

8.0 PLANNING FOR COMPLIANCE

8.1 Introduction

The Town of Buena Vista (the Town) is Central Colorado Regional Airport's (AEJ or the Airport) airport sponsor and has accepted federal grants; subsequently, the Town is legally obligated to comply with the FAA's Sponsor Assurances, pertinent FAA advisory circulars, and FAA Order 5190.6B, *Airport Compliance Manual*.

As part of the airport master planning process, the FAA Northwest Mountain Region and the Denver Airport District Office (ADO) encourage airport sponsors to evaluate their compliance with FAA grant assurances and other federal obligations; the results of the evaluation are presented in this chapter. The FAA has a responsibility to ensure that sponsors are in compliance with their obligations. Airport sponsors that are not in compliance with FAA assurances or requirements may risk losing FAA grants.

8.1.1 Compliance Education Materials

In addition to the *Airport Compliance Manual*, FAA Order 5100.38D, *Airport Improvement Handbook*, also serves as a valuable guide for airport sponsors dealing with FAA grants.

8.1.2 Summary and Conclusions

This analysis concluded that:

- The Town of Buena Vista should develop and submit an Airport Concession Disadvantaged Business Enterprise Program to the FAA for review and approval, in compliance with 49 C.F.R. § 23.21.
- The Exhibit "A" Property Map and the Airport Layout Plan (ALP) should be kept up-to-date as capital projects are completed and changes are made in terms of property ownership, control, and easements.
- The Town should create a database of all airport leases, licenses, and permits; this will enable the Town to better maintain, track, and ensure consistency among the agreements.
- The Town should amend the Airport primary guiding documents to ensure consistency with each other, as well as compliance with federal aviation statutes and regulations and standard industry practices.

The Federal Aviation Administration (FAA) encourages airport sponsors to establish practices and procedures that ensure ongoing review of and compliance with pertinent regulatory requirements.

Airport sponsors are not required, but are strongly encouraged, to adopt a number of guiding documents to ensure compliance with the FAA assurances, including:

- Airport rules and regulations
- Minimum standards

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- Leases
- Airport business and marketing plan

AEJ’s list of key guiding documents is in **Table 8-1**.

The FAA requires airport sponsors to develop and keep current the following:

- Airport layout plan (ALP)
- Exhibit “A” property interest map
- Airport Capital Improvement Plan (CIP)

Preparation of this chapter included a review of existing airport documents, plans, and associated records.

TABLE 8-1 – KEY AIRPORT GUIDING DOCUMENTS

Document	Requirement / Additional Information	Date AEJ Last Updated
REQUIRED DOCUMENTS AND PLANS		
Airport Certification Manual	Each holder of an Airport Operating Certificate must maintain an Airport Certification Manual. See 14 C.F.R. Part 139, Subpart C. Additional information is available in FAA Advisory Circular 150-5210-22.	NA
Airport Concession Disadvantaged Business Enterprise (ACDBE) Program	The requirements for an ACDBE Program are set forth in 49 CFR Part 23. In general, primary commercial service airports are required to maintain an ACDBE program.	
Airport Emergency Plan	14 C.F.R. § 139.325 mandates that “each certificate holder must develop and maintain an airport emergency plan”. FAA provides additional guidance in Advisory Circular (AC) 150/5200-31C (Jun. 2009).	NA
Airport Security Program	The Airport Security Program is mandated by 49 C.F.R. Part 1542.	NA
Emergency Contingency Plan	Airport operators are required to develop and implement an Emergency Contingency Plan pursuant to 49 U.S.C. § 42301(a)(1).	
Snow and Ice Control Plan	Each certificate holder must develop and implement a snow and ice control plan. 14 C.F.R. § 139.313(a).	
Spill Prevention, Control and Countermeasures (SPCC) Plan	The requirements for a Spill Prevention, Control, and Countermeasures (SPCC) Plan are found in 40 C.F.R. Part 112.	
Storm Water Management Plan	The requirements for a Storm Water Management Plan are found in 40 C.F.R. § 122.26.	
Wildlife Hazard Management Plan	A wildlife hazard management plan may be required under 14 C.F.R. § 139.337. Additional guidance can be found in ACRP Legal Research Digest 20 (2013).	
Primary Guiding Documents (voluntary)		
Airport Minimum Standards	The FAA recommends that airport sponsors establish minimum standards for commercial aeronautical activities. See FAA Order 5190.6B, Airport Compliance Manual, at 10-1 (Sept. 2009).	February 2008

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Document	Requirement / Additional Information	Date AEJ Last Updated
Airport Rates and Charges	Pursuant to Grant Assurance 22(c) and 22(e), FBO's and air carriers must be subject to similar rates, fees, rentals, and other charges as compared to other FBO's and air carriers respectively.	
Airport Rules and Regulations	The County is authorized under state law to regulate use of the Airport. The FAA acknowledges an airport sponsor's right to adopt reasonable and not unjustly discriminatory conditions on use of an airport.	September 2010
Air Service Development Plan	Airport sponsors can develop air service marketing campaigns and have limited authority to offer incentives for new service. FAA policy is set forth in Air Carrier Incentive Guidebook: A Reference for Airport Sponsors (Sept. 2010).	NA
Design Guidelines	Some airport sponsors adopt design guidelines to establish procedural and substantive requirements for new construction.	
Leasing Policy	Some airport sponsors adopt leasing policies to establish procedural and substantive standards on leasing airport property.	
Schedule of Insurance Requirements	Some airport sponsors adopt a schedule of insurance requirements to be satisfied by various types of airport users.	
Professional Service Agreements	Additional information can be found in FAA Advisory Circular (AC) 150/5100-14 (Sept. 2005) and ACRP Report 87 (2013).	
Safety Management System	The FAA issued a Notice of Proposed Rulemaking that would require all certificated airports to develop and implement a Safety Management System. Some airport operators are developing an SMS in advance of the final rule.	
Standard Forms and Permits	Some airport sponsors develop standard forms and permits to ensure consistency and expedite negotiation of new agreements.	
Planning Documents (voluntary)		
Strategic Plan		
Financial Plan		
Business Plan		2015
Noise Exposure Map and Noise Compatibility Program	Airport sponsors can voluntarily conduct noise studies and develop land use compatibility programs under 14 C.F.R. Part 150.	

