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APR 24 2008

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MEMORANDUM **Public Works Department - Airport - Memo No. AP08-070**

DATE: APRIL 24, 2008

TO: MAYOR AND COUNCIL

THRU: W. MARK PENTZ, CITY MANAGER
R.J. ZEDER, PUBLIC WORKS DIRECTOR
DANIEL W. COOK, DEPUTY PUBLIC WORKS DIRECTOR

FROM: GREG CHENOWETH, AIRPORT MANAGER

SUBJECT: RESOLUTION NO. 4173 AUTHORIZING THE CITY TO ENTER INTO A GRANT AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION (ADOT) ACCEPTING GRANT NUMBER E8F1C IN THE AMOUNT OF $71,298 AS THE STATE'S MATCHING SHARE TO CONSTRUCT PHASE 1 OF THE NORTH APRON PROJECT

RECOMMENDATION: Staff recommends the Council pass and adopt Resolution No. 4173 authorizing the City to enter into a grant agreement with the Arizona Department of Transportation (ADOT) accepting grant number E8F1C in the amount of $71,298 as the state's matching share to construct Phase 1 of the North Apron Project.

BACKGROUND/DISCUSSION: The City received notification of a state grant offer (ADOT Grant Number E8F1C) in the amount of $71,298 to assist in funding to construct Phase 1 of the North Apron Project which is just finishing construction. This grant was anticipated with the approval of a Federal Aviation Administration (FAA) grant presented to City Council earlier this fiscal year. That federal grant amount was based upon construction bids already received by the City. To retain that construction bid price, the construction began in November 2007 before this ADOT grant was received. It was known at the time the State's matching share to the federal grant would follow after construction was already begun. This ADOT grant represents the State's local matching share to for that project.

FINANCIAL IMPLICATIONS: The grant represents the state share of 2.5% of the total project value of the Phase 1 North Apron Project. The remaining balance of $2,780,542 is in the form of the FAA grant (95%) and local funds (2.5%) through prior voter approved airport bonds.

ADVISORY COMMITTEE VOTE: At the April 9, 2008 regular meeting, the Airport Commission voted 7 to 0 recommending acceptance of ADOT Grant agreement No. E8F1C.

PROPOSED MOTION: Move to pass and adopt Resolution No. 4173 authorizing the City to enter into a grant agreement with the Arizona Department of Transportation (ADOT) accepting grant number E8F1C in the amount of $71,298 as the state's matching share to construct Phase 1 of the North Apron Project.

Attachments: Resolution No 4173
ADOT Grant Agreement No. E8F1C

RESOLUTION NO. 4173

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, AUTHORIZING THE CITY TO ENTER INTO A GRANT AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION AERONAUTICS DIVISION (ADOT) ACCEPTING GRANT NUMBER E8F1C FOR FUNDING TO CONSTRUCT AN APRON PROJECT

WHEREAS, ADOT has programmed state funds for use by municipal airports provided that any municipality receiving such funds provides matching funds; and

WHEREAS, the City of Chandler plans to pursue an Apron Project at the Chandler Municipal Airport with a total estimated cost of Two Million Eight Hundred Fifty-One Thousand Eight Hundred Forty and 00/100 Dollars ($2,851,840.00); and

WHEREAS, the City has secured federal grant funds in the amount of Two Million Seven Hundred Nine Thousand Two Hundred Forty-Four and 00/100 Dollars ($2,709,244.00) for the Apron Project; and

WHEREAS, ADOT has made Seventy-One Thousand Two Hundred Ninety-Eight and 00/100 Dollars ($71,298.00) available to the City of Chandler for the Apron Project from its programmed state funds as identified in Grant Number E8F1C; and

WHEREAS, the City of Chandler has Seventy-One Thousand Two Hundred Ninety Eight and 00/100 Dollars ($71,298.00) in matching funds available and budgeted for the Apron Project; and

WHEREAS, the City of Chandler must execute a standard ADOT Reimbursable Grant Agreement to receive funding pursuant to Grant Number E8F1C; and

WHEREAS, Airport staff has review the provisions of the Grant Agreement and has determined that it can comply with all terms thereof.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Chandler, Arizona, authorizing the Mayor of the City of Chandler to execute a Grant Agreement in the form attached hereto for the purpose of accepting funding for the Apron Project made available by ADOT pursuant to Grant Number E8F1C.

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona this _____ day of _____, 2008.

ATTEST:

_____ _____

CITY CLERK MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Resolution No. 4173was duly passed and adopted by the City Council of the City of Chandler, Arizona, at the regular meeting held on the _____ day of _____, 2008, and that a quorum was present thereat.

