be expected to produce more than *de minimis* revenue at the time the community use is contemplated, and the property is not reasonably expected to be used by an aeronautical tenant or otherwise be needed for airport operations in the foreseeable future. When airport property reasonably may be expected to earn more than minimal revenue, it still may be used for community purposes at less than FMV if the revenue earned from the community use approximates the revenue that could otherwise be generated, provided that the other provisions of VII. D. are met.

3. The community use does not preclude reuse of the property for airport purposes if, in the opinion of the airport sponsor, such reuse will provide greater benefits to the airport than continuation of the community use.

4. Airport revenue is not to be used to support the capital or operating costs associated with the community use.

E. Use of Property by Not-for-Profit Aviation Organizations

1. An airport operator may charge reduced rental rates and fees to the following not-for-profit aviation organizations, to the extent that the reduction is reasonably justified by the tangible or intangible benefits to the airport or to civil aviation:

a. Aviation museums;

b. Aeronautical secondary and postsecondary education programs conducted by accredited educational institutions; or

c. Civil Air Patrol units operating aircraft at the airport;

2. Police or fire-fighting units operating aircraft at the airport generally will be expected to pay a reasonable rate for aeronautical use of airport property, but the value of any services provided by the unit to the airport may be offset against the applicable reasonable rate.

F. Use of Property by Military Units

The FAA acknowledges that many airports provide facilities to military units with aeronautical missions at nominal lease rates. The FAA does not consider this practice inconsistent with the requirement for a self-sustaining airport rate structure. Military units with aeronautical missions may include the Air National Guard, aviation units of the Army National Guard, U.S. Air Force Reserve, and Naval Reserve air units operating aircraft at the airport. Reserve and Guard units typically have an historical presence at the airport that precedes the Airport and Airway Improvement Act of 1982, and provide services that directly benefit airport operations and safety, such as snow removal and supplementary ARFF capability.

G. Use of Property for Transit Projects

Making airport property available at less than fair market rental for public transit terminals, right-of-way, and related facilities will not be considered a violation of 49 U.S.C. §§ 47107(b), 47133 or 47107(a)(13) if the transit system is publicly owned and operated (or operated by contract on behalf of the public owner), and the facilities are directly and substantially related to the air transportation of passengers or property, including use by airport visitors and employees. A lease of nominal value in the circumstances described in this section would be considered consistent with the selfsustaining requirement.

H. Private Transit Systems

Generally, private ground transportation services are charged as a nonaeronautical use of the airport. In cases where publicly-owned transit services are extremely limited and where a private transit service (i.e., bus, rail, or ferry) provides the primary source of public transportation, making property available at less than fair market rental to this private service would not be considered inconsistent with 49 U.S.C. §§ 47107(b), 47133 or 47107(a)(13).

Section VIII—Reporting and Audit Requirements

The Federal Aviation Administration Authorization Act of 1994 established a new requirement for airports to submit annual financial reports to the Secretary, and the Act required the Secretary to compile the reports and to submit a summary report to Congress. The Federal Aviation Reauthorization Act of 1996 established a new requirement for airports to include, as part of their audits under the Single Audit Act, a review and opinion on the use of airport revenue.

A. Annual Financial Reports

Section 111(a)(4) of the 1994 Authorization Act, 49 U.S.C. § 47107(a)(19), requires airport owners or operators to submit to the Secretary

and to make available to the public an annual financial report listing in detail (1) all amounts the airport paid to other government units and the purposes for which each payment was made, (2) all services and property the airport provided to other government units and compensation received for each service or unit of property provided. Additionally, Section 111(b) of the 1994 Authorization Act requires a report, for each fiscal year, in an uniform simplified format, of the airport's sources and uses of funds, net surplus/loss and other information which the Secretary may require.

FAA Forms 5100–125 and 126 have been developed to satisfy the above reporting requirements. The forms must be filed with the FAA 120 days after the end of the sponsor's fiscal year. Extensions of the filing date may be granted if audited financial information is not available within 120 days of the

end of the local fiscal year. Requests for extension should be filed in writing with the FAA Airport Compliance Division, AAS–400.

B. Single Audit Review and Opinion

1. General requirement and applicability. The Federal Aviation Reauthorization Act of 1996, Section 805; 49 U.S.C. § 47107(m) requires public agencies that are subject to the Single Audit Act, 31 U.S.C. § 7501–7505, and that have received Federal financial assistance for airports to include, as part of their single audit, a review and opinion of the public agency's funding activities with respect to their airport or local airport system.

2. Federal Financial Assistance. For the purpose of complying with 49 U.S.C. § 47107(m), Federal financial assistance for airports includes any interest in property received, by a public agency since October 1, 1996, for the purpose of developing, improving, operating, or maintaining a public airport, or an AIP grant which was in force and effect on or after October 1, 1996, either directly or through a state block grant program.