Source: Town of Buena Vista

8.2 FAA Grant Assurances

Airport sponsors that accept FAA grants, including the Town of Buena Vista, are legally obligated to comply with the FAA's sponsor assurances (see **Appendix 8-A** for the FAA Sponsor Assurances). There are 39 assurances, ten of which directly impact day-to-day airport management and operations. Those ten are highlighted in **Figure 8-1** and summarized below.

FIGURE 8-1 - FAA AIRPORT SPONSOR ASSURANCES



Source: FAA Grant Assurances, Jviation

8.2.1 Good Title – Assurance No. 4

Good Title requires that the airport sponsor provide proof of ownership for property that may be affected through consideration of projects associated with land, building, or equipment. Ownership must be complete and leave no legal question as its legitimacy. It must be demonstrated that the property will soon be acquired when the Airport does not hold affected property.

8.2.2 Preserving Rights and Powers – Assurance No. 5

Actions that may take away rights or powers from the sponsor are prohibited when they are necessary to fulfill conditions included in the grant agreements. Existing actions and activities that impede rights or powers are to be discontinued in order to preserve the authority and necessary functions of the Airport. For example, Through-the-Fence activity hinders the sponsor’s control of Airport operations. Consequentially, other Airport users may be negatively affected. Adverse effects can be present in many forms such as unequal rates and charges for on-airport or off-airport users, and other unreasonable competitive advantage for a particular party or user.

8.2.3 Consistency with Local Plans – Assurance No. 6

Airport projects must be consistent with City and County comprehensive plans, transportation plans, zoning ordinances development code, and hazard mitigation plans. The airport sponsor and planners shall consider local planning documents prior to project consideration. Such action ensures compliance with local ordinances and demonstrates an interest for the well-being of stakeholders.

A proactive approach to ensuring consistent compliance with local plans is by the Airport contributing to the development of local plans. Incorporation of the Airport and its needs may be supported through policy and goal development, as well as implementation strategies that protect the Airport within local plans and ordinances.

8.2.4 Accounting System Audit and Record Keeping – Assurance No. 13

All project accounts and records must be kept in a manner that supports a successful audit or examination at any time. Records are to include costs connected with the grant, how monies were actually spent, funds supplied by other sources, and all other financial records associated with the granted project. It is therefore pertinent that the sponsor keeps and make available books, records, documents, and papers that pertain to the project.

8.2.5 Operations and Maintenance – Assurance No. 19

All federally-funded airport facilities must operate at all times in a safe and serviceable manner. Any activities that would inhibit or interfere with this manner are to be prohibited by the Airport. The airport will promptly mark and light on-airport hazards, and promptly issue Notices to Airmen (NOTAMs) to advise of any conditions that might affect safe aeronautical use. Exceptions are temporary weather conditions that make it unreasonable to maintain the airport. Further, this assurance does not require the sponsor to repair conditions of substantial damage or destruction imposed by conditions beyond its control.

8.2.6 Compatible Land Use – Assurance No. 21

Land uses around an airport are to be planned and implemented in a way that ensures compatibility with surrounding development and activities. The sponsor is expected to ensure compatibility through appropriate action, to the extent reasonable, including the adoption of zoning laws and noise programs. Projects will not cause or permit any change in land use, within its jurisdiction, that reduces compatibility. Compatible land use surrounding airports is best accomplished by prevention to ensure the future progress of airports.

8.2.7 Exclusive Rights – Assurance No. 23

Specific experiences at an airport often complicate the assurance of Exclusive Rights. FAA states that the sponsor “will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public.” This is, however, permitted under specific circumstances. Exemption occurs when permitting a similar business is unreasonably costly, burdensome, or impractical and when not granting an exclusive right reduces leased space in an

existing agreement. Denial of a business opportunity due to safety must have clear justification that demonstrates the supposed compromise to airport safety.

Exclusive rights can be established with any business at the Airport which could assist in the operation of an aircraft at the Airport. Commonly, exclusive rights relationships occur between an airport and an FBO. Any existing unapproved exclusive rights agreements are to be dissolved before the award of future federal funding.

When there is uncertainty surrounding the denial of a business at the Airport it is encouraged to seek guidance from the FAA ADO, in AEJ's case, the Denver ADO. Preemptive communication may help clarify specific situations and protect the airport from a denial of access that could be viewed as unjust discrimination. Advisory Circular 150/5190-6, *Exclusive Rights at Federally Obligated Airports* offers detailed information concerning this Exclusive Rights assurance.

8.2.8 Fee and Rental Structure – Assurance No. 24

The Airport fee and rental structure must be implemented in a manner that makes the Airport as self-sustaining as possible. Generated revenue from Airport-related fees and rents are to support day-to-day operational needs. Regular oversight of the fee and rental structure should be done to ensure that reasonable charges are established to support this goal. Familiar fees that may be included are that of fuel flowage, tie-downs, landing, cargo, and parking and hangar charges.

8.2.9 Airport Revenue – Assurance No. 25

All revenues generated by the Airport and local taxes on aviation fuel are to be used for the operating costs of the Airport, the local airport system, or other local facilities which are owned or operated by the Airport. That which is directly impacted by actual air transportation of passengers or property and noise mitigation also applies. Use of revenues generated by Airport activities is therefore applied toward the continued operation and maintenance of the Airport. Airport revenue uses like subsidization of non-aviation activities or functions are not permitted and considered revenue diversion. Revenue diversion is a significant compliance issue and questionable practices may raise concern enough for inspection by the FAA.

8.2.10 Airport Layout Plan (ALP) – Assurance No. 29

The Airport is to at all times keep an up-to-date ALP showing current and future boundaries, facilities/structures, and the location of existing and proposed non-aviation areas and improvements. Changes may only be made to benefit the Airport and its safety, utility, efficiency, and operations. Such changes cannot be made outside conformity with the ALP and appropriate FAA authorization shown through signature. Any alterations outside of these parameters must be restored to original condition or the Airport is responsible to bear all cost associated with the change. Improvement projects not shown on an approved ALP do not qualify for federal participation.

8.3 AEJ Airport Business Plan

The AEJ Business Plan states that the Airport serves the general aviation (GA) and corporate aircraft markets. AEJ is also used by the U.S. Forest Service, U.S. Department of Natural Resources,

Colorado Division of Wildlife, Flight for Life, transient military aircraft, as well as public service and law enforcement agencies.