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

Grant Number E8F1C
City of Chandler
Chandler Municipal Airport

Arizona Department of Transportation
Aeronautics Division

AIRPORT DEVELOPMENT REIMBURSABLE GRANT AGREEMENT

Design/Construction

Part I

This Agreement is entered into this _____ day of _____, 20____, by and between the State of Arizona acting by and through the Arizona Department of Transportation, Aeronautics Division, herein referred to as the "State" and the City of Chandler, a political subdivision of the State of Arizona, herein referred to as the "Sponsor" for a grant of State funds for the purpose of aiding in financing a Project of design/construction, hereinafter called the "Project", for the improvement of the Chandler Municipal Airport, hereinafter called the "Airport".

WITNESSETH

Recitals:

1) The Sponsor desires, in accordance with the authority granted by Arizona Revised Statutes (A.R.S.) Section 28-8413, funds from the State for the purpose of airport planning and/or development.

2) The Arizona State Transportation Board and the Director of the Arizona Department of Transportation, in accordance with the authority granted by A.R.S. Sections 28-304, 28-363, and 28-401 and Title 28, Chapter 25, A.R.S., have authorized reimbursement to the Sponsor of funds expended for airport planning and/or development.

Now, therefore, in consideration of the foregoing recitals and of the covenants and agreements made by the parties herein to be kept and performed, the parties agree as follows:

Sponsor's Responsibility

1) The Sponsor shall accept this Agreement within 4 months of the State Transportation Board Approval. This Grant offer, if not accepted by the Sponsor, shall expire at the end of the 4-month period.

2) The Sponsor shall commence the Project within one year of the State Transportation Board Approval. This Project will consist of the airport improvements as described in Exhibit A. The Sponsor shall proceed with due diligence and complete the Project in accordance with the provisions of this Agreement. The Sponsor shall provide and maintain competent supervision to complete the Project in conformance with the plans, specifications and work completion schedule incorporated as part of this Agreement.

3) The Sponsor represents that its governing body has formally authorized the acceptance of this Agreement. This Agreement shall be signed by an official with the authority to bind the Sponsor contractually and shall be approved as to form by the Sponsor's attorney, who shall certify that the Sponsor's acceptance constitutes a legal and binding obligation of the Sponsor and is within the Sponsor's powers and authority as granted by law.

4) The Sponsor shall submit completed Project Reimbursement and Milestone schedules, which shall be attached hereto, as Exhibit A, Schedules Two and Three respectively and shall complete the Project within that schedule. Any change to the schedule shall be submitted in writing and be approved by the State. A time extension beyond the State's obligation to provide funds herein must be reflected by formal Amendment to this Agreement.

5) The Sponsor shall comply with the General Provisions and abide by and enforce the Sponsor Assurances incorporated herein as Exhibits B and C respectively.

Obligations

1) The minimum funding participation from the Sponsor shall be two and one-half percent (2.5 percent) of allowable costs for this Federal/State/Local Grant as determined by the State.

2) The maximum reimbursement available from the State to the Sponsor for this Agreement shall be Seventy One Thousand Two Hundred Ninety Eight Dollars ($71,298.00).

3) If this is a State/Local grant and in the event that the FAA provides funding for this Project, the State participation shall be a minimum of fifty percent (50%) of the non-federal share of the eligible items up to the maximum reimbursement stated above.

4) Except as otherwise provided herein, the State's obligation to provide funds hereunder expires upon completion of the efforts required herein or September 30, 2011, whichever is earlier.

5) The State may, after agreeing to provide said funds to the Sponsor, withdraw/terminate the grant if the Project has not entered the design stage within one year of the State Transportation Board Approval or at any time, if not entered into the construction phase. If it becomes necessary to terminate a grant at any time, the State will reimburse expenses of the Sponsor, approved by the State, up to the time of notification of cancellation.

6) Sponsor acknowledges that in the event of a late payment or reimbursement by the State, the State shall have no obligation to pay a late payment fee or interest and shall not otherwise be penalized.

Preliminary Work Provision

Any preliminary work, for which costs for this Project were incurred after August 31, 2007 shall be considered eligible for reimbursement provided that said costs are directly related to the development of the Project on which this Agreement is written.

Part II

The Sponsor hereby represents and certifies as follows:

1) The Sponsor has the legal power and authority:

   a) to do all things necessary, in order to undertake and carry out the Project;

   b) to accept, receive and disburse grant funds from the State in aid of the Project.

