



**CALEXICO CITY COUNCIL/CALEXICO REDEVELOPMENT SUCCESSOR
AGENCY/CALEXICO FINANCING AUTHORITY
REGULAR MEETING AGENDA**

**City of Calexico
Fernando "Nene" Torres Council Chambers
608 Heber Avenue
Calexico, California
www.calexico.ca.gov**

**Tuesday, September 16, 2014
6:30 p.m.**

Council Members

**John M. Moreno, Mayor/Chairman
Joong S. Kim, Mayor Pro Tem/Vice Chair
Luis J. Castro, Councilman
Bill Hodge, Councilman
Maritza Hurtado, Councilwoman**

City Clerk

Gabriela T. Garcia

Interim City Manager

Richard N. Warne

City Attorney

Jennifer M. Lyon

City Treasurer

John T. Quinn

CLOSED SESSION AGENDA

5:30 P.M.

CALL TO ORDER

Roll Call.

Adjourn to Closed Session.

A "Closed" Session of the City Council/Calexico Community Redevelopment Agency Successor Agency/ Calexico Financing Authority may be held in accordance with state law which may include, but is not limited to, the following types of items: personnel matters, labor negotiations, security matters, providing instructions to real property negotiators and conference with legal counsel regarding pending litigation. The Closed Session will be held in the City Hall Conference Room located at 608 Heber Avenue, Calexico, California. Any public comment on Closed Session items will be taken before the Closed Session. Any required announcements or discussion of Closed Session items or actions following the Closed Session will be made in the City Council Chambers, 608 Heber Avenue, Calexico, California.

CLOSED SESSION

1. PUBLIC EMPLOYEE APPOINTMENT

Title: Permanent City Manager (Govt. Code section 54957)

**CALEXICO CITY COUNCIL/CALEXICO REDEVELOPMENT SUCCESSOR
AGENCY/CALEXICO FINANCING AUTHORITY**

REGULAR SESSION AGENDA

6:30 P.M.

**Next City Ordinance Number: 1157
Next City Resolution Number: 2014-69**

CALL TO ORDER

Call to Order and Attendance.
Pledge of Allegiance.
Closed Session Announcements.
Approval of the Agenda.

ANNOUNCEMENTS

These proceedings may be viewed on the City of Calexico website at www.calexico.ca.gov the Friday following the City Council meeting.

PUBLIC COMMENTS AND PUBLIC APPEARANCES

NOTE: (Not to Exceed 3 Minutes) This is the time for the public to address the City Council on any item not appearing on the agenda that is within the subject matter jurisdiction of the City Council. The Mayor will recognize you and when you come to the microphone, please state your name and place of residence for the record. While members of the public are encouraged to participate, it is unlawful to disturb or delay the Council meeting with personal or slanderous remarks. If the item you wish to comment on is a closed session or consent item, please comment now. The City Council is prohibited by State law from taking action or discussing items not included on the printed agenda. If the item you wish to comment on is on the public portion of the agenda, we will take your comment when we get to the item on the agenda. Please direct your questions and comments to the City Council.

CITY COUNCIL COMMENTS AND REPORTS OF MEETINGS ATTENDED

CONSENT CALENDAR

All matters listed under the Consent Calendar are to be considered routine by the City Council/Calexico Community Redevelopment Agency Successor Agency or Calexico Financing Authority and will be enacted by one motion in the form listed. Any item may be removed from the Consent Calendar and considered separately by the City Council.

2. City Council/Calexico Community Redevelopment Agency Successor Agency/Calexico Financing Authority Minutes for Regular Meetings of May 21, 2013, April 18, 2013, Special Meetings of September 9, 2014, December 3, 2013.
3. Approval of Community Development Block Grant Program Income Reuse Plan.
4. Approval of Resolution of the City Council of the City of Calexico authorizing the City Manager or his designee to execute grant offer agreement and/or any documentation pertaining to Airport Improvement Program (AIP) Project No. 3-07-0034-016-2014 with the Federal Aviation Administration (FAA).

ITEMS REMOVED FROM CONSENT CALENDAR FOR DISCUSSION

DISCUSSION AND POTENTIAL ACTION ITEMS

- 5. Appointment of a General Commissioner to the Calexico Housing Authority.
- 6. Discussion and Potential Action Regarding Ronald McDonald House Charities of San Diego request of Waiver of Temporary Use Permit filing fee.
- 7. Community Development Block Grant (CDBG) Program Income Waiver – Villa Primavera.
- 8. Approval of Resolution of the City Council of the City of Calexico Authorizing the Extension of the Conditional Certificate of Occupancy for Phase 1A of the Gran Plaza Project.
- 9. Discussion of Measure H Revenues and Expenditures.