Another important market sector for AEJ has been high-altitude aircraft testing. The Airport has been used by a variety of military and civilian agencies to test a variety of aircraft. High-altitude aircraft testing began in 2002, and continues to be a vibrant seasonal utilization of the Airport. Testing at AEJ typically occurs June through September, and is anticipated to continue.

The Airport Business Plan needs to address airport rates and charges, and also specifically reference certain FAA sponsor assurances. The Business Plan serves as a public notice to Airport users that the Town and the Airport are abiding by and in compliance with FAA guidelines regarding airport rates and charges and agreements. In particular, FAA assurance Numbers 22, 23, and 24 state:

Number 24: “It (i.e. the airport sponsor – Town of Buena Vista) 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.”

Number 22: “It (i.e. the airport sponsor – Town of Buena Vista) will furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and 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.”

Number 22: “Each fixed-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.”

Number 23: “It (i.e. the airport sponsor – Town of Buena Vista) will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public.”

FAA allows sponsors to negotiate different rates and charges with different users and tenants on the airport, reflecting different investments made by them, as well as the varying costs of doing business on the airport. The FAA strongly encourages airport sponsors to ensure that the rates and charges that are put in place result in the airport being financially self-supporting.

8.3.1 Recommendations

Ensure that the Airport Business Plan addresses existing and future revenue sources, rates and charges, clearly show how the Airport can be as financially self-supporting as possible, and also reference specific FAA sponsor assurances. The Business Plan should also address possible future scenarios in which aviation activity and Airport revenues increase faster than anticipated, and also a scenario in which they decrease over time.

8.4 Airport Marketing Plan

AEJ's Marketing Plan focuses on efforts that may be advanced and maintained through the efforts of current staff. The Plan presents seven recommendations, which are ranked in order of priority by perceived strength in marketing:

1. Billboards
2. Website
3. Charter Service/Broker Promotion
4. Online Directories
5. Tradeshows
6. Marketing at Eagle County Airport
7. Local Outreach - "Win a Scenic Flight Tour!"

The aforementioned recommendations were implemented in 2015 and will be followed to track budget allocations and investment returns.

8.4.1 Recommendations

- Record initial progress in terms of meeting goals after a two-year cycle, followed by an annual evaluation, to gauge returns on investment. Re-rank marketing items in order of priority and present new ideas that may benefit AEJ in its changing environment.
- Assess and adjust budget resources to align and support expenses with positive returns on investment.
- Ensure the Marketing Plan takes full advantage of marketing programs offered by aviation trade organizations such as Aircraft Operators and Pilots Association (AOPA), Experimental Aircraft Association (EAA), and National Business Aviation Association (NBAA). For example, AOPA is actively promoting the formation of flying clubs in an effort to stimulate flying, as well as a program to attract pilots that are no longer current to return to the Airport, get current again, and fly. Also, EAA has long promoted their Young Eagles program. Tie-ins with national marketing programs may offset some local expenses.

8.5 Airport Minimum Standards

Airport minimum standards are not required by the FAA, although the FAA strongly recommends that sponsors adopt minimum standards. The Town adopted minimum standards for AEJ in 2008. The standards set forth the minimum requirements that must be met by Airport tenants to conduct commercial aeronautical activities at AEJ. Minimum standards also represent a commitment by the airport sponsor to ensure that all tenants and service providers abide by the standards.

Minimum standards should include reasonable standards that satisfy sponsor expectations of engagement for any person, firm, or corporation to operate at the Airport. They are to reflect specific Airport conditions and all known factors that may impact the involved parties. Businesses that conduct commercial operations and other aeronautical activities at public-use airports are therefore held to the same basic requirements through minimum standards. This practice ensures that like

operators are given the same advantage by the sponsor and that each business may operate within the careful consideration given to the development of standards. Satisfactorily meeting the standards implies that the sponsor agrees to provide an opportunity for the party to engage in aeronautical activity at the Airport.

The FAA's objectives for adopting minimum standards are to promote safety in all Airport activities, maintain a higher quality of service for Airport users, protect the public from unlicensed and unauthorized products or services, enhance the availability of adequate services for all Airport users, and promote the orderly development of airport land¹.

FAA AC 150/5190-7, *Minimum Standards for Commercial Aeronautical Activities*, states: "When developing minimum standards, the most critical consideration is the particular nature of the aeronautical activity and operating environment at the airport. Minimum standards should be tailored to the specific aeronautical activity and the airport to which they are to be applied."

In addition, the FAA AC notes: "When the airport sponsor imposes reasonable and not unjustly discriminatory minimum standards for airport operations through the use of reasonable minimum standards, the FAA generally will not find the airport sponsor in violation of the Federal obligations. Considerations for applying those standards may include, but are not limited to, the following:

1. Apply standards to all providers of aeronautical services, from full service FBOs to single service providers;
2. Impose conditions that ensure safe and efficient operation of the airport in accordance with FAA rules, regulations, and guidance;
3. Ensure standards are reasonable, not unjustly discriminatory, attainable, uniformly applied and reasonably protect the investment of providers of aeronautical services to meet minimum standards from competition not making a similar investment;
4. Ensure standards are relevant to the activity to which they apply; and
5. Ensure standards provide the opportunity for newcomers who meet the minimum standards to offer their aeronautical services within the market demand for such services.

Note: There is no requirement for inclusion of non-aeronautical activities (such as a restaurant, parking, or car rental concession) in minimum standards since those activities are not covered under the grant assurances or covenants in conveyance of Federal property."

FAA also recommends that minimum standards be updated on a regular basis to reflect current conditions on the Airport.

AEJ aligns with FAA objectives, considers recommended factors, and serves to meet the aviation needs of the Town of Buena Vista and Chaffee County by providing aerial access for aircraft in a safe and efficient manner. These commitments are designated to preserve the public interest and

¹ *Exclusive Rights and Minimum Standards for Commercial Aeronautical Activities*, FAA AC 150/5190-5. FAA, Washington, D.C., 2002. 14 pp. www.faa.gov/airports_airtraffic/airports/resources/advisory_circulars

accommodate a variety of commercial activities like aircraft maintenance, fueling, charter, flight training, sales, rental, and like entities.

AEJ's minimum standards should be flexible to accommodate changes in the Airport environs. Criteria should also reflect care via the development of reasonable, relevant, and applicable standards for each type and class of service.

