

ARIZONA AIRPORT DEVELOPMENT LOAN PROGRAM

INSTRUCTIONS and APPLICATION FORMS

**For
Airport Development Loans**



**State of Arizona
Department of Transportation
Multimodal Planning Division**

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May 2011**

Arizona Department of Transportation
Multimodal Planning Division
206 S. 17th Ave. MD 426M
Phoenix, Arizona 85007-3217

AIRPORT DEVELOPMENT LOAN APPLICATION PACKET
APPLICATION INFORMATION, DEFINITIONS AND INSTRUCTIONS

INFORMATION

BACKGROUND

To enhance the utilization of available State funds, the Arizona State Department of Transportation (ADOT) established the Arizona Development Loan Program. The Program is designed to be a flexible funding mechanism to assist eligible airport sponsors in improving the economic status of their respective airports..

ELIGIBLE APPLICANTS

The State, city, town, county, district, authority or other political subdivisions of the State, which owns and operates an airport(s), open to the public on a nondiscriminatory basis, is eligible for assistance under the Loan Program. Eligible airports must be identified in the ADOT State Airports System Plan dated November 2009 (or most current version).

ELIGIBLE PROJECTS

Typical airport related construction projects include runways, taxiways, aircraft parking ramps, aircraft storage facilities, (hangars), fueling facilities, general aviation terminal buildings or pilot lounges, utility services (power, water, sewer, etc.) to the airport runway or taxiway lighting, approach aids (electronic or visual), ramp lighting, airport fencing, airport drainage, land acquisition, planning studies, and under certain conditions, the preparation of plans and specifications for airport construction projects. In addition, projects not eligible for funding under other programs and which are designed to improve the airport self-sufficiency will also be considered.

CONTENTS OF APPLICATION PACKET

This package contains information and materials for the preparation of your application for with the Airport Development Loan. Included are:

- Application Information, Definitions and Instructions
- Application Form (to be used as Exhibit A)
- Basic Airport Development Loan Agreement
- Exhibit B - General Provisions
- Exhibit C - Borrower Assurances

LOAN DEFINITIONS

Airport Development

Airport Development Loan: This is an interest bearing loan available to publicly-owned airports identified in the ADOT State Aviation System Plan dated November 2009. Loans may be utilized for projects that generate direct revenue to the airport.

Arizona Airport Development Loan Program

LOAN APPLICATION INSTRUCTIONS

Section 1. APPLICANT INFORMATION and LOAN REQUEST

A. B. & C. (Self-Explanatory)

- D. Carefully select which loan type you are applying for, the amount and duration in years. The intent of the loan program is to provide short term (5 - 10 years) financing. Airport Development Loans can be made up to twenty years, however, strong justification must be provided by the sponsor for the Airport Development Loan Committee to consider.

Section 2. PROJECT DESCRIPTION

- A. In the space provided, prepare a brief description of the project and identify the fiscal year it is intended to be constructed.
- B. The project must be shown to have "Statewide Benefits". ADOT will examine such factors as how the project will enhance air safety, protect natural resources, improve air service, or enhance the State System of airports
- C. A proposed project is practical from an engineering standpoint when it can be designed, constructed and operated to safely accomplish the aviation purpose for which it is intended in accordance with FAA aviation design criteria and generally accepted engineering principles and concepts. Practicality must also be demonstrated that the project is in an operationally acceptable location on the airport. A project feasibility analysis, engineers preliminary design report and project schedule must be included with the application. The feasibility analysis shall include the airport's official Airport Layout Plan and shall show (to scale) the size location and orientation of the project on the airport.
- D. This project's economic purpose can be demonstrated when, within one year of the project's completion, the airport will experience: 1) an increase in aviation activity in the form of aircraft operations and/or based aircraft; or 2) an increase in new businesses or ancillary business activities. Either must be clearly associated with the project's presence on the airport. It is of utmost importance that the public benefits be described in quantitative detail.

Section 3. FINANCIAL INFORMATION

- A. Summary projects costs shall be included in this application. Details costs including any required debt service and projected revenues shall be provided as an attachment to this application pursuant to item C of this section. Financial security provisions for the loan must be addressed including any debt service, lease payments or payments from sublease of the facility or any credit enhancements.
- B. The applicant must provide a pro forma cash flow. Proforma report must cover the entire period of the proposed loan at a minimum. Also, a financial report must include the Borrower's investigation of alternative of private financing for the project. The report must show the total financing plan for the project; this includes recognizing revenue generation ability and operating expenses of the completed project. All financial statements must be prepared by a certified public accountant approved by the sponsor's governing body. This can be attached to this application.
- C. The sponsor shall provide three formal assurances, by separate resolutions of its governing body, that it has 1) the ability to apply for this loan, 2) will financially secure the loan if the projected revenues are not produced as proposed in this application and, 3) Should the loan application be approved, a third resolution will be required accepting the final loan.