PUBLIC HEARING

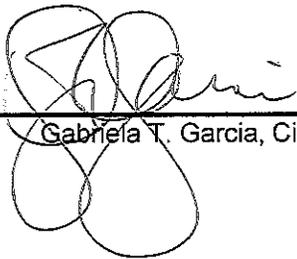
- 10. Resolution Adopting the Fiscal Year 2014-15 Final Annual Operating Budget and Capital Improvement Plan for the City of Calexico.

FUTURE AGENDA ITEMS

ADJOURNMENT

It is the intention of the City of Calexico to comply with the Americans with Disabilities Act in all respects. If you are a person with a disability who requires a disability-related modification or accommodation in order to participate in a meeting, including auxiliary aids or services, please request such modification or accommodation from the City Clerk at (760) 768-2102. Notification at least 48 hours prior to the meeting will enable the City to make reasonable arrangements to assure accessibility to the meeting. Please advise us at the time whether you will require accommodations to participate in meetings on a regular basis. Any person affected by any application on this agenda may submit their concerns in writing prior to the meeting or appear in person and be heard in support or opposition to the proposal at the time the matter is considered on the agenda. The staff reports, applications and environmental documents may be viewed at either the office of the office of the City Clerk, 608 Heber Avenue from 8:30 a.m. until 5:30 p.m. Monday through Thursday, except legal holidays. Telephone inquiries may be made at (760) 768-2102. If you challenge any agenda issue in court, you may be limited to raising only those issues that you or someone else raised at the public meeting described in this notice, or in written correspondence delivered to the City of Calexico at, or prior to, the public meeting.

This notice of agenda is hereby certified to have been posted on or before 8:00 p.m., September 11, 2014



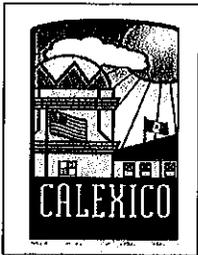
Gabriela T. Garcia, City Clerk

8:00 pm / 9/11/14
Time/Date

AGENDA

ITEM

2



AGENDA STAFF REPORT

DATE: September 16, 2014
TO: Mayor and City Council
APPROVED BY: Richard N. Warne, Interim City Manager
PREPARED BY: Gabriela T. Garcia, Deputy City Clerk
SUBJECT: Approval of City Council Meeting Minutes

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Recommendation:

City Council/Calexico Community Redevelopment Agency Successor Agency/ Calexico Financing Authority Minutes for Regular Meetings of May 21, 2013, April 18, 2013, Special Meetings of September 9, 2014, December 3, 2013.

Background:

In accordance with Municipal Code Section 2.04.070, the City Clerk shall prepare minutes of the proceedings of each City Council Meeting.

Discussion & Analysis:

Minutes for City Council/Calexico Community Redevelopment Agency Successor Agency/ Calexico Financing Authority Minutes for Regular Meetings of May 21, 2013, April 18, 2013, Special Meetings of September 9, 2014, December 3, 2013 have been prepared for City Council review and approval.

Fiscal Impact:

None.

Coordinated With:

None.

Attachments:

Minutes for May 21, 2013, April 18, 2013, Special Meetings of September 9, 2014, December 3, 2013.

AGENDA
ITEM
2

THE CITY COUNCIL/CALEXICO COMMUNITY REDEVELOPMENT AGENCY SUCCESSOR AGENCY/CALEXICO FINANCING AUTHORITY MET IN REGULAR SESSION ON THE 21ST DAY OF MAY, 2013 AT 6:30P.M. AT THE FERNANDO "NENE" TORRES COUNCIL CHAMBERS, 608 HEBER AVENUE, CALEXICO, CALIFORNIA. THE DATE, HOUR AND PLACE DULY ESTABLISHED FOR THE HOLDING OF SAID MEETING.

CLOSED SESSION – 5:30P.M.

CALL TO ORDER

The Special Closed Session portion of the agenda was called to order at 5:30p.m.