2) The Sponsor now has on deposit, or is in a position to secure Seventy One Thousand Two Hundred Ninety Eight Dollars ($71,298), or an equivalent amount represented by Sponsor's proposed labor and equipment costs, for use in defraying Sponsor's share of the costs of the Project. The present status of these funds is as follows:

Voter approved airport bonds
(enter local funding type and location)

3) The Sponsor possesses legal authority to apply for the grant and that a resolution, motion or similar action has been duly adopted or passed as an official act of the Sponsor'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 Sponsor to act in connection with this application and to provide such additional information as may be required.

The Sponsor hereby designates Greg Chenoweth (Name), Airport Manager (Title)
to receive payments representing the State's share of project costs.

Address: 2380 South Stinson Way
City: Chandler, State: Arizona, Zip: 85249

Phone: (480) 782-3540 Fax: (480) 782-3541

Signature of Sponsor's Representative

Title of Representative

Date: _____

Exhibits

The following Exhibits are incorporated herewith and form a part of this Agreement.

Exhibit A - Project Schedules
Exhibit B - General Provisions
Exhibit C - Sponsor Assurances

Date of Transportation Board Approval: March 21, 2008

Signature of Aeronautics Division Representative: Tammy Martelle Date: March 31, 2008

STATE:

State of Arizona
Department of Transportation
Aeronautics Division

By: _____

Title: Director

Date: _____

SPONSOR:

City of Chandler
Chandler Municipal Airport

By: _____

Title: _____

Date: _____

WITNESSED BY:

Signature: _____

Print Name: _____

Date: _____

WITNESSED BY:

Signature: _____

Print Name: _____

Date: _____

APPROVAL AS TO FORM:

_____
Legal Counsel for Sponsor

Date: _____

EXHIBIT A

Project Schedules

The Schedule Forms are intended to identify and monitor basic milestones that will be encountered during various phases of your Project. The Sponsor shall complete these three schedules showing the project description and total costs, project reimbursements (cash flow) schedule and project milestones. Schedule One is to show total costs with each State and Federal and Local shares. Schedule Two is to show State funds only. This reimbursement schedule will be used to keep track of a project's progress. Be sure to develop a realistic schedule. Schedule Three is to show only anticipated dates of milestones.

As the project progresses, and the original reimbursement schedule and or milestone dates change, you must submit a revised Schedule. We need the most accurate information you can supply in order for us to manage the cash flow requirements of the program.

Schedule One
Project Description and Funding Allocation

Detailed Project Description:

Construct Apron

Project Cost Area	Total Estimated Project Cost	Estimated Local Share	Estimated Federal Share	Estimated State Share*
Design Engineering Services	$ 0	$ 0	$ 0	$ 0
Construction	$ 2,566,656	$ 64,168	$ 2,438,320	$ 64,168
Construction Inspection/Survey	$ 285,184	$ 7,130	$ 270,924	$ 7,130
Sponsor Administration	$ 0	$ 0	$ 0	$ 0
Sponsor Force Account Work**	$ 0	$ 0	$ 0	$ 0
Other	$ 0	$ 0	$ 0	$ 0
Total Project Costs	$ 2,851,840	$ 71,298	$ 2,709,244	$ 71,298

* Total of this column to be used in Schedule Two.
** All force account work is to be approved by ADOT prior to the grant agreement being signed.

Schedule Two
Project Reimbursement Schedule

The Sponsor must complete this Project Reimbursement Schedule showing the projected cash flow of State Grant Funds Only, for this Project. All projections must include all consulting and contractor services and any Sponsor-based needs. This reimbursement schedule will be used to keep track of a project's progress. Be sure to develop a realistic schedule. It is the Sponsor's decision when to request State funds.

Instructions:

1) In the entry "Total State Funds" below, enter the total State funds from Schedule One, "Estimated State Share Column, Total Project Costs Row" above.

2) For each month/year, indicate the projected reimbursement amount for **State Funds Only** (use whole dollars only, e.g. $540, or $1300).

3) Continue the process by entering a Zero (Ø) in the month/year for which no reimbursement is requested and/or a dollar amount of the reimbursement, until the total State dollars are expended.

Total State Funds: $ 71,298.00 (must match amount in Schedule One, State Share Total above)

State Fiscal Year	Jul	Aug	Sep	Oct	Nov	Dec
2008	$ 17,825	$ 8,950	$ 8,874	$ 0	$ 0	$ 0
2009	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0
2010	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0
2011	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0
State Fiscal Year	Jan	Feb	Mar	Apr	May	Jun
2008	$ 0	$ 0	$ 0	$ 0	$ 0	$ 35,649
2009	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0
2010	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0
2011	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0

Schedule Three
Project Milestones

Milestone Duration Model

To help with developing your project schedules, the following duration periods are intended to provide a model for you to consider. Our experience indicates these are average time periods (in calendar days), but it is understood these periods may vary by Airport and Project, and are subject to modification. If an entry on the form is not applicable write N/A.