8.5.1 Recommendations

It is recommended that AEJ review the 2008 Minimum Standards with the intent of refining its content to include specific and consistent criteria. The revision should be reflective of current conditions. AEJ should establish and enforce minimum standards to promote orderly development and can be included in commercial leases. It is not advised that AEJ adopt standards to accommodate a single operator or as a generic framework for agreements.

8.6 Airport Rules and Regulations

AEJ maintains rules and regulations to ensure its efficient operation, and to safeguard life and property from dangerous conditions¹. These Airport Rules and Regulations apply to all Airport employees, local staff, and organizations working at, conducting business at, leasing property from, or accessing AEJ. All persons must satisfy these provisions on the Airport in the interest of protecting health, safety, and welfare.

FAA does not require airport sponsors to adopt Airport Rules and Regulations, although it strongly supports them. Airport Rules and Regulations must be fully consistent with federal aviation regulations, FAA sponsor assurances, as well as with state and local laws and ordinances, as they may be amended. Federal and state laws preempt Airport Rules and Regulations if there is a discrepancy. As a result, when federal and state laws are amended, Airport Rules and Regulations should be reviewed and amended as needed to ensure consistency.

8.6.1 Recommendations

Airport Rules and Regulations serve an important role at AEJ. It is recommended that they be occasionally updated, particularly as pertinent federal and state laws are amended. It is recommended

FAA Recommended Factors for Establishing Minimum Standards

FAA AC 150/5190-5 suggests that the following factors be considered when establishing minimum standards.

- What type of airport is at issue? Is it a large airport or a small rural airport? Will that airport provide service to only small general aviation aircraft or will it serve air taxi operators as well?
- What types of aeronautical activities will be conducted on the airport? Is there a demand for the business?
- How much space will be required for each type of aeronautical activity that may prospectively operate at the airport?
- What type of documentation will business applicants be required to present as evidence of financial stability and good credit?
- To what extent will each different type of aeronautical activity be required to demonstrate to the sponsor compliance with sanitation, health, and safety codes?
- What requirements will be imposed regarding minimum insurance coverage and indemnity provisions?
- Is each minimum standard relevant to the aeronautical activity for which it was designed to apply? For example, the minimum space required for a repair station might not be relevant to an air taxi operation. Avoid unreasonable standards by selecting elements that accurately reflect the nature of the aeronautical activity in question.

¹ Town of Buena Vista, Colorado Ordinance No. 17 (Series of 2010). Article V Airport Rules and Regulations Sec. 8-93.

that editorial and organization changes be made in the subsequent revision of the Airport Rules and Regulations. Suggested areas of emphasis to strengthen this guiding document are included in **Table 8-2**.

TABLE 8-2 - RECOMMENDED CHANGES TO AEJ'S AIRPORT RULES AND REGULATIONS

Recommended Change	Benefit
Table of Contents	Ease user experience by making AEJ's Airport Rules and Regulations more accessible.
Ensure lease and rental clauses effectively meet FAA grant assurances	Support grant assurances by safeguarding against economic nondiscrimination, and protecting the Airport and its tenants as Airport conditions evolve.
Environmental Standards Section	Define expectations surrounding AEJ and its impact on in the local environment.
Security Requirements Section	Cover existing and future compliance developments relating to Airport security.
Enforcement Section	Refine existing Violations of Airport Rules and Regulations; penalty section to clearly state compliance responsibilities, Notice of Violation, and procedures.

Source: AEJ staff and Jviation

8.7 Regional Setting and Land Use

The Federal Aviation Act of 1958 preempts local regulations in the area of aircraft operations and control of navigable airspace. The preemption does not affect the responsibility of local governments to exercise their powers over land uses that abate, mitigate, and respond to incompatible land uses surrounding an airport.

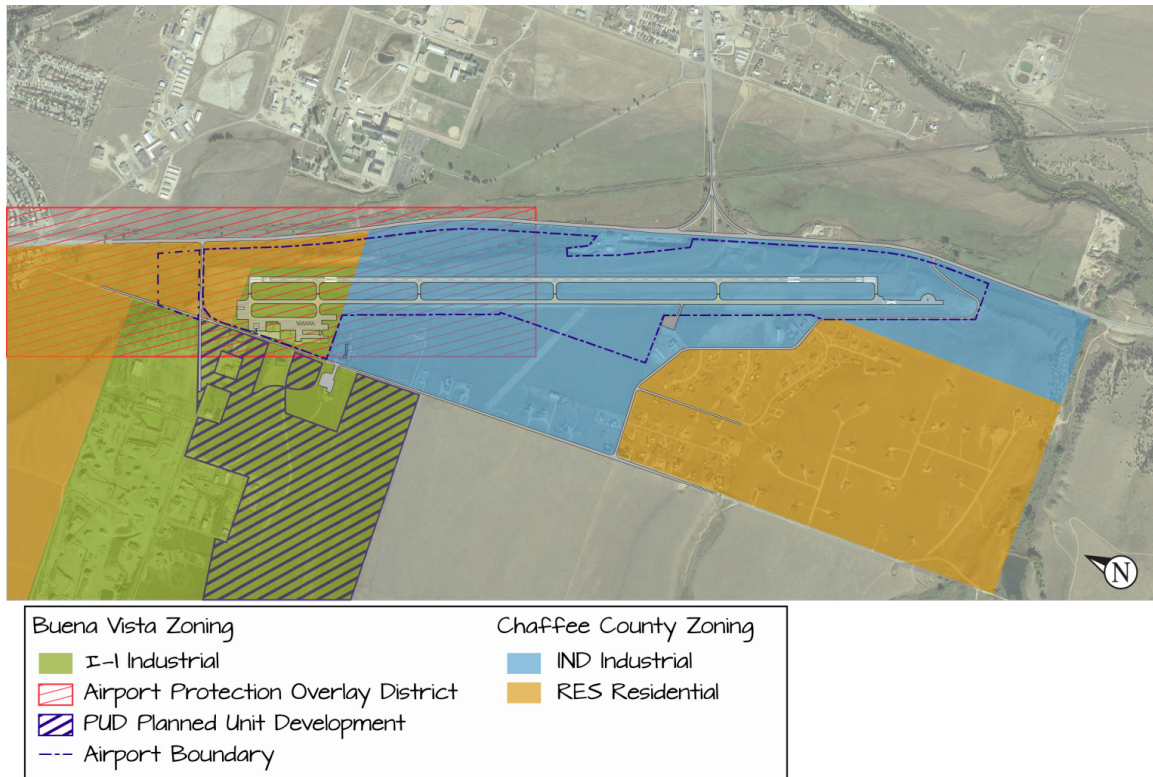
It is in the mutual interest of the FAA, Airport users, the Town of Buena Vista, and Chaffee County, to ensure that the land uses on and in the vicinity of the Airport are fully compatible with aircraft and Airport operations. In general, land uses around AEJ are compatible with the Airport in relation to noise exposure levels. Although there are noise sensitive residential land uses near the Airport, as noted below, the aircraft noise contours do not extend off Airport property.