ATTENDANCE

Mayor: Maritza Hurtado
Mayor Pro Tem: Bill Hodge
Councilman: John M. Moreno
Councilman: Joong S, Kim
Councilman: Luis J. Castro

The City Council convened into Closed Section at 5:30p.m. to discuss the following:

- A. CONFERENCE WITH LEGAL COUNSEL- EXISTING LITIGATION
Pursuant to Government Code section 54956.9(d)(1)- (2 cases)
- (CASE NOS. ECU06863/ ECU07106)
- B. CONFERENCE WITH LEGAL COUNSEL---ANTICIPATED LITIGATION
Initiation of Litigation pursuant to Govt. Code section 54956.9(d)(4)
(3 cases)
- C. PUBLIC EMPLOYEE PERFORMANCE EVALUATION
Title: City Manager
- D. CONFERENCE WITH REAL PROPERTY NEGOTIATORS
Property: 352 East First Street, Calexico, CA 92231; APN 058-535-001-
Agency Negotiators: City Manager, City Attorney
Negotiating Party: Cellco Partnership, d/b/a Verizon Wireless
Under Negotiation: Price and terms of lease

Jennifer Lyon, City Attorney reported that the City Council meet in closed session and discussed Item A, B, C and D direction was given. No reportable action.

REGULAR SESSION – 6:30P.M.

CALL TO ORDER

The regular session portion of the agenda was called to order at 6:54 p.m. by Mayor Hurtado.

PLEDGE OF ALLEGIANCE

Vincent Cuevas led those present in the Pledge of Allegiance

ATTENDANCE

(All Council members were present: Hodge, Moreno, Hurtado, Kim, Castro)

APPROVAL OF AGENDA

Councilman Moreno requested that Item No. 7 be moved before consent agenda.

Oscar Rodriquez, City Manager requested Item No. 8 be pulled.

Motion was made by Councilman Moreno to approve the agenda with Item No. 7 before consent agenda and Item No. 8 pulled, seconded by Mayor Pro Tem Hodge and passed by the following vote to wit:

AYES:	Hodge, Moreno, Hurtado, Castro
NOES:	Kim
ABSENT:	None
ABSTAIN:	None

Oscar Rodriquez, City Manager requested Item No. 8 be pulled.

Motion was made by Councilman Moreno to pull item No. 8 from the agenda, seconded by Mayor Pro Tem Hodge and passed by the following vote to wit:

AYES:	Hodge, Moreno, Hurtado, Castro, Kim
NOES:	None
ABSENT:	None
ABSTAIN:	None

ANNOUNCEMENTS/PUBLIC APPEARANCES/PUBLIC COMMENTS:

Ignacio Lasoya Morales, Mexicali Fire Department, requested a meeting to discuss the possibility of purchasing Fire Department surplus equipment/engine/ambulance for the City of Mexicali Fire Department.

Vincent Cuevas, Dool Avenue, stated that on various occasion he has requested that Cesar Chavez north be opened to Cole Road in order for traffic to flow and not bottleneck at V.V. Williams and HWY 98.

Mohamed Aciad, 1709 Elena Drive, stated that public safety is a major concern and the City should stop furloughing Police Officers. The City needs more police staff to patrol the City.

Kevin Smith, 2050 Country Club Drive, Holtville, CA, stated that the City of Calexico required Towncenter to place a \$2.8 million dollar performance bond to guarantee the development of Cole Blvd and Sunset which was constructed using EDA funds. On July 2012 a Notice of Completion was filed. After the Notice of Completion was filed the City has thirty (30) days to remove the bond. Mr. Smith stated that he has made multiple letters, emails and correspondence requesting that the bond be removed to the City, EDA, and has not gotten any response.

Ben Horton, PO Box 2136, Calexico, CA, stated that the Economic Development Commission at their next meeting will be working with Kevin Smith and Nick Servin, Public Works Director/City Engineer to work out the bond issue. He mentioned that the commission will be bring to the City Council suggestions for Towncenter that will create jobs for the people of Calexico. Mr. Horton stated that he has met with the Finance Committee regarding the Calexico International Airport that is underutilized and they will be bringing suggestions to the City Council.

Maribel Padilla, AC Nogales, Calexico, CA, stated that she is pleased to hear that order has been placed on City Council meeting. Last City Council meeting was a circus. Ms. Padilla asked if the rules and decorum also applied to the City Council as well. Ms. Padilla delivered a formal complaint to Gonzalo Gerardo, Interim Police Chief with a copy to Councilman Castro regarding last City Council meeting where she was insulted by senior citizens and Calexico Police Office Association (COPA) representatives for bringing her children to a City Council meeting.

GENERAL COMMENTS BY COUNCIL MEMBERS

Councilman Moreno congratulated the Chamber of Commerce and the Mariachi Committee for an outstanding week full of event that honored Mexico. He also thanked the Fire Department with the collaboration of various fire agencies throughout the Valley and Mexicali for the outstanding job of putting out the warehouse fire at the old Garcia Shopping Mall. He has requested on various occasion an ordinance that specifies that all homes/building should have a visible number on the home/building in order for public safety to arrive on time and at right destination.