1) The Consultant Selection Phase for all Projects, regardless of type, is approximately ninety (90) days but should not exceed one hundred eighty (180) days.
2) Duration of the Design/Engineering Phase is subject to the type and complexity of the Project, however, most designs can be accomplished within one hundred eighty (180) days to two hundred and seventy (270) days.
3) The Bidding Phase typically should be sixty (60) days or less.
4) Construction Phase duration is dependent upon the type of Project, generally ninety (90) days to three hundred sixty (360) days.
5) Aeronautics review periods should be fifteen (15) days.

(Do Not Write In Shaded Areas)

Milestones	Duration # of Days	Start Date		Completion Date	
		Proposed	Actual	Proposed	Actual
Consultant Selection Phase					
Submit Scope/RFP for ADOT Review	N/A	N/A		N/A	
Submit Contract for ADOT Review	N/A	N/A		N/A	
Award Consultant Contract		June 2007		June 2007	
Design & Engineering Phase					
Sponsor Issue Notice To Proceed/Start Design		N/A		N/A	
Conduct 30% Design Review at Aeronautics Division		N/A		N/A	
Bidding Phase					
Issue Invitation for Bids	N/A	Aug 2007		Aug 2007	
Submit Bid Tab for ADOT Review	15	Sept 2007		Sept 2007	
Award Construction Contract		Oct 2007		Oct 2007	
Project Milestones					
Construction Phase	180	Jan 2008		Feb 2008	
Final Inspection		Feb 2008		Feb 2008	
Submit As-Builts		May 2008		May 2008	
Submit Final Reimbursement Request		Jun 2008		July 2008	

EXHIBIT B

General Provisions

Employment of Consultant

The term consultant, as used herein, includes planners, architects and/or engineers. If a consultant is to be used for this Project, the Sponsor agrees to consider at least three (3) consultant firms. If the Sponsor has contracted with or will contract with a consultant on a retainer basis, the Sponsor assures to the State that prior to entering such a contract, at least three (3) consultants were or will be considered. The Sponsor shall submit to the State, for review and approval, a copy of the request for proposals, and the proposed consultant contract prior to its execution and upon award of the contract, a fully executed copy.

Contracts

1) The Sponsor as an independent entity and not as an agent of the State may obtain the services required in order to fulfill the work outlined in the Project Application. All contracts awarded to accomplish the project work described in this Agreement shall state:

   a) The name of the consultant authorized to act on behalf of the Sponsor;

   b) The Sponsor must insure that contracts issued under this Agreement comply with the provisions of Arizona Executive Order 75-5 as amended by Arizona Executive Order 99-4, relating to equal opportunity;

   c) The terms for termination of the contract either for failure to perform or in the best interest of the Sponsor;

   d) The duly authorized representatives of the State shall have access to any books, documents, papers and records of the consultant and/or contractor which are in any way pertinent to the contract for a period of five years, in accordance with A.R.S. 35-214, for the purpose of making inspections, audits, examinations, excerpts and transcriptions.

2) For Design and Construction Agreements only, all contracts shall also stipulate and make clear:

   a) The responsibilities of the consultant to authorize changes on the Project, which may have an affect on the contract price;

   b) That all construction contractors and sub-contractors hired to perform services, shall be in compliance with A.R.S. 32.1101 through 32.1170.03.

Conflict of Interest

Each consultant submitting a proposal shall certify that it shall comply with, in all respects, the rules of professional conduct set forth in A.C.R.R. R4-30-301. In addition, a conflict of interest shall be cause for disqualifying a consultant from consideration; or terminating a contract if the conflict should occur after the contract is made. A potential conflict of interest includes, but is not limited to:

1) Accepting an assignment where duty to the client would conflict with the consultant's personal interest, or interest of another client.

2) Performing work for a client or having an interest which conflicts with this contract.

Reports

The Sponsor shall submit reports that shall reflect the progress accomplished in relation to the contract schedule and milestones, reasons for delay and recommended corrections of problems encountered. Upon completion of the Project, the Sponsor shall submit a letter to the State specifying that the Project has been completed to their satisfaction and that the consultant and the contractor have completed their contractual responsibilities.