3. Frequency. The opinion will be required whenever the auditor under OMB Circular A–133 selects an airport improvement program grant as a major program. In those cases where the airport improvement program grant is selected as a major program the requirements of 49 U.S.C. § 47107(m) will apply.

4. Major Program. For the purposes of complying with 49 U.S.C. § 47107(m), major program means an airport improvement program grant determined to be a major program in accordance with OMB Circular A–133, § 520 or an airport improvement program grant identified by FAA as a major program in accordance with OMB A–133 § 215(c); except additional audit costs resulting from FAA designating an airport improvement program grant as a major program are discussed at paragraph 9 below.

5. FAA Notification. When FAA designates an airport improvement program grant as a major program, FAA will generally notify the sponsor in writing at least 180 days prior to the end of the sponsor's fiscal year to have the grant included as a major program in its next Single Audit.

6. Audit Findings. The auditor will report audit findings in accordance with OMB Circular A–133.

7. Opinion. The statutory requirement for an opinion will be considered to be satisfied by the auditor's reporting under OMB Circular A–133. Consequently when an airport improvement program grant is designated as a major program, and the audit is conducted in accordance with OMB Circular A–133, FAA will accept the audit to meet the requirements of 49 USC § 47107(m) and this policy.

8. Reporting Package. The Single Audit reporting package will be distributed in accordance with the requirements of OMB Circular A–133. In addition when an airport improvement program grant is a major program, the sponsor will supply, within 30 days after receipt by the sponsor, a copy of the reporting package directly to the FAA, Airport Compliance Division (AAS–400), 800 Independence Ave. SW 20591. The FAA regional offices may continue to request the sponsor to provide separate copies of the reporting package to support their administration of airport improvement program grants.

9. Audit Cost. When an opinion is issued in accordance with 47107(m) and this policy, the costs associated with the opinion will be allocated in accordance with the sponsor's established practice for allocating the cost of its Single Audit, regardless of how the airport improvement program grant is selected as a major program.

10. Compliance Supplement. Additional information about this requirement is contained in OMB Circular A–133 Compliance Supplement for DOT programs.

11. Applicability. This requirement is not applicable to (a) privately-owned, public-use airports, including airports accepted into the airport privatization program (the Single Audit Act governs only states, local governments and nonprofit organizations receiving Federal assistance); (b) public agencies that do not have a requirement for the single audit; (c) public agencies that do not satisfy the criteria of paragraph B.1 and 2; above; and Public Agencies that did not execute an AIP grant agreement on or after June 2, 1997.

Section IX—Monitoring and Compliance

A. Detection of Airport Revenue Diversion

To detect whether airport revenue has been diverted from an airport, the FAA will depend primarily upon four sources of information:

1. Annual report on revenue use submitted by the sponsor under the provisions of 49 U.S.C. § 47107(a)(19), as amended.

2. Single audit reports submitted, pursuant to 49 U.S.C. § 47107(m), with annual single audits conducted under 31 U.S.C. §§ 7501–7505. The requirement for these reports is discussed in Part IX of this policy.

3. Investigation following a third party complaint filed under 14 CFR. Part 16, FAA Rules of Practice for Federally Assisted Airport Proceedings.

4. DOT Office of Inspector General audits.

B. Investigation of Revenue Diversion Initiated Without Formal Complaint

1. When no formal complaint has been filed, but the FAA has an indication from one or more sources that airport revenue has been or is being diverted unlawfully, the FAA will notify the sponsor of the possible diversion and request that it respond to the FAA's concerns. If, after information and arguments submitted by the sponsor, the FAA determines that there is no unlawful diversion of revenue, the FAA will notify the sponsor and take no further action. If the FAA makes a preliminary finding that there has been unlawful diversion of airport revenue, and the sponsor has not taken corrective action (or agreed to take corrective action), the FAA may issue a notice of investigation under 14 CFR § 16.103.

If, after further investigation, the FAA finds that there is reason to believe that there is or has been unlawful diversion of airport revenue that the sponsor refuses to terminate or correct, the FAA will issue an appropriate order under 14 CFR § 16.109 proposing enforcement action. However, such action will cease if the airport sponsor agrees to return the diverted amount plus interest.

2. Audit or investigation by the Office of the Inspector General. An indication of revenue diversion brought to the attention of the FAA in a report of audit or investigation issued by the DOT Office of the Inspector General (OIG)

will be handled in accordance with paragraph B.1 above.

C. Investigation of Revenue Diversion Precipitated by Formal Complaint

When a formal complaint is filed against a sponsor for revenue diversion, the FAA will follow the procedures in 14 CFR Part 16 for notice to the sponsor and investigation of the complaint. After review of submissions by the parties, investigation of the complaint, and any additional process provided in a particular case, the FAA will either dismiss the complaint or issue an appropriate order proposing enforcement action.