Mayor Pro Tem Hodge requested a following to a City Council retreat for the City's Master Plan. He stated that the City Council needs to have goal, objectives and action plan in order to have common ground and know where they are going. Once the Master Plan is set there is a possible of hiring a grant writer and grant coordinator. Mayor Pro Tem Hodge thanked the Fire and Police Department for their hard work at the warehouse fire.

Councilman Kim stated that citizens of Calexico need to stand up together for the closing of Calexico Court House. He stated that City Council should have a report for all fires in Calexico and as of today he has not received any reports. Councilman Kim stated that for the past six (6) months he has also asked for the City's Master Plan and has not received it. He urged the City Council to work together to benefit the citizens of Calexico.

Councilman Castro congratulated the Fire Department for the outstanding work they did at warehouse fire.

Mayor Hurtado stated that she has been informed by the Parks and Recreation Department that the Adopt-A-Park program is working well and congratulated Class of '82 for adopting Rodriguez Park. She also thanked the Chamber of Commerce and Mexican Consul for very successful Mariachi Festival. Mayor Hurtado stated that Interim Police Chief Gerardo and Mexican Consul Huerta met to discuss the long lines at the border crossing. Last week she met with JPA and they saw the smooth transition of the new bookkeeping program for JPA monies.

City Manager Rodriquez thanked all staff for the outstanding work they do every day. He acknowledged Fire and Police Dispatchers for communicating and providing information to all agencies involved in the warehouse fire. They are behind the scenes and are just important. City Manager Rodriquez also thanked the Fire Department for helping Ventura County with their fire as part of the State mutual aid agreement. Fire Department has seen an increase in medical calls at the Gran Plaza due to the change in climate during the construction phase of the project.

CONSENT

Councilman Kim pulled Item No. 3, 4 and 5 for discussion.

Motion was made by Councilman Moreno, seconded by Mayor Pro Tem Hodge to approve consent agenda consisting of the following: Acknowledge receipt of Calexico Business Improvement District minutes for April 10, 2013; Application for Alcoholic Beverage License for Arturo Mercado Huereque, El Gallo de Oro, 525 S. Imperial Avenue, Calexico, CA 92231; Approval of resolution authorizing the City Manager to negotiate and execute the third amendment to the ground lease and tower license with Verizon Wireless; motion passed by the following vote to wit:

AYES: Hodge, Moreno, Hurtado, Castro, Kim
NOES: None
ABSENT: None

ITEM NO. 3 - APPROVAL OF WARRANT REGISTER OF CLAIMS PAID FOR THE MONTH OF APRIL 2013

Councilman Kim asked what services are provided by Barney and Barney. City Manager Rodriquez informed Councilman Kim that they are medical consultants on our insurance plan. Councilman Kim asked what services are provided by Dudek. City Manager Rodriquez informed Councilman Kim that they are consultants that are working on Mega Park Project and they are being paid by the developer. Councilman Kim requested that he be provided the name of the owner of Hunter Employment. City Manager Rodriquez informed Councilman Kim that it was a corporation.

Motion was made by Councilman Moreno to approve the warrant register of claims paid for the month of April 2013. Motion seconded by Mayor Pro Tem Hodge and passed by the following:

AYES: Hurtado, Hodge, Moreno
NOES: Castro, Kim
ABSENT: None

ITEM NO. 4 - APPROVAL FOR PUBLIC WORKS DIRECTOR/CITY ENGINEER TO FILE NOTICE OF COMPLETION FOR THE STREET IMPROVEMENT PROJECT - ASPHALT RUBBER COMPOSITE LAYER OVERLAY

Councilman Kim requested pictures of the streets that were completed.

Motion was made by Councilman Moreno to approve the Public Works Director/City Engineer to file notice of completion for the Street Improvement Project - Asphalt Rubber Composite Layer Overlay. Motion seconded by Mayor Pro Tem Hodge and passed by the following:

AYES: Hurtado, Hodge, Moreno, Castro, Kim
NOES: None
ABSENT: None

ITEM NO. 5 - APPROVAL OF MEASURE H FUNDING FOR PARKS MAINTENANCE

Councilman Kim stated that its his understanding that the Measure H Committee approved this item on a 2-1 vote. City Manager Rodriquez and City Attorney Lyon informed Councilman Kim that the Measure H Committee does not approve items, they only provide recommendation to City Council. Councilman Kim mentioned that Measure H funds are to be used for public safety and recreation safety not park maintenance. City Attorney Lyon stated that Measure H Funds are for General Fund purposes.