Changes

Any changes to the consultant contract, authorized by the Sponsor, that include additional funds shall be by amendment and shall be approved by the State prior to being made in order to be eligible for reimbursement. Approval of a change by the State shall not obligate the State to provide reimbursement beyond the maximum funds obligated by this Agreement. Any increase to the amount of funds authorized hereunder must be by formal amendment, and signed by all parties.

Any changes to the construction and/or planning contract documents, authorized by the Sponsor, must be approved by the State prior to any changes being made in order to be eligible for reimbursement.

Audit

Upon completion of the Project, the Sponsor agrees to have an audit performed. The audit examination may be a separate project audit or in accordance with the Single Audit Act of 1984 (Single Audit). If the Sponsor is required under law to have a Single Audit, this Project shall be considered for inclusion in the scope of examination.

The Sponsor shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of the grant, the total cost of the Project in connection with which the grant is given or used, and the amount or nature of that portion of the cost of the Project supplied by other sources, and such other financial records pertinent to the Project. The accounts and records will be kept in accordance with A.R.S. 35-214.

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 relating to the Project in connection with which the grant was given or used, it shall file a certified copied of such audit with the State not later than six (6) months following the close of the fiscal year in which the audit was made.

The Sponsor shall make available to the State or any of their other duly authorized representatives, for the purpose of audit and examination, any books, documents, papers and records of the recipient that are pertinent to the grant. The Sponsor further agrees to provide the State a certified copy of the audit report. The State is to determine the acceptability of this audit.

Suspension

If the Sponsor fails to comply with any conditions of this Agreement, the State, by written notice to the Sponsor, may suspend participation and withhold payments until appropriate corrective action has been taken by the Sponsor. Costs incurred during a period of suspension may not be eligible for reimbursement by the State.

Failure to Perform

If the Sponsor fails to comply with the conditions of this Agreement the State, may by written notice to the Sponsor, terminate this Agreement in whole or in part. The notice of termination will contain the reasons for termination, the effective date, and the eligibility of costs incurred prior to termination. The State shall not reimburse any costs incurred after the date of termination.

Termination for Convenience

When the continuation of the Project will not produce beneficial results commensurate with the further expenditure of funds or when funds are not appropriated or are withdrawn for use hereunder, the State may terminate this Agreement. In the case where continuation of the Project will not produce beneficial results, the State and the Sponsor shall mutually agree upon the termination either in whole or in part. In the case where funds are no longer available or have been withdrawn or not appropriated, or the Project is no longer in the State's best interest, the State shall have the right of termination at its sole option. The State shall not reimburse any costs incurred after receipt of the notice of termination. The Governor pursuant to Arizona Revised Statutes Section 38-511 hereby puts all parties on notice that this Agreement is subject to cancellation.

Waiver by State

No waiver of any condition, requirement or right expressed in this Agreement shall be implied by any forbearance of the State to declare a default, failure to perform or to take any other action on account of any violation that continues or repeats.

Compliance with Laws

The Sponsor shall comply with all Federal, State and Local laws, rules, regulations, ordinances and decrees that are applicable to the performance hereunder.

Arbitration

In the event of a dispute, the parties agree to use arbitration to the extent required by Arizona Revised Statute, Section 12-1518.

Jurisdiction

Any litigation between the Sponsor and the State shall be commenced and prosecuted in an appropriate State court of competent jurisdiction within Maricopa County, State of Arizona.

Excess of Payments

If it is found that the total payments to the Sponsor exceed the State's share of allowable project costs, the Sponsor shall promptly return the excess to the State. Final determination of the State's share of allowable costs shall rest solely with the State. Any reimbursement to the Sponsor by the State prior to this Agreement, not in accordance with this Agreement or unsubstantiated by project records will be considered ineligible for reimbursement and shall be returned promptly to the State.

State Inspectors

Prior to final payment of funds for work performed under this Agreement, the State may perform an inspection of the work site to assure compliance with the terms herein and to review the workmanship of the Sponsor's contractors and/or consultants. No inspector is authorized to change any provisions of this Agreement or any provisions of Agreements between the Sponsor and the Sponsor's contractor and/or consultant.

Indemnification

The State of Arizona, acting by and through the Arizona Department of Transportation, does not assume any liability to third persons nor will the Sponsor be reimbursed for the Sponsor's liability to third persons resulting from the performance of this Agreement or any subcontract hereunder.

The Sponsor shall indemnify and hold harmless the State, any of their departments, agencies, officers and employees from any and all liability, loss or damage the State may suffer as a result of claims, demands, costs or judgments of any character arising out of the performance or non-performance of the Sponsor or its independent contractors in carrying out any provisions of this Agreement. In the event of any action, this indemnification shall include, but not be limited to, court costs, expenses of litigation and reasonable attorney's fees.