If the airport sponsor takes the corrective action specified in the order, the complaint will be dismissed.

D. The Administrative Enforcement Process

1. Enforcement of the requirements imposed on sponsors as a condition of the acceptance of Federal grant funds or property is accomplished through the administrative procedures set forth in 14 CFR part 16. Under part 16, the FAA has the authority to receive complaints, conduct informal and formal investigations, compel production of evidence, and adjudicate matters of compliance within the jurisdiction of the Administrator.

2. If, as a result of the investigative processes described in paragraphs B and C above, the FAA finds that there is reason to proceed with enforcement action against a sponsor for unlawful revenue diversion, an order proposing enforcement action is issued by the FAA and under 14 CFR 16.109. That section provides for the opportunity for a hearing on the order.

E. Sanctions for Noncompliance

1. As explained above, if the FAA makes a preliminary finding that airport revenue has been unlawfully diverted and the sponsor declines to take the corrective action, the FAA will propose enforcement action. A decision whether to issue a final order making the action effective is made after a hearing, if a hearing is elected by the respondent. The actions required by or available to the agency for enforcement of the prohibitions against unlawful revenue diversion are:

a. Withhold future grants. The Secretary may withhold approval of an application in accordance with 49 USC § 47106(d) if the Secretary provides the sponsor with an opportunity for a hearing and, not later than 180 days after the later of the date of the grant application or the date the Secretary discovers the noncompliance, the Secretary finds that a violation has occurred. The 180-day period may be extended by agreement of the Secretary and the sponsor or in a special case by the hearing officer.

b. Withhold approval of the modification of existing grant agreements that would increase the amount of funds available. A supplementary provision in section 112 of the 1994 Authorization Act, 49 USC § 47111(e), makes mandatory not only the withholding of new grants but also withholding of a modification to an existing grant that would increase the amount of funds made available, if the Secretary finds a violation after hearing and opportunity to cure.

c. Withhold payments under existing grants. The Secretary may withhold a payment under a grant agreement for 180 days or less after the payment is due without providing for a hearing. However, in accordance with 49 USC § 47111(d), the Secretary may withhold a payment for more than 180 days only if he or she notifies the sponsor and provides an opportunity for a hearing and finds that the sponsor has violated the agreement. The 180-day period may be extended by agreement of the Secretary and the sponsor or in a special case by the hearing officer.

d. Withhold approval of an application to impose a passenger facility charge. Section 112 also makes mandatory the withholding of approval of any new application to impose a passenger facility charge under 49 USC § 40117. Subsequent to withholding, applications could be approved only upon a finding by the Secretary that corrective action has been taken and that the violation no longer exists.

e. File suit in United States district court. Section 112(b) provides express authority for the agency to seek enforcement of an order in Federal court.

f. Withhold, under 49 USC § 47107(n)(3), any amount from funds that would otherwise be available to a sponsor, including funds that would otherwise be made available to a State, municipality, or political subdivision thereof (including any multi-modal transportation agency or transit agency of which the sponsor is a member entity) as part of an apportionment or grant made available pursuant to this title, if the sponsor has failed to reimburse the airport after receiving notification of the requirement to do so.

g. Assess civil penalties.

(1) Under section 112(c) of Public Law 103–305, codified at 49 USC § 46301(a) and (d), the Secretary has statutory authority to impose civil penalties up to a maximum of $50,000 on airport sponsors for violations of the AIP sponsor assurance on revenue diversion. Any civil penalty action under this section would be adjudicated under 14 CFR Part 13, Subpart G.

(2) Under section 804 of Public Law 104–264, codified at 49 USC § 46301((a)(5), the Secretary has statutory authority to obtain civil penalties of up to three times the amount of airport revenues that are used

in violation of 49 USC §§ 47107(b) and 47133. An action for civil penalties in excess of $50,000 must be brought in a United States District Court.

(3) The Secretary may, under 49 USC § 47107(n)(4), initiate a civil action for civil penalties in the amount equal to the illegal diversion in question plus interest calculated in accordance with 49 USC § 47107(o), if the airport sponsor has failed to take corrective action specified by the Secretary and the Secretary is unable to withhold sufficient grant funds, as set forth above.

(4) An action for civil penalties under this provision must be brought in a United States District Court. The Secretary intends to use this authority only after the airport sponsor has been given a reasonable period of time, after a violation has been clearly identified to the airport sponsor, to take corrective action to restore the funds or otherwise come into compliance before a penalty is assessed, and only after other enforcement actions, such as withholding of grants and payments, have failed to achieve compliance.