SUBMIT TO ADOT MPD AERONAUTICS:

The originally signed application and a .PDF version are to be sent to:

Michael Klein, A.A.E.
Aeronautics Director
206. S. 17th Ave.
Phoenix, AZ 85007

For additional information, please call or e-mail:
Phone: 602-712-7647
E-Mail: maklein@azdot.gov

Arizona Department of Transportation
Multimodal Planning Division
 206 S. 17th Ave.
 Phoenix, Arizona 85007

AIRPORT DEVELOPMENT LOAN APPLICATION FORM

Section 1. APPLICANT INFORMATION AND LOAN REQUEST

- A. Name of applying agency: _____
- B. Airport Name: _____
- C. Authorized Contact Person: _____ Telephone # _____
 Address _____ - _____
- D. Loan Type applied for:
 Airport Development Loan Amount: _____
 Durations in years: _____

Section 2. PROJECT DESCRIPTION

- A. In the space below, briefly describe the project and the fiscal year the project(s) is intended to be constructed.
- _____
- _____
- _____
- B. On a separate page, show the project's "Statewide Benefits". ADOT will examine such factors as how the project will enhance air safety in the local region, protect natural resources, improve air service, or enhance the State System of airports.
- C. Attach to this application the following required reports/documents demonstrating project's practicality. If not complete, show when they will be completed and submitted to ADOT. The loan cannot be considered without these documents.
- | Enclosed
(Yes or No) | Pending
(Yes or No) | Date | |
|-------------------------|------------------------|-------|-------------------------------------|
| _____ | _____ | _____ | Feasibility Analysis |
| _____ | _____ | _____ | Engineers Preliminary Design Report |
| _____ | _____ | _____ | Project Schedule |

Section 3. FINANCIAL INFORMATION

A. Total project costs.

Cost Details:

Planning: \$ _____
Land Acquisition: \$ _____
Design Engineering: \$ _____
Construction Management: \$ _____
Debt Service: \$ _____
Other: _____ \$ _____

B. Projected annual revenues \$ _____

B. Total financial assistance requested \$ _____

C. Duration of the loan requested _____ Years

D. Matching funds provided by Sponsor

Amount: _____ FY _____ Source: _____
Amount: _____ FY _____ Source: _____

E. Attach a financial plan for this project to this application. Please refer to the instruction for detailed information need in this plan.

F. Attach a pro forma cash flow.

Section 4. LOCAL GOVERNMENT APPROVAL

Please include resolution of the governing agency authorizing the application to be filed with ADOT and indicating the local government's responsibility to repay the loan should other proposed payment methods fail to occur.

Authorized Official's Signature: _____ **Date:** _____

Typed Name and Title

**ARIZONA DEPARTMENT OF TRANSPORTATION
MPD AERONAUTICS GROUP
STATE AVIATION FUND**

AIRPORT DEVELOPMENT LOAN AGREEMENT

This loan agreement, effective _____, _____, between the State of Arizona, acting by and through the Arizona Department of Transportation, MPD Aeronautics GROUP hereinafter referred to as "ADOT", and _____, a political subdivision of the State of Arizona, hereinafter referred to as "Borrower";

RECITALS

The parties recite and declare:

- I. ADOT has the responsibility to administer the State Aviation Fund, hereinafter referred to as "Fund", created by A.R.S. 28-8202; and,
- II. ADOT has determined that it is in the best interest of the State and the Fund to provide loans to public entities from the Fund for the development, construction and improvement of publicly-owned and operated airports; and,
- III. Borrower has submitted an application (Exhibit A) requesting ADOT to lend it the sum of _____ and No/100--Dollars (\$ _____) from the Fund for purposes set forth herein; and,
- IV. ADOT is willing to lend Borrower the sum of _____ and No/100--Dollars (\$ _____) on the terms and conditions hereinafter set forth.
- V. ADOT desires that the _____ (Borrower) further acknowledge this obligation becomes a general obligation and is not solely related to the operations of the _____ Airport.