Required Provisions Deemed Inserted

Each and every provision of law and clause required by law to be inserted in this Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, this Agreement shall forthwith be physically amended to make such insertion or correction.

Property of the Sponsor and State

Any materials, including reports, computer programs or files and other deliverables created under this Agreement are the sole property of the Sponsor. The Contractor/Consultant is not entitled to a patent or copyright on these materials and may not transfer the patent or copyright to anyone else. The Sponsor shall give the State unrestricted authority to publish, disclose, distribute and otherwise use at no cost to the State any of the material prepared in connection with this grant.

EXHIBIT C

Sponsor Assurances

Upon acceptance of the grant offer by the Sponsor, these assurances will become a part of this Agreement. The Sponsor hereby covenants and agrees with the State as follows:

General

1) That the Project is consistent with plans (existing at the time of approval of the Project) of political jurisdictions authorized by the State to plan for the development of the area surrounding the Airport and has given fair consideration to the interest of communities in or near where the Project is to be located. In making a decision to undertake any airport development Project under this Agreement the Sponsor insures that it has undertaken reasonable consultation with affected parties using the Airport at which the Project is proposed. All appropriate development standards of FAA Advisory Circulars, Orders or Federal Aviation Regulations shall be complied with.

2) That these covenants shall become effective upon execution of this Agreement for the Project or any portion thereof, made by the State and shall remain in full force and effect throughout the useful life of the facilities or the planning project's duration developed under the grant, but in any event, not to exceed twenty (20) years from the date of acceptance of the grant offer by the Sponsor. The useful life of a Planning Grant is considered to be the period from acceptance of the grant offer by the Sponsor until the grant is closed by the State.

3) The Sponsor certifies in this Agreement that it is a political subdivision of the State and is the public agency with control over a public-use Airport and/or on behalf of the possible future development of an Airport and is eligible to receive grant funds for the development or possible development of an Airport under its jurisdiction.

4) The Sponsor further agrees it holds good title, satisfactory to the State, to the landing area of the Airport or site thereof, or will give assurance satisfactory to the State that good title will be acquired.

5) The Sponsor agrees that it has sufficient funds available for that portion of the project costs which are not to be paid by the State (or the United States).

6) The Sponsor agrees to provide and maintain competent supervision to complete the Project in conformance with this Agreement.

7) Preserving Rights and Powers: The Sponsor agrees it shall 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 Agreement without written permission from the State, and shall act promptly to acquire, extinguish or modify any outstanding rights or claims of right by others which would interfere with such performance by the Sponsor. This will be done in a manner acceptable to the State. The Sponsor shall 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, Airport Property Map, to this application, or to that portion of the property upon which State funds have been expended, for the duration of the terms, conditions and assurances in this Agreement without approval by the State. If the transferee is found by the State to be eligible under Title 49, United States Code, to assume the obligations of this Agreement and to have the power, authority and financial resources to carry out such obligations, the Sponsor shall insert in the contract or document transferring or disposing of Sponsor's interest and make binding upon the transferee all the terms, conditions and assurances contained in this Agreement.

8) Public Hearings: In Projects involving the location of an Airport, an airport runway or a major runway extension, the Sponsor has afforded the opportunity for public hearings for the purpose of considering the economic, social and environmental impacts 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 State, submit a copy of such hearings to the State.

Financial

Pursuant to A.R.S. 35-326 and 41-177, the Sponsor may elect to utilize the Local Government Investment Pool ("LGIP") maintained by the state treasurer. The Sponsor shall request written approval from the State to use the LGIP. Thereafter, the State may deposit the funds authorized by the grant into the Sponsor's account. After approval of the reimbursements by the state, the funds shall be disbursed through the LGIP account to the Sponsor. The disbursements shall be made pursuant to the applicable laws and regulations.

The Sponsor shall establish and maintain for each Project governed by this Agreement, an adequate accounting record to allow State personnel to determine all funds received (including funds of the Sponsor and funds received from the United States or other sources) and to determine the eligibility of all incurred costs of the Project. The Sponsor shall segregate and group project costs in the following costs classifications:

1) Engineering services costs (as applicable), including topographic surveys/mapping, geometric design, plans preparation, geotechnical and pavement design, specifications, contract documents.

2) Construction costs (as applicable).

3) Construction administration costs (as applicable), including contract administration, inspection/field engineering, materials testing, construction staking/as-built plans and other.

4) Sponsor administrative costs directly associated with this Project (calculated as not to exceed 5% of project costs).

5) Costs of force account contribution (if applicable).