AEJ is zoned industrial by the Town of Buena Vista and Chaffee County (**Figure 8-3**). The Town controls the portion of the Airport that includes the buildings and hangars, while the County controls the remaining areas. Land use decisions by the Town and County serve to protect the valuable resource of land, and promote on- and off-airport compatibility in order for the affected economy sectors to continue to expand, provide job opportunities, and meet the needs of the public¹.

¹ Land Use Compatibility and Airports, Federal Aviation Administration, 2015

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FIGURE 8-2 - ZONING



Note: Not to scale

Sources: Town of Buena Vista and Chaffee County

The portion of the Airport controlled by the Town is zoned as Industrial (I-1). The principal use of land zoned as I-1 is:

“for the fabrication, assembly and manufacture of goods and materials in conjunction with related retail and wholesale activities. It is the intention of these regulations to encourage the development and orderly expansion of the district with such uses and in such a manner as to avoid dangerous, noxious or unsightly land uses.”¹

The portion of the Airport controlled by Chaffee County is zoned as Industrial (IND). The intent of IND is:

“areas for industrial businesses in locations where conflicts with residential, commercial and other land uses can be minimized. It is the intent of this district to allow uses that are complementary to industrial uses. This land use district is intended to promote the development of local employment centers as well as to provide a location for uses that may be considered undesirable in other areas, such as concrete and asphalt plants, heavy equipment storage, and intensive manufacturing

¹ Colorado Code Publishing Company, Buena Vista Municipal Code, Section 16-160, 1992

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processes. These land uses should have easy access to the state highways or other transportation modes.”¹

An airport protection overlay (APO) district is included in the municipal codes of the Town of Buena Vista and Chaffee County as an additional protective layer to zoning designations. The intent of the APO District adopted by the Town is:

- The APO District is a supplemental district that may overlay any standard zoning district. Any use by right or conditional use permitted in the underlying district is also permitted in an APO District so long as that use meets the special conditions required in an APO District.
- The APO District is established to minimize exposure of residential and other sensitive land uses to aircraft noise areas, to avoid danger from aircraft accidents, to reduce the possibility of such accidents, to discourage traffic congestion within the area of the district and to restrict non-compatible land uses in proximity to and within airport influence areas.
- The APO District shall be applied in the vicinity of all general aviation airports which would be significantly affected by air traffic, noise or any hazard related to the establishment, operation or maintenance of an airport.
- The degree of protection provided by this overlay district is considered reasonable and prudent for land use regulatory purposes and is based on established parameters of control. Establishment of this district, however, does not imply that areas outside of the district will be totally free from airport and aircraft related hazards, or that all hazards within the APO District will be completely mitigated. Establishment of this district shall not create a liability on the part of or create or cause action against the Town or any officer, employee or contractor thereof for any damages that may result directly or indirectly from reliance on the provisions contained herein.²

Intent of the Airport Protection Overlay District (APO) adopted by the County is:

- To support and encourage the continued operation and vitality of public use airports and heliports.
- To reduce potential safety hazards for persons living, working or recreating near public use airports and heliports.
- To minimize environmental impacts resulting from the operation of public use airports and heliports.³

To assess land compatibility, KB Environmental developed airport-related noise contours by using the FAA-approved computer simulation model, the Aviation Environmental Design Tool (AEDT), Version 2b. The AEDT produces Day-Night Average Sound Level (DNL) contours (i.e., lines of equal noise exposure).

¹ Chaffee County Commissioners, Chaffee County Land Use Code, Section 2.2.7, 2014




² Colorado Code Publishing Company, Buena Vista Municipal Code, Section 16-168, 1992

³ Chaffee County Commissioners, Chaffee County Land Use Code, Section 2.6.3, 2014

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A DNL is a 24-hour (average day), time-weighted sound level that is expressed in A-weighted decibels. A-weighted decibels express how loud a sound is to the human ear. The FAA, and other federal agencies including Housing & Urban Development (HUD), among others, use DNL as the primary means of determining land compatibility because the DNL noise contour correlates well with attitudinal surveys regarding noise; the noise contour increases with the duration of noise events; and, the noise contours account for an increased sensitivity to noise at night by increasing each noise event that occurs during nighttime hours (10 pm to 7 am) by a factor of 10. The FAA and other federal agencies define compatible land use in relation to the 65 DNL contour. Certain land uses within the 65 DNL and higher noise contours, such as residential, institutional, outdoor recreational, etc. are not considered to be compatible with aircraft operations (see **Figure 8-3**).

FIGURE 8-3 – LAND USE NOISE SENSITIVITY MATRIX

		55-65 DNL	65-75 DNL	75+ DNL
 Residential	1-2 Family	Yellow	Red	Red
	Multi-Family	Yellow	Red	Red
	Mobile Homes	Yellow	Red	Red
	Dorms, etc.	Yellow	Red	Red
 Institutional	Churches	Yellow	Red	Red
	Schools	Yellow	Red	Red
	Hospitals	Yellow	Red	Red
	Nursing Homes	Yellow	Red	Red
	Libraries	Yellow	Red	Red
 Recreational	Sports/Play	Yellow	Yellow	Red
	Arts/Instructional	Yellow	Red	Red
	Camping	Yellow	Yellow	Red
Commercial	All Uses	Yellow	Yellow	Yellow
Industrial	All Uses	Yellow	Yellow	Yellow
Agricultural	All Uses	Yellow	Yellow	Yellow

PER FAR PART 150	COMPATIBLE	Yellow
	INCOMPATIBLE	Red

Source: FAA Land Use Compatibility at Airports

https://www.faa.gov/about/office_org/headquarters_offices/apl/noise_emissions/planning_toolkit/media/III.B.pdf

The AEDT model was run to assess the noise impacts of aircraft operations at AEJ in 2015, as well as aircraft operations projected in 2035. The results of the computer model show that the 65 DNL noise contour, based on aircraft operations in 2015, do not extend off of the Runway. Based on aircraft operations projected for 2035, the 65 DNL noise contour does not extend off Airport

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property (Figure 8-4). As a result, the residential land uses in the vicinity of AEJ are considered to be compatible within FAA guidelines.