COVENANTS and CONDITIONS

In consideration of the above recitals, the following covenants and conditions and other valuable consideration, receipt of which is acknowledged, the parties agree as follows:

- 1. ADOT will lend the Borrower the principal sum of _____ and No/100--Dollars (\$ _____) from the Fund for use on the "Project" as described below in paragraph 3. The loan will extend for a period of _____ (____) years at an annual interest rate of _____ PERCENT (____%).
- 2. The Borrower shall repay the loan to ADOT in successive quarterly installments of no less than _____ No/100--Dollars (\$ _____) including accrued interest. The loan installment payments shall be due quarterly. If the Borrower fails to pay any payment on schedule, the payment shall be made by those responsible entities listed in the financial feasibility statement.
- 3. Borrower will make all loan payments regardless whether there is enough money in the repayment account as defined in paragraph 5 below.
- 4. All monies disbursed to Borrower and all interest earned on such monies shall be used solely for the development, construction and improvement of a publicly-owned and operated airport facility at the

_____ Airport, described more in Exhibit A of this agreement, hereinafter referred to as "Project". Interest earned from these funds cannot be used as borrower's share of the projects costs.

5. Borrower shall deposit all loan funds received from ADOT in a separate account ("loan disbursement account"). Borrower's expenditures from this account are limited to the Project's costs and expenditures made pursuant to the terms of this agreement. As a condition to receiving the loan proceeds, Borrower shall provide written assurance and evidence that provisions have been made for this account. A pre-award audit may be conducted by ADOT to see that provisions have been made for this account.
6. The monies designated by the Borrower to be used for repayment of the loan which shall be deposited in the loan repayment account referred to in paragraph 5 are the following:
 - A. _____
 - B. _____
7. Borrower shall create a second separate bank account ("repayment account"), which shall be restricted to repayment of the loan until the loan, and accrued interest is fully paid. As a condition to receiving the loan proceeds, Borrower shall provide written assurance and evidence that provisions have been made for this account. Any money or income which is designated in paragraph 5 above to be used for repayment of the loan shall be deposited in the loan repayment account and shall be used only for repayment of the loan until the loan and accrued interest is fully paid. A pre-award audit may be conducted by ADOT, which shall assure provisions have been made for this account. Failure of Borrower to deposit any or all designated monies in the loan repayment account shall terminate ADOT'S duty to make any progress payments on the loan, which have not been paid.
8. Borrower must make all repayments in full regardless whether the income from the project is sufficient to cover the repayment amount. Borrower further acknowledges this obligation becomes a general obligation and is not solely related to the operations of the _____ Airport.
9. Payments shall be made payable to ADOT/MPD Aeronautics Group at ADOT, MPD Aeronautics Group, 206 S. 17th Ave, MD 426M, Phoenix, AZ, 85007.. Borrower shall reference the loan number on all payments and correspondence.
10. The Borrower may at any time make repayment in full, provided that when such advance payment is made, the interest due as of the date of such payment shall be included.
11. Borrower agrees to provide ADOT monthly reports during any design phase and weekly reports during all construction phases on the project's status and progress.
12. Upon receipt of the last payment of the loan, ADOT shall execute and deliver to Borrower a release canceling the fiscal obligation of this agreement.
13. ADOT shall have the right to inspect the Project at any time during the life of this agreement.
14. Borrower agrees to complete the construction of the Project no later than _____, _____. This date may be extended by advanced written request of BORROWER to and upon approval of ADOT. Should Project not be completed on the specified date, with extensions the entire loan with interest becomes due and payable with interest on the last approved Project completion date.
15. Consistent with safety and security requirements, the Project shall be made available to all types and classes of uses on a totally non-discriminatory basis during the life of this agreement. Borrower certifies that the Airport will remain a publicly owned and operated airport (as defined by A.R.S. §28-8202, subsection D) at least until the final payment date listed on the attached Exhibit D. If the Airport ceases to be a publicly owned and operated airport the entire loan balance plus accrued interest shall become immediately due and owing.
16. Borrower agrees that it will not lease the Project until the loan with accrued interest is paid in full; nor relocate, sell, transfer, exchange, mortgage, hypothecate or encumber in any way whatsoever all or any

portion of the Project or any real or other property necessarily connected or used in conjunction therewith without prior written permission of ADOT.

- 17. Neither ADOT nor any officer or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by the Borrower under or in connection with any work or activity performed with monies borrowed under this agreement. Borrower shall indemnify, hold harmless, and defend ADOT, its officers, agents and employees against any and all claims, demands, damages, costs, expenses or liability costs arising out of the construction, operation or maintenance of the project.
- 18. This agreement shall not be assigned to any third party, nor the monies used for any other purpose other than those set forth herein without the written approval of ADOT.
- 19. The Governor of Arizona, pursuant to Arizona Revised Statutes 38-511, the provisions of which are incorporated herein by reference, puts all parties on notice that this agreement shall be subject to cancellation.
- 20. In the event of a dispute, the parties agree to use arbitration to the extent required by Arizona Revised Statute, Section 12-1518.
- 21. Borrower shall execute this agreement and ADOT shall have received the executed agreement before _____, _____ or this agreement shall be deemed null and void.
- 22. All books, accounts, reports, files and other records relating to the payment and loan shall be retained by the Borrower and shall be subject at all reasonable times to inspection and audit by ADOT for five years after completion of all loan repayments.
- 23. The following Exhibits are attached hereto and incorporated herein and form a part of this Agreement.
 - Exhibit A - Specific Loan Application
 - Exhibit B - General Provisions
 - Exhibit C - Borrower Assurances
 - Exhibit D - Repayment Schedule
 - Exhibit E - Resolution(s): _____

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their duly authorized respective officers, the provisions of which agreements are effective upon the signature of the representative of ADOT.