F. Compliance With Reporting and Audit Requirements

The FAA will monitor airport sponsor compliance with the Airport Financial Reporting Requirements and Single Audit Requirements described in this Policy Statement. The failure to comply with these requirements can result in the withholding of future AIP grant awards and further payments under existing AIP grants.

Issued in Washington, DC on February 8, 1999.

Susan L. Kurland,

Associate Administrator for Airports.

[FR Doc. 99–3529 Filed 2–11–99; 8:45 am]

Exhibit F

9411220009

TICOR TITLE INSURANCE

V1191 P0412

REVE

THIS SPACE RESERVED FOR RECORDER'S USE.
DARLENE P. DEROSIER
COWLITZ CO. AUDITOR

Nov 22 8 54 AM '94

FILED
REQUEST OF John LEGER

11-22-94 AM 0766 REC 02 7.00

Filed for Record at Request of

AFTER RECORDING MAIL TO:

FORM L-58 (3-84)

Statutory Warranty Deed

THE GRANTOR KELSO/LONGVIEW REGIONAL AIRPORT AUTHORITY

for and in consideration of Eighteen Thousand One Hundred Sixty One Dollars and no/100s ($18,161.00)

in hand paid, conveys and warrants to THE SUNSHINE FAMILY LIMITED PARTNERSHIP

the following described real estate, situated in the County of Cowlitz, State of Washington:

Beginning at the Northwest corner of a parcel of land sold by the City of Kelso to Martin R. Neumann, recorded in Cowlitz County, Deed Records Volume 790, Page 1155, Auditor's Fee Number 742,412; thence, South 25°13'00" East, a distance of 158.18 feet; thence South 75°17'04" West, a distance of 100.56 feet; thence North 25°13'00" West, a distance of 154.77 feet; thence, North 73°21'53" East, a distance of 100.00 feet, to the point of Beginning.

Said tract of land contains approximately 0.36 Acres +/-

Received $ 233.46 excise tax levied pursuant to Chap. 11, Laws Ex. 1951
AFF. NO. 944356
Date NOV 22 1994
DONNA R. ROLFE
COWLITZ COUNTY TREAS.
K. Hanks Deputy

Dated this 17th day of November, 1994

By ..... By J. Walter Barham

By ..... By .....

STATE OF WASHINGTON
COUNTY OF ..... } ss

On this day personally appeared before me

.....

to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that ..... signed the same as ..... free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this ..... day of ....., 19 .....

.....
Notary Public in and for the State of Washington, residing at .....
My appointment expires on .....

LPE No. 10

STATE OF WASHINGTON
COUNTY OF COWLITZ } ss

On this 17 day of November, 1994, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared J. Walter Barham and .....

to me known to be the Chairman ~~President~~ and ~~Secretary~~, respectively, of KELSO/LONGVIEW REGIONAL AIRPORT AUTH. the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

Witness my hand and official seal hereto affixed the day and year first above written.

Notary Public in and for the State of Washington, residing at Longview
My appointment expires on 6-13-96

Exhibit 'G'

#03013

AUDITOR'S FILE NO. 3171562

RECORD OF SURVEY
FOR
THE CITY OF KELSO

DESCRIPTION

APN 9309130911

Together with the following platted property north of Colorado Street:

H. S. Turners Home Tracts Addition No. 1:

Block 1, Lots 14 through 24 and Lot 25
Block 2, all
Block 3, all
Block 4, West 97 feet of Lot 2, and all of Lots 3, 4, and 5.

Wallace Acreage Tract Addition:

All of Tract 7
All of Tract 8
South half of Tract 9
South half of Tract 10
South half of West half of Tract 11
South 178 feet of East half of Tract 11
South 178 feet of West half of Tract 12

A tract of land situated in Section 2, Township 7 North, Range 2 West, Willamette Meridian, more particularly described as follows:

Beginning at the northeast corner of Turners Home Tracts No. 2, at the intersection of Pacific Avenue and Colorado Street; thence South 89°39' East along the centerline of said street a distance of 1024.12 feet; thence South 0°21' West a distance of 30.00 feet to the South line of Colorado Street; thence South 37°24' East a distance of 836.36 feet; thence South 39°31' East a distance of 836.83 feet; thence North 52°36' East a distance of 412.91 feet to the Southwest right-of-way line of Parrott Way; thence along said Southwest right-of-way line South 37°23'40" East a distance of 1752.86 feet to the North line of a tract of land sold by Brudi Equipment, Inc. to Swing-Shift Manufacturing, Inc. recorded in Cowlitz County Auditors Records in File No. 9002140441; thence South 73°27' West a distance of 18.11 feet; thence South 25°13' East a distance of 419.61 feet; thence North 73°21'53" East a distance of 100.00 feet; thence South 25°13' East a distance of 158.18 feet to the Southwest corner of a parcel of land recorded in file No. 742412; thence South 75°17'04" West a distance of 272.21 feet; thence South 39°31' East a distance of 286.16 feet; thence South 50°29' West a distance of 28.02 feet; thence South 38°31' East a distance of 560.09 feet to the Southeasterly corner of a parcel of land, sold to the City of Kelso, recorded in File No. 800731004, said point being in the Westerly right-of-way line of the old alignment of Talley Way; thence South 36°16'44" East a distance of 329.21 feet to a point on the Westerly right-of-way line of the new alignment of Talley Way; said point being South 50°29' West a distance of 30.00 feet from the centerline at P.T. Station 7+10; thence along the Westerly line of Talley Way; South 39°31' East a distance of 380.89 feet; thence on a curve to the right through a central angle of 59°23'00" an arc distance of 711.97 feet; thence South 19°52' West a distance of 92.78 feet; thence on a curve to the right through a central angle of 40°31'01" an arc distance of 582.85 feet; thence Southerly to the right-of-way line of the Diking District property; thence Easterly along said dike right-of-way to the Easterly right-of-way line of the Burlington Northern Railroad; thence Northerly along said Burlington Northern Railroad right-of-way line to the point of beginning.

APN 930903092

A portion of the James Huntington Donation Land Claim located in Section 2, Township 7 North, Range 2 West of the Willamette Meridian, more particularly described as follows:

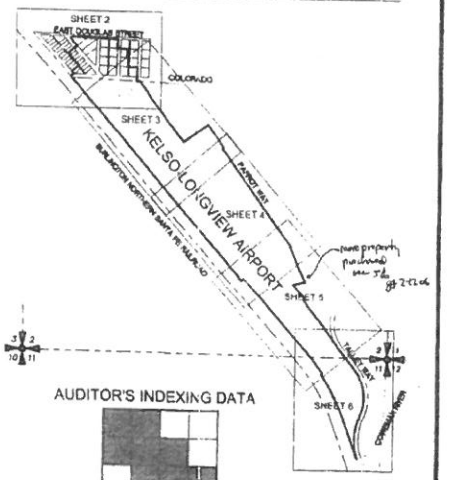
Beginning at the Northwest corner of Turner's Home Tracts No. 2, at the intersection of the Pacific Avenue and Colorado Street; thence South 89°39'00" East along the center line of said street a distance of 1,100 feet; thence South 0°21'00" West, a distance of 30 feet to the South line of Colorado Street; thence South 37°24'00" East, a distance of 800 feet; thence North 52°36'00" East, a distance of 400 feet; thence South 37°24'00" East, a distance of 145 feet to the True Point of Beginning; thence South 37°24'00" East, a distance of 300.50 feet; thence South 52°36'00" West, a distance of 429.08 feet; thence North 39°31'00" West, a distance of 339.87 feet; thence North 52°36'45" East, a distance of 443.85 feet to the True Point of Beginning. Said tract being approximately 4.00 Acres.

EXCEPTION:

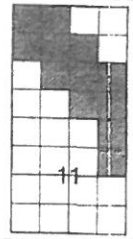
APN 9411220009

Beginning at the northwest corner of a parcel of land sold by the City of Kelso to Martin R. Naemann, recorded in Cowlitz County Deed Records Volume 790, Page 1138, Auditor's Fee Number 742412; thence South 25°13'00" East a distance of 158.18 feet; thence South 75°17'04" West a distance of 100.56 feet; thence North 25°13'00" West a distance of 154.77 feet; thence North 73°21'53" East a distance of 100.00 feet to the point of beginning.

SHEET INDEX



AUDITOR'S INDEXING DATA



TWP 7 N, RGE 2 W 02016 SHEET 1 OF 6

SURVEYOR'S CERTIFICATE

THIS MAP CORRECTLY REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE SURVEY RECORDING ACT AT THE REQUEST OF THE CITY OF KELSO IN MARCH, 2002.