FIGURE 8-4 - DNL NOISE CONTOUR 2035



Source: KB Environmental Services

NOTE: Given the minimal size of the 70 and 75 DNL contours, they are not shown graphically on the figure.

8.7.1 Recommendations

It is recommended that the Town and County ensure that noise-sensitive land uses are not allowed to develop adjacent to or any closer to AEJ than presently exist. In addition, communication and cooperation between the Airport users and the community should remain the focus of local efforts to

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establish common compatible land use goals. Such goals should align with the necessary development of compatible land use, airport planning, and governing jurisdictions of adjacent land.

Establishment of realistic future Airport development needs are supported in the Airport Master Plan through documentation and analyses that speak to the reasonableness of future Airport development. Communicating AEJ's established needs and surrounding potential high risk areas should involve City and County planning efforts. Increased knowledge of future Airport development plans allows for concerns from adjacent jurisdictions and the public to set mutually beneficial goals in the best interest of the Town, County, and Airport users.

APPENDIX 8-A
FAA SPONSOR ASSURANCES



FAA
Airports

ASSURANCES

Airport Sponsors

A. General.

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

B. Duration and Applicability.

1. Airport development or Noise Compatibility Program Projects Undertaken by a Public Agency Sponsor.

The terms, conditions and assurances of this grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport. There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with federal funds. Furthermore, the duration of the Civil Rights assurance shall be specified in the assurances.

2. Airport Development or Noise Compatibility Projects Undertaken by a Private Sponsor.

The preceding paragraph 1 also applies to a private sponsor except that the useful life of project items installed within a facility or the useful life of the facilities developed or equipment acquired under an airport development or noise compatibility program project shall be no less than ten (10) years from the date of acceptance of Federal aid for the project.

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3. Airport Planning Undertaken by a Sponsor.

Unless otherwise specified in this grant agreement, only Assurances 1, 2, 3, 5, 6, 13, 18, 25, 30, 32, 33, and 34 in Section C apply to planning projects. The terms, conditions, and assurances of this grant agreement shall remain in full force and effect during the life of the project; there shall be no limit on the duration of the assurances regarding Airport Revenue so long as the airport is used as an airport.

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.
- 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. 90-148, as amended.
- j. Coastal Zone Management Act, P.L. 93-205, as amended.
- k. Flood Disaster Protection Act of 1973 - Section 102(a) - 42 U.S.C. 4012a.¹
- l. Title 49, U.S.C., Section 303, (formerly known as Section 4(f))
- m. Rehabilitation Act of 1973 - 29 U.S.C. 794.
- n. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- o. Americans with Disabilities Act of 1990, as amended, (42 U.S.C. § 12101 et seq.), prohibits discrimination on the basis of disability).
- p. Age Discrimination Act of 1975 - 42 U.S.C. 6101, et seq.
- q. American Indian Religious Freedom Act, P.L. 95-341, as amended.
- r. Architectural Barriers Act of 1968 -42 U.S.C. 4151, et seq.¹
- s. Power plant and Industrial Fuel Use Act of 1978 - Section 403- 2 U.S.C. 8373.¹
- t. Contract Work Hours and Safety Standards Act - 40 U.S.C. 327, et seq.¹
- u. Copeland Anti-kickback Act - 18 U.S.C. 874.1
- v. National Environmental Policy Act of 1969 - 42 U.S.C. 4321, et seq.¹
- w. Wild and Scenic Rivers Act, P.L. 90-542, as amended.
- x. Single Audit Act of 1984 - 31 U.S.C. 7501, et seq.²
- y. Drug-Free Workplace Act of 1988 - 41 U.S.C. 702 through 706.

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- z. The Federal Funding Accountability and Transparency Act of 2006, as amended (Pub. L. 109-282, as amended by section 6202 of Pub. L. 110-252).

Executive Orders

- a. Executive Order 11246 - Equal Employment Opportunity¹
- b. Executive Order 11990 - Protection of Wetlands
- c. Executive Order 11998 – Flood Plain Management
- d. Executive Order 12372 - Intergovernmental Review of Federal Programs
- e. Executive Order 12699 - Seismic Safety of Federal and Federally Assisted New Building Construction¹
- f. Executive Order 12898 - Environmental Justice

Federal Regulations

- a. 2 CFR Part 180 - OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement).
- b. 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. [OMB Circular A-87 Cost Principles Applicable to Grants and Contracts with State and Local Governments, and OMB Circular A-133 - Audits of States, Local Governments, and Non-Profit Organizations].^{4,5,6}
- c. 2 CFR Part 1200 – Nonprocurement Suspension and Debarment
- d. 14 CFR Part 13 - Investigative and Enforcement Procedures 14 CFR Part 16 - Rules of Practice For Federally Assisted Airport Enforcement Proceedings.
- e. 14 CFR Part 150 - Airport noise compatibility planning.
- f. 28 CFR Part 35- Discrimination on the Basis of Disability in State and Local Government Services.
- g. 28 CFR § 50.3 - U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964.
- h. 29 CFR Part 1 - Procedures for predetermination of wage rates.¹
- i. 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.¹
- j. 29 CFR Part 5 - Labor standards provisions applicable to contracts covering federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act).¹
- k. 41 CFR Part 60 - Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements).¹
- l. 49 CFR Part 18 - Uniform administrative requirements for grants and cooperative agreements to state and local governments.³
- m. 49 CFR Part 20 - New restrictions on lobbying.
- n. 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.
- o. 49 CFR Part 23 - Participation by Disadvantage Business Enterprise in Airport Concessions.

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- p. 49 CFR Part 24 – Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs.^{1 2}
- q. 49 CFR Part 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Programs.
- r. 49 CFR Part 27 – Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.¹
- s. 49 CFR Part 28 – Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities conducted by the Department of Transportation.
- t. 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.
- u. 49 CFR Part 32 – Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)
- v. 49 CFR Part 37 – Transportation Services for Individuals with Disabilities (ADA).
- w. 49 CFR Part 41 - Seismic safety of Federal and federally assisted or regulated new building construction.

Specific Assurances

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

Footnotes to Assurance C.1.