ADOT:

BORROWER:

STATE OF ARIZONA
DEPARTMENT OF TRANSPORTATION
Multimodal Planning Division

_____(Borrower Name)

_____(Airport Name)

By _____

By _____

TITLE _____

TITLE _____

DATE _____

DATE _____

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 Borrower agrees to consider at least three (3) consultant firms. If the Borrower has contracted with or will contract with a consultant on a retainer basis, the Borrower assures to the State that prior to entering such a contract, at least three (3) consultants were or will be considered. The Borrower 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 Borrower 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 Borrower;
 - b) The Borrower 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 Borrower;
 - 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 Borrower 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 Borrower 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 construction contract documents, authorized by the BORROWER, must be approved by ADOT. Any changes to the consultant contract, authorized by the BORROWER, must be by amendment and shall be approved by ADOT. Approval of a change by ADOT shall not obligate ADOT to provide additional monies.

Audit

Upon completion of the Project, the Borrower 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 Borrower is required under law to have a Single Audit, this Project shall be considered for inclusion in the scope of examination.

The Borrower 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 Borrower 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 Borrower 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 Borrower further agrees to provide the State a certified copy of the audit report. The State is to determine the acceptability of this audit.

Compliance with Laws

The BORROWER 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 BORROWER and ADOT shall be commenced and prosecuted in an appropriate state court of competent jurisdiction within Maricopa County, State of Arizona.

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.

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 BORROWER be reimbursed for the Borrower's liability to third persons resulting from the performance of this Agreement or any subcontract hereunder.

The BORROWER shall indemnify and hold harmless ADOT, any of their departments, agencies, officers and employees from any and all liability, loss or damage ADOT may suffer as a result of claims, demands, costs or judgments of any character arising out of the performance or non-performance of the BORROWER 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, the Agreement shall forthwith be physically amended to make such insertion or correction.

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 Borrower's contractors and/or consultants. No inspector is authorized to change any provisions of this Agreement or any provisions of Agreements between the Borrower and the Borrower's contractor and/or consultant.

EXHIBIT C
BORROWER ASSURANCES

Upon acceptance of the loan offer by the Borrower, these assurances will become a part of this Agreement. The Borrower 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 Borrower 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 Borrower. The useful life of a Planning Grant is considered to be the period from acceptance of the grant offer by the Borrower until the grant is closed by the State.
- 3) The Borrower 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 loan funds for the development or possible development of an Airport under its jurisdiction.
- 4) The Borrower 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 Borrower agrees that it has sufficient funds available for that portion of the project costs, which are not to be paid by the State.
- 6) The Borrower agrees to provide and maintain competent supervision to complete the Project in conformance with this Agreement.
- 7) Preserving Rights and Powers: The Borrower 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 Borrower. This will be done in a manner acceptable to the State.

The Borrower 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 Borrower shall insert in the contract or document transferring or disposing of Borrower'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 Borrower 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

The Borrower 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 Borrower and funds received from the United States or other sources) and to determine the eligibility of all incurred costs of the Project. The Borrower 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) Borrower 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 Borrower 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 Borrower 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 Borrower 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 MPD Aeronautics and will require a new/updated Airport Layout Plan forwarded for re-validation/approval.
- 2) The Borrower shall be required to prepare an ALP for update or revalidation in accordance with current FAA and ADOT MPD Aeronautics Group 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 MPD Aeronautics Group.
- 3) The Borrower shall assure that any and all changes to the airport property boundaries, together with any off-site areas owned or controlled by the Borrower 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 Borrower 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 Borrower 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 Borrower 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 Borrower 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 Borrower shall promptly notify airmen of any condition affecting aeronautical use of the Airport.
 - 2) The Borrower 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 Borrower 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 Borrower 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 Borrower 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 Borrower 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 Borrower 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 Borrower under these provisions.
 - 5) The Borrower 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 Borrower shall not permit an 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, 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 Borrower 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.

Borrower Transactions

The Borrower shall refrain from entering into any transaction which would deprive the Borrower 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 Borrower, the Borrower 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 Borrower 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 Borrower shall apply to the State and FAA for permission to dispose of such land. If agreed to by the State and/or FAA, the Borrower 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.

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.