DATE: 1/13/03

T. PATRICK FOX, REGISTERED PROFESSIONAL LAND SURVEYOR, LICENSE NUMBER 27182

EXPIRES: 12/08/04

AUDITOR'S CERTIFICATE

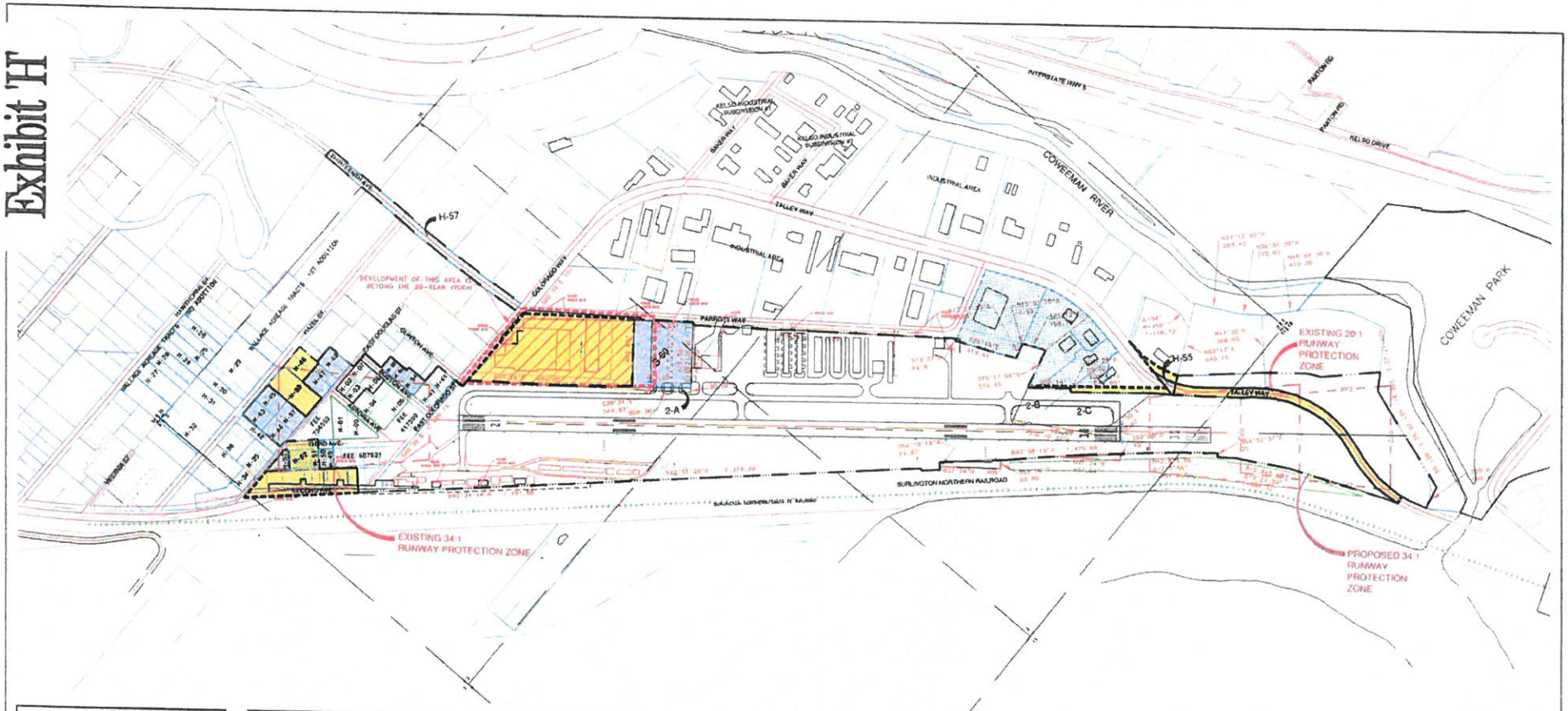
FILED FOR RECORD THIS 15th DAY OF JANUARY 2003
AT ——— M. UNDER AUDITOR'S FILE NUMBER 3171562
AT THE REQUEST OF SKILLINGS-CONNOLLY, INC. Vol. 24, Pg 39

COWLITZ COUNTY AUDITOR ——— DEPUTY

SKILLINGS CONNOLLY
5016 Lacey Boulevard SE,
Lacey, Washington 98503
(360) 491-3399 (800) 454-7545
Fax (360) 491-3857

03013
Keller Simplicate Airport Survey
1 of 6

Exhibit 'H'



LEGEND	
PROPERTY ACQUIRED UNDER ADAP DEED	
AVIGATION EASEMENT	
AIP – EASEMENTS	
RECOMMENDED EASEMENTS	
AIP – DEED	
RECOMMENDED ACQUISITION	
ACQUISITION BEYOND 20-YEAR PERIOD	
EXISTING RUNWAY PROTECTION ZONE	
FUTURE RUNWAY PROTECTION ZONE	
EXISTING AIRPORT PROPERTY LINE	
FUTURE AIRPORT PROPERTY LINE	
SECTION CORNER	