6) Other/Contingencies (typically not to exceed approximately 10% of construction costs).

Record Keeping

The Sponsor shall maintain accurate records of all labor, equipment and materials used in this Project and that upon reasonable notice, shall make available to the State, or any of their authorized representatives, for the purpose of audit and examination all records, books, papers or documents of the recipient relating to work performed under this Agreement. 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 State upon reasonable request.

Airport Reporting Based Aircraft Reporting

That it will furnish to the State on a quarterly basis, a current listing of all based aircraft on the Airport.

FAA Notice of Proposed Construction

The Sponsor agrees to submit an FAA Form 7460-1, Notice of Proposed Construction or Alteration before construction, installation or alteration of any Project under this Agreement that falls under the requirements of Subpart B to Part 77, Objects Affecting Navigable Airspace.

Airport Layout Plan

1) The Sponsor shall maintain a current Airport Layout Plan (ALP) of the Airport, which shows building areas and landing areas, indicating present and planned development and to furnish ADOT an updated ALP of the Airport as changes are made. If the planning performed under this Agreement directs a change in on-airport land use to a non-aeronautical land use or a change in the Airport Reference Code, that change must be approved by FAA and ADOT Aeronautics and will require a new/updated Airport Layout Plan forwarded for re-validation/approval.

2) The Sponsor shall be required to prepare an ALP for update or revalidation in accordance with current FAA and ADOT Aeronautics Division standard guidelines. The ALP will indicate any deviations from FAA design standards as outlined in current FAA Advisory Circulars, orders or regulations. A copy of the ALP in electronic format shall be forwarded to the Aeronautics Division after authentication by FAA or the ADOT Aeronautics Division.

3) The Sponsor shall assure that any and all changes to the airport property boundaries, together with any off-site areas owned or controlled by the Sponsor and which support the Airport or its operations, are recorded on the ALP and on the Airport Property Map.

4) If a change or alteration is made at the Airport which the State determines adversely affects the safety, utility or efficiency of the Airport, or any State funded property on or off Airport which is not in conformity with the ALP as approved by the State, the Sponsor will, if requested by the State, eliminate such adverse affect in a manner approved by the State.

Immediate Vicinity Land Use Restriction

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 and to take appropriate action including the adoption of appropriate zoning laws. In addition, if the Project is for noise compatibility or to protect the 14 CFR Part 77 imaginary surfaces of the Airport, the Sponsor 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 or the imaginary surfaces of the Airport upon which State funds have been expended.

Airport Operation

1) The Sponsor shall promote safe airport operations by clearing and protecting the approaches to the Airport by removing, lowering, relocating, marking and/or lighting existing airport hazards and to prevent, to the extent possible, establishment or creation of future airport hazards. The Sponsor shall take appropriate action to assure 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 preventing the establishment or creation of future airport hazards. The Sponsor shall promptly notify airmen of any condition affecting aeronautical use of the Airport.

2) The Sponsor further agrees to operate the Airport for the use and benefit of the public and to keep the Airport open to all types, kinds and classes of aeronautical use without discrimination between such types, kinds and classes; provided that the Sponsor shall establish such fair, equal and nondiscriminatory conditions to be met by all users of the Airport

as may be necessary for the safe and efficient operation of the Airport; and provided further, that the Sponsor may prohibit any given type, kind or class of aeronautical use of the Airport if such use would create unsafe conditions, interfere with normal operation of aircraft, or cause damage or lead to the deterioration of the runway or other airport facilities.

3) 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 engage in any aeronautical activity for furnishing services to the public at the Airport, the Sponsor shall insert and enforce provisions requiring said person, firm or corporation:

   a) to furnish 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;

   b) and be allowed to make reasonable and nondiscriminatory discounts, rebates or similar types of price reductions to volume purchasers;

   c) each Fixed Based Operator (FBO) and Air Carrier at the Airport shall be subject to the same rates, fees, rentals and other charges as are uniformly applicable to all other FBOs and Air Carriers making the same or similar uses of the 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 FBO that is authorized or permitted by the Airport to serve any Air Carrier at the Airport.

4) The Sponsor shall 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. 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 a commercial aeronautical operator authorized by the Sponsor under these provisions.

5) The Sponsor shall suitably operate and maintain the Airport and all facilities thereon or connected therewith which are necessary for airport purposes and to prohibit any activity thereon which would interfere with its use for aeronautical purposes and to operate essential facilities, including night lighting systems, when installed, in such manner as to assure their availability to all users of the Airport; provided that nothing contained herein shall be construed to require that the Airport be operated and maintained for aeronautical uses during temporary periods when snow, flood or other climatic conditions interfere substantially with such operation and maintenance.