¹ These laws do not apply to airport planning sponsors.

² These laws do not apply to private sponsors.

³ 49 CFR Part 18 and 2 CFR Part 200 contain requirements for State and Local Governments receiving Federal assistance. Any requirement levied upon State and Local Governments by this regulation and circular shall also be applicable to private sponsors receiving Federal assistance under Title 49, United States Code.

⁴ On December 26, 2013 at 78 FR 78590, the Office of Management and Budget (OMB) issued the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR Part 200. 2 CFR Part 200 replaces and combines the former Uniform Administrative Requirements for Grants (OMB Circular A-102 and Circular A-110 or 2 CFR Part 215 or Circular) as well as the Cost Principles (Circulars A-21 or 2 CFR part 220; Circular A-87 or 2 CFR part 225; and A-122, 2 CFR part 230). Additionally it replaces Circular A-133 guidance on the Single Annual Audit. In accordance with 2 CFR section 200.110, the standards set forth in Part 200 which affect administration of Federal awards issued by Federal agencies become effective once implemented by Federal agencies or when any future amendment to this Part becomes final. Federal agencies, including the Department of Transportation, must implement the policies and procedures applicable to Federal awards by promulgating a regulation to be effective by December 26, 2014 unless different provisions are required by statute or approved by OMB.

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⁵ Cost principles established in 2 CFR part 200 subpart E must be used as guidelines for determining the eligibility of specific types of expenses.

⁶ Audit requirements established in 2 CFR part 200 subpart F are the guidelines for audits.

2. Responsibility and Authority of the Sponsor.

a. Public Agency Sponsor:

It has legal authority to apply for this grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

b. Private Sponsor:

It has legal authority to apply for this grant and to finance and carry out the proposed project and comply with all terms, conditions, and assurances of this grant agreement. It shall designate an official representative and shall in writing direct and authorize that person to file this application, including all understandings and assurances contained therein; to act in connection with this application; and to provide such additional information as may be required.

3. Sponsor Fund Availability.

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

4. Good Title.

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

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

5. Preserving Rights and Powers.

a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.

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- b. It will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in this grant agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under Title 49, United States Code, to assume the obligations of this grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this grant agreement.
- c. For all noise compatibility program projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise compatibility program project. That agreement and changes thereto must be satisfactory to the Secretary. It will take steps to enforce this agreement against the local government if there is substantial non-compliance with the terms of the agreement.
- d. For noise compatibility program projects to be carried out on privately owned property, it will enter into an agreement with the owner of that property which includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial non-compliance with the terms of the agreement.
- e. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.
- f. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to insure that the airport will be operated and maintained in accordance Title 49, United States Code, the regulations and the terms, conditions and assurances in this grant agreement and shall insure that such arrangement also requires compliance therewith.
- g. Sponsors of commercial service airports will not permit or enter into any arrangement that results in permission for the owner or tenant of a property used as a residence, or zoned for residential use, to taxi an aircraft between that property and any location on airport. Sponsors of general aviation airports entering into any arrangement that results in permission for the owner of residential real property adjacent to or near the airport must comply with the requirements of Sec. 136 of Public Law 112-95 and the sponsor assurances.

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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. Metropolitan Planning Organization.

In projects involving the location of an airport, an airport runway, or a major runway extension at a medium or large hub airport, the sponsor has made available to and has provided upon request to the metropolitan planning organization in the area in which the airport is located, if any, a copy of the proposed amendment to the airport layout plan to depict the project and a copy of any airport master plan in which the project is described or depicted.

11. Pavement Preventive Maintenance.

With respect to a project approved after January 1, 1995, for the replacement or reconstruction of pavement at the airport, it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed or repaired with Federal financial assistance at the airport. It will provide such reports on pavement condition and pavement management programs as the Secretary determines may be useful.

12. Terminal Development Prerequisites.

For projects which include terminal development at a public use airport, as defined in Title 49, it has, on the date of submittal of the project grant application, all the safety equipment required for certification of such airport under section 44706 of Title 49, United States Code, and all the security equipment required by rule or regulation, and

has provided for access to the passenger enplaning and deplaning area of such airport to passengers enplaning and deplaning from aircraft other than air carrier aircraft.

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

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

14. Minimum Wage Rates.

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

15. Veteran's Preference.

It shall include in all contracts for work on any project funded under this grant agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Vietnam era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns owned and controlled by disabled veterans as defined in Section 47112 of Title 49, United States Code. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

16. Conformity to Plans and Specifications.

It will execute the project subject to plans, specifications, and schedules approved by the Secretary. Such plans, specifications, and schedules shall be submitted to the Secretary prior to commencement of site preparation, construction, or other performance under this grant agreement, and, upon approval of the Secretary, shall be incorporated into this grant agreement. Any modification to the approved plans,

specifications, and schedules shall also be subject to approval of the Secretary, and incorporated into this grant agreement.

17. Construction Inspection and Approval.

It will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms to the plans, specifications, and schedules approved by the Secretary for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the Secretary and such work shall be in accordance with regulations and procedures prescribed by the Secretary. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary.

18. Planning Projects.

In carrying out planning projects:

- a. It will execute the project in accordance with the approved program narrative contained in the project application or with the modifications similarly approved.
- b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.
- c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.
- d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.
- e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.
- f. It will grant the Secretary the right to disapprove the sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.
- g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.
- h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.

19. Operation and Maintenance.

- a. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal,

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state and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Secretary. In furtherance of this assurance, the sponsor will have in effect arrangements for-

- 1) Operating the airport's aeronautical facilities whenever required;
 - 2) Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and
 - 3) Promptly notifying airmen of any condition affecting aeronautical use of the airport. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.
- b. It will suitably operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended.

20. Hazard Removal and Mitigation.

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

21. Compatible Land Use.

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

22. Economic Nondiscrimination.

- a. It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.
- b. In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or

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to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to-

- 1) furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and
 - 2) charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.
- c. Each fixed-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.
 - d. Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.
 - e. Each air carrier using such airport (whether as a tenant, non-tenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities, subject to reasonable classifications such as tenants or non-tenants and signatory carriers and non-signatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status.
 - f. It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees [including, but not limited to maintenance, repair, and fueling] that it may choose to perform.
 - g. In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.
 - h. The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.
 - i. The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

23. Exclusive Rights.

It will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the providing of the services at an airport by a single fixed-based operator shall not be construed as an exclusive right if both of the following apply:

- a. It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and
- b. If allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport. It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49, United States Code.