AIRPORT PROPERTY ACQUISITION

AQ*	DATE	FEDERAL GRANT NO.	PARCEL NO.	GRANTOR	GRANTEE	COUNTY AUDITOR'S FEE NO.		AREA (ACRES)
AP	11/18/1977	ADAP 3-53-0034-01	H-03	CURTIS S. SNYDER	CITY OF KELSO	823311	DEED	0.302
AP	11/18/1977	ADAP 3-53-0034-01	H-01	DARELL WILSON	CITY OF KELSO	823306	DEED	0.601
AP	11/14/1977	ADAP 3-53-0034-01	H-03	MARLIN ATKINS ET UX	CITY OF KELSO	823170	DEED	0.304
AP	11/18/1977	ADAP 3-53-0034-01	H-04	WILLIAM N. BARKER	CITY OF KELSO	823308	DEED	0.702
AP	11/18/1977	ADAP 3-53-0034-01	H-02	CLIFFORD SMITH	CITY OF KELSO	823307	DEED	0.944
AP	8/29/1978	ADAP 3-53-0034-02	H-03	LUCILLE WELTZ	CITY OF KELSO	835872	DEED	0.304
AP	10/28/1971	ADAP 3-53-0034-03	H-01	PAYNE E. MORGAN	CITY OF KELSO	844164	DEED	0.601
D	1/7/1980	ADAP 3-53-0034-04	2-A	TOLLYCRAFT	CITY OF KELSO	8001107027	DEED	0.804
D	1/7/1980	ADAP 3-53-0034-04	2-B	CHARLES MCCLOUGHEY ET UX	CITY OF KELSO	8001107028	DEED	1.031
D	1/31/1980	ADAP 3-53-0024-04	2-C	WATKINS TRACTOR	CITY OF KELSO	8002101526	DEED	1.031
AP	2/18/1988	AIP 3-53-0034-02	H-24	LESLEY M. PARSELL	CITY OF KELSO	8807310004	DEED	3.304
AP	2/18/1988	AIP 3-53-0034-02	H-15	CHARLES L. WOHLER	CITY OF KELSO	8803310053	ESMT	0.302
AP	8/19/1985	AIP 3-53-0034-02	H-28	JEANETTE F. MCCONNELL	CITY OF KELSO	8803310051	ESMT	1.006
AP	8/19/1985	AIP 3-53-0034-02	H-27	TROY MOSTELLER	CITY OF KELSO	8509119001	ESMT	0.5069
AP	3/18/1988	AIP 3-53-0034-02	H-28	JOSE STRANGE	CITY OF KELSO	8809310001	ESMT	1
AP	12/27/1989	AIP 3-53-0034-02	H-29	REAGOR – DUNTEN	CITY OF KELSO	8902310052	ESMT	1
AP	2/23/1988	AIP 3-53-0034-02	H-30	WILLIAM M. BEARDY	CITY OF KELSO	8812270070	ESMT	2.5
AP	3/29/1996	AIP 3-53-0034-02	H-31	WILDRED M. DRAHAN	CITY OF KELSO	8903130046	ESMT	0.5
AP	8/19/1985	AIP 3-53-0034-02	H-32	NEIL MOSTELLER	CITY OF KELSO	8908130052	ESMT	1
AP	10/11/1985	AIP 3-53-0034-02	H-34	THOMAS L. SHELTON	CITY OF KELSO	8908130092	ESMT	2
AP	3/24/1978	AIP 3-53-0034-02	H-35	CASCADE NATURAL GAS	CITY OF KELSO	8811210160	ESMT	0.3
AP	3/22/1988	AIP 3-53-0034-02	H-36	SWANSON – HEIST	CITY OF KELSO	8801140048	ESMT	0.75
AP	3/29/1996	AIP 3-53-0034-02	H-37	THOMAS W. FOWLER	CITY OF KELSO	8903230233	ESMT	2.03
AP	3/29/1996	AIP 3-53-0034-02	H-42	JEWELL BRUNER	CITY OF KELSO	8903130034	DEED	0.5
AP	8/19/1988	AIP 3-53-0034-02	H-43	STEVEN D. WHITZ	CITY OF KELSO	8803180033	ESMT	0.5
AP	3/21/1985	AIP 3-53-0034-03	H-46	CLARENCE E. DOAN	CITY OF KELSO	8908190038	DEED	0.5
						8903210011	DEED	0.3