6) The Sponsor shall not permit an <u>exclusive right</u> for the use of the Airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, providing services at an Airport by a single FBO shall not be construed as an "exclusive right" if:

   a) it would be unreasonably costly, burdensome or impractical for more than one FBO; and

   b) if allowing more than one FBO to provide such services would require a reduction of space leased pursuant to an existing agreement between a single FBO and the Airport.

Note: Aeronautical activities that are covered by this paragraph include, but are not limited to: charter flights, pilot training, aircraft rental, sightseeing, air carrier operations, aircraft sales and services, aerial photography, agricultural spraying, aerial advertising and surveying, sale of aviation petroleum products whether or not conducted in conjunction with any 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.

7) The Sponsor shall terminate any exclusive right to conduct an aeronautical activity now existing at the Airport before any grant of any assistance from the State. 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 State funds.

8) Airport Pavement Preservation Program: The Sponsor certifies that they have implemented an effective pavement preservation management program at the Airport for the replacement, reconstruction or maintenance of pavement at the Airport. The Sponsor assures that it shall use this program for the useful life of the pavement constructed, reconstructed or repaired with financial assistance from the State and provide such reports on pavement condition and pavement management programs as may be required by the State.

Sponsor Transactions

The Sponsor shall refrain from entering into any transaction which would deprive the Sponsor of any of the rights and powers necessary to perform any or all of the covenants made herein, unless by such transaction the obligation to perform all such covenants is assumed by another public agency eligible to assume such obligations and having the power, authority and financial resources to carry out such obligations; and, if an arrangement is made for management or operation of the Airport by an agency or person other than the Sponsor, the Sponsor shall reserve sufficient powers and authority to insure that the Airport will be operated and maintained in accordance with these covenants or insure that such an arrangement also requires compliance therewith.

Airport Revenues

The Sponsor shall 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. All revenues generated by the Airport (and any local taxes established after Dec 30, 1987), will be expended by it for the capital or operating costs of the Airport; the local airport system; or the local facilities which are owned or operated by the owner or operator of the Airport and which are directly or substantially related to the actual air transportation of passengers or property, on or off the Airport.

Disposal of Land

1) For land purchased under a grant for airport development purposes (it is needed for aeronautical purposes, including runway protection zones, or serve as noise buffer land; and revenue from the interim use of the land contributed to the financial self-sufficiency of the Airport), the Sponsor shall apply to the State and FAA for permission to dispose of such land. If agreed to by the State and/or FAA, the Sponsor shall dispose of such land at fair market value and make available to the State and FAA an amount that is proportionate to the State and FAA's share of the cost of the land acquisition. That portion of the proceeds of such disposition, which is proportionate to the share of the cost of acquisition of such land, shall be (a) reinvested in another eligible airport development Project or Projects approved by the State and FAA or (b) be deposited to the Aviation Trust Fund if no eligible Project exists.

2) Disposition of such land shall 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.

Construction Contract Documents

Any changes to the construction contract documents, authorized by the Sponsor, must be approved by the State prior to being implemented by the Sponsor in order to be eligible for reimbursement under the grant.

Plans, Specifications and Design Review

Plans, specifications, estimates and construction inspection shall be accomplished by, or under the direct supervision of a qualified engineer registered by the State of Arizona. The Sponsor shall conduct a Concept Design Review meeting with ADOT and Sponsor's consultant at approximately the thirty percent (30%) completion point in the design of the Project, as indicated in Exhibit A, Schedule Three of this Agreement. This mandatory review shall be completed before the Sponsor will be permitted to proceed with the Project. The State shall issue a notice to proceed with final design upon satisfactory completion of the review. Any modification to the approved plans, specifications and schedules shall also be subject to approval of the State and incorporated into this Agreement.

1) That the Sponsor is the owner or lessee of the property or properties on which the Airport is located and that the lease guarantees that the Sponsor has full control of the use of the property for a period of not less than twenty (20) years from the date of this Agreement. All changes in airport ownership or to an airport lease shall be approved by the State.

2) The Sponsor shall subject the construction work on any Project contained in an approved project application to inspection and approval by the State and the FAA and State shall in accordance with regulations and procedures prescribe such work.

Construction Inspection

Airport planning, design project estimates and/or construction inspection is the direct responsibility of the Sponsor and may be accomplished by the Sponsor's staff or by a qualified consultant. The Sponsor shall provide and maintain competent technical supervision throughout the Project to assure that the work conforms to the plans, specifications and schedules approved by the State and the Sponsor.