24. Fee and Rental Structure.

It will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. No part of the Federal share of an airport development, airport planning or noise compatibility project for which a grant is made under Title 49, United States Code, the Airport and Airway Improvement Act of 1982, the Federal Airport Act or the Airport and Airway Development Act of 1970 shall be included in the rate basis in establishing fees, rates, and charges for users of that airport.

25. Airport Revenues.

- a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. The following exceptions apply to this paragraph:
 - 1) If covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or

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operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.

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

26. Reports and Inspections.

It will:

- a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;
- b. for airport development projects, make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use agreements, regulations and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request;
- c. for noise compatibility program projects, make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of this grant agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request; and

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- d. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:
 - 1) all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and
 - 2) all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

27. Use by Government Aircraft.

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

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

28. Land for Federal Facilities.

It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein, or rights in buildings of the sponsor as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

29. Airport Layout Plan.

- a. It will keep up to date at all times an airport layout plan of the airport showing
 - 1) boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto;
 - 2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and

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roads), including all proposed extensions and reductions of existing airport facilities;

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

30. Civil Rights.

It will promptly take any measures necessary to ensure that no person in the United States shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any activity conducted with, or benefiting from, funds received from this grant.

- a. Using the definitions of activity, facility and program as found and defined in §§ 21.23 (b) and 21.23 (e) of 49 CFR § 21, the sponsor will facilitate all programs, operate all facilities, or conduct all programs in compliance with all non-discrimination requirements imposed by, or pursuant to these assurances.
- b. Applicability
 - 1) Programs and Activities. If the sponsor has received a grant (or other federal assistance) for any of the sponsor's program or activities, these requirements extend to all of the sponsor's programs and activities.
 - 2) Facilities. Where it receives a grant or other federal financial assistance to construct, expand, renovate, remodel, alter or acquire a facility, or part of a facility, the assurance extends to the entire facility and facilities operated in connection therewith.

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- 3) Real Property. Where the sponsor receives a grant or other Federal financial assistance in the form of, or for the acquisition of real property or an interest in real property, the assurance will extend to rights to space on, over, or under such property.

c. Duration.

The sponsor agrees that it is obligated to this assurance for the period during which Federal financial assistance is extended to the program, except where the 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:

- 1) So long as the airport is used as an airport, or for another purpose involving the provision of similar services or benefits; or
- 2) So long as the sponsor retains ownership or possession of the property.

d. Required Solicitation Language. It will include the following notification in all solicitations for bids, Requests For Proposals for work, or material under this grant agreement and in all proposals for agreements, including airport concessions, regardless of funding source:

“The **(Name of Sponsor)**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises and airport concession disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.”

e. Required Contract Provisions.

- 1) It will insert the non-discrimination contract clauses requiring compliance with the acts and regulations relative to non-discrimination in Federally-assisted programs of the DOT, and incorporating the acts and regulations into the contracts by reference in every contract or agreement subject to the non-discrimination in Federally-assisted programs of the DOT acts and regulations.
- 2) It will include a list of the pertinent non-discrimination authorities in every contract that is subject to the non-discrimination acts and regulations.
- 3) It will insert non-discrimination contract clauses as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a sponsor.
- 4) It will insert non-discrimination contract clauses prohibiting discrimination on the basis of race, color, national origin, creed, sex, age, or handicap as a

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covenant running with the land, in any future deeds, leases, license, permits, or similar instruments entered into by the sponsor with other parties:

- a) For the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
 - b) For the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
- f. It will provide for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the acts, the regulations, and this assurance.
- g. It agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the acts, the regulations, and this assurance.

31. Disposal of Land.

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

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eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order: (1) reinvestment in an approved noise compatibility project, (2) reinvestment in an approved project that is eligible for grant funding under Section 47117(e) of title 49 United States Code, (3) reinvestment in an approved airport development project that is eligible for grant funding under Sections 47114, 47115, or 47117 of title 49 United States Code, (4) transferred to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport, and (5) paid to the Secretary for deposit in the Airport and Airway Trust Fund.

- c. Land shall be considered to be needed for airport purposes under this assurance if (1) it may be needed for aeronautical purposes (including runway protection zones) or serve as noise buffer land, and (2) the revenue from interim uses of such land contributes to the financial self-sufficiency of the airport. Further, land purchased with a grant received by an airport operator or owner before December 31, 1987, will be considered to be needed for airport purposes if the Secretary or Federal agency making such grant before December 31, 1987, was notified by the operator or owner of the uses of such land, did not object to such use, and the land continues to be used for that purpose, such use having commenced no later than December 15, 1989.
- d. Disposition of such land under (a) (b) or (c) will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with operation of the airport.

32. Engineering and Design Services.

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

33. Foreign Market Restrictions.

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

34. Policies, Standards, and Specifications.

It will carry out the project in accordance with policies, standards, and specifications approved by the Secretary including but not limited to the advisory circulars listed in the Current FAA Advisory Circulars for AIP projects, dated _____ (the latest approved version as of this grant offer) and included in this grant, and in accordance

with applicable state policies, standards, and specifications approved by the Secretary.

35. Relocation and Real Property Acquisition.

- a. 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.
- b. 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.
- c. It will make available within a reasonable period of time prior to displacement, comparable replacement dwellings to displaced persons in accordance with Subpart E of 49 CFR Part 24.

36. Access By Intercity Buses.

The airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport; however, it has no obligation to fund special facilities for intercity buses or for other modes of transportation.

37. Disadvantaged Business Enterprises.

The sponsor shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any DOT-assisted contract covered by 49 CFR Part 26, or in the award and performance of any concession activity contract covered by 49 CFR Part 23. In addition, the sponsor shall not discriminate on the basis of race, color, national origin or sex in the administration of its DBE and ACDBE programs or the requirements of 49 CFR Parts 23 and 26. The sponsor shall take all necessary and reasonable steps under 49 CFR Parts 23 and 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts, and/or concession contracts. The sponsor's DBE and ACDBE programs, as required by 49 CFR Parts 26 and 23, and as approved by DOT, are incorporated by reference in this agreement. Implementation of these programs is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the sponsor of its failure to carry out its approved program, the Department may impose sanctions as provided for under Parts 26 and 23 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 1936 (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.

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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.