AIRPORT PROPERTY ACQUISITION

AQ*	DATE	FEDERAL GRANT NO.	PARCEL NO.	GRANTOR	GRANTEE	COUNTY AUDITOR'S FEE NO.		AREA (ACRES)
AP	6/22/1988	AIP 3-53-0034-02	H-48	JOANNE SMITH	CITY OF KELSO	8806220011	ESMT	0.605
AP	1/27/1986	AIP 3-53-0034-02	H-47	ALONZO E. BRUCE	CITY OF KELSO	8601270044	DEED	0.605
AP	12/29/1985	AIP 3-53-0034-02	H-48	MARTIN J. BOSH	CITY OF KELSO	8512290048	DEED	0.605
AP	5/2/1988	AIP 3-53-0034-03	H-49	ANGEL L. HALEY	CITY OF KELSO	8805270048	DEED	0.25
AP	2/28/1988	AIP 3-53-0034-03	H-50	ARTHUR B. DEHAREST	CITY OF KELSO	8802220042	DEED	0.14
AP	9/7/1982	AIP 3-53-0034-03	H-51	WILLIAM – WILSON	CITY OF KELSO	8208030038	ESMT	0.14
AP	7/24/1986	AIP 3-53-0034-03	H-52	JOHN VOSSEN	CITY OF KELSO	8607240047	ESMT	0.42
AP	7/24/1986	AIP 3-53-0034-03	H-53	DENNIS DOUGLAS	CITY OF KELSO	8607240048	ESMT	0.42
AP	12/20/1985	AIP 3-53-0034-03	H-54	WALDREP – WEED	CITY OF KELSO	8602240022	DEED	0.25
AP	12/22/1982	AIP 3-53-0034-03	H-55	SILVER EAGLE CO.	CITY OF KELSO	8312290032	DEED	0.76
AP	1/29/1983	AIP 3-53-0034-03	H-57	ROBERT HYDE (ETAL)	CITY OF KELSO	8301210028	DEED	0.784
AP	12/17/1985	AIP 3-53-0034-03	H-58	SAMUEL E. ISH	CITY OF KELSO	8512170035	DEED	0.274
AP	11/22/1983	AIP 3-53-0034-02	H-60	JAMES J. SMITH	CITY OF KELSO	8311220011	DEED	0.181
AP	8/27/1991	AIP 3-53-0034-04	H-36	LEONARD L. COOK	CITY OF KELSO	9108270045	ESMT	0.689
AP	8/27/1991	AIP 3-53-0034-04	H-38	MARGARET R. COOK	CITY OF KELSO	9108270048	ESMT	0.825
AP	10/27/1998	AIP 3-53-0034-04	H-45	WILFRED E. OSBORN	CITY OF KELSO	8810210036	DEED	0.5
D	6/3/1982	AIP 3-53-0034-06	G-80	VOLKSWAGEN INCOME CORP	CITY OF KELSO	8206030082	DEED	*
AP	12/17/1973	NO FEDERAL GRANT	23170 /23171	E.M. & ELAINE REEVES	CITY OF KELSO	734352	FEE TITLE	0.85
AP	08/27/1968	NO FEDERAL GRANT	23162 /23163 /23164	COWLITZ COUNTY	CITY OF KELSO	687521	FEE TITLE	1.05
AP	05/20/1994	NO FEDERAL GRANT	417389	JAY & ROBERTA THOMPSON	CITY OF KELSO	4413589	FEE TITLE	0.74

* AQ = ACQUISITION
AP = APPROACH PROTECTION
D = DEVELOPMENT

PORTION OF SECTIONS 1, 2, 3 & 11, TOWNSHIP 7 NORTH, RANGE 2 WEST, W.M. AND PORTION OF SECTIONS 34 & 36, TOWNSHIP 8 NORTH, RANGE 2 WEST, W.M.
COWLITZ COUNTY, WASHINGTON

INCLUDES PROPERTY PURCHASED BY:
ADAP 3-53-0034-01 AIP 3-53-0034-02
ADAP 3-53-0034-02 AIP 3-53-0024-04
ADAP 3-53-0034-03 AIP 3-53-0024-05
ADAP 3-53-0034-04

URS
1501 4th AVENUE, SUITE 1400
SEATTLE, WA 98101
PHONE: (206) 438-2700

THE PREPARATION OF THIS DOCUMENT MAY HAVE BEEN SUPPORTED, IN PART, THROUGH THE AIRPORT IMPROVEMENT PROGRAM FINANCIAL ASSISTANCE FROM THE FEDERAL AVIATION ADMINISTRATION (PROJECT NUMBER 3-53-0034-13) AS PROVIDED UNDER TITLE 49, UNITED STATES CODE, SECTION 47104. THE CONTENTS DO NOT NECESSARILY REFLECT THE OFFICIAL VIEWS OR POLICY OF THE FAA. ACCEPTANCE OF THIS REPORT BY THE FAA DOES NOT IN ANY WAY CONSTITUTE A COMMITMENT ON THE PART OF THE UNITED STATES TO PARTICIPATE IN ANY DEVELOPMENT DEPICTED THEREIN NOR DOES IT INDICATE THAT THE PROPOSED DEVELOPMENT IS ENVIRONMENTALLY ACCEPTABLE IN ACCORDANCE WITH APPROPRIATE PUBLIC LAWS.

REVISIONS				
NO.	DESCRIPTION	BY	APP.	DATE

KELSO, WASHINGTON

SOUTHWEST WASHINGTON REGIONAL AIRPORT
AIRPORT MASTER PLAN

AIRPORT PROPERTY MAP (EXHIBIT 'A')

PROJECT MANAGER	JJY	DATE	JUNE 2010
DESIGNED BY	RLO	SHEET	8 of 8
DRAWN BY	RLO		
CHECKED BY	JJY		