Motion was made by Councilman Moreno to approve Measure H funding for parks maintenance. Motion seconded by Mayor Pro Tem Hodge and passed by the following:

AYES: Hurtado, Hodge, Moreno, Castro
NOES: Kim
ABSENT: None

ITEM NO. 7 – RESOLUTION TO APPROVE THE POLICE CHIEF APPOINTMENT AND APPROVE THE AGREEMENT FOR EMPLOYMENT

Councilman Moreno made a presentation and stated the selection of the Police Chief is an integral part of the City administration. He stated that he has not thing against the gentleman that has been selected Tabarez but he feels that the City did not go through the proper procedures to select the Police Chief. He felt that the City needed to remove politics within the selection process. In his opinion the process was flawed and the City Council could have done a better job by making it more rigorous, inclusive, equitable, and balanced. Councilman Moreno stated that

in today's world people get tons of emails, write many reports, and submit many things to difference agencies. He stated that he did not see that through this process. In Part 1 of the process, he would have liked to see all candidates on a computer working with various programs composing draft memos, press release and/or grant proposals. Councilman Moreno stated that he wants to select the best candidate for Calexico and the City Council did not do its do diligently. He emphasized that he did not support the process. In Part 2 of the process, Councilman Moreno stated that he would have liked to see an interview panel with about ten (10) to eleven (11) individuals compromised of Fire Chief Peter Mercado, 2 department heads: Human Resources, Finance, Public Works, 2 county/state/federal law enforcement representatives, 1 police officer, 1 clerical staff from the Police Department, 1 City staff, 1 Police Commissioner and others. In Part 3 of the process, He stated he would have liked to see the top 3 candidates have a one-to-one interview with the City Manager so he can ask the tough questions, rate candidates, and provide his recommendation to the City Council based on the process. If the City Council did not agree than the City would need to hire a firm to conduct the search. Councilman Moreno stated that he was not going to support the decision presented.

Mayor Pro Tem Hodge stated that he respects Councilman Moreno valid points. He stated that decision to have City Council involved in the selection of the Police Chief was questioned by him and he was informed that it was legal. The process that was chosen was a viable method and has been done by other cities. Mayor Pro Tem Hodge stated that the process that was used was not unusual or not normal, it just a matter of individuals perspective. In order to be most equitable an interview panel of five (5) individuals was chosen. The five (5) panel members were from diverse background that leaned more towards law enforcement. Mayor Pro Tem Hodge stated that to criticize this panel is an insult to the integrity of these high ranked professionals. The reason he selected a police officer to the interview panel was because he is an officer, works for the Police Department and will be working under the Police Chief. He stated that the process in selecting the Police Chief was legal, correct and done with do diligent, there was due process. In the pool of applicants three (3) were eliminated and was dropped down to five (5). The candidate that will be selected today has no skeleton in the closet, has no criminal background and will not play with favoritism. Mayor Pro Tem Hodge continued on stating that the new Police Chief will strengthen community relations. With this new Police Chief the community will see more police officers patrolling the streets on vehicle and foot, walking downtown and interacting with individuals like the good old days and bring back PAL for our youth. Mayor Pro Tem Hodge stated that Pompey Tabarez is the man of the community. Today is the time to hire the new Police Chief and focus on the future.

Councilman Kim stated that he served as one (1) of the eleven (11) panel members when the Calexico Unified School District hired the superintendent. The panel interviewed the candidates and did an excellent job. Certain Council Members are complaining that only one (1) employee was in the interview panel. Councilman Kim stated that all Council Members had the opportunity to select their own member of the panel and they had the opportunity to chose an employee. The criticism of the flaws and interview panel did not come out until the interviews finished. Council Members are critiquing and insulting their own choice of panel. Councilman Kim stated that he has heard the saying that the City is divided and agrees because there is one side that has not been outspoken and that is why he has standup. The City Council needs to put their differences aside and make the right decision for the community.

Councilman Castro stated that he concurs with Mayor Pro Tem Hodge and Councilman Kim. The selection of the Police Chief was excellent, democratic and every Council Member appointed one of the members for the panel. He stated that he saw nothing wrong with the process and Mr. Tabarez received the highest score. Mr. Tabarez will get an at-will contract and if he does not meet the needs of the citizens of Calexico the City Council can get rid of him from one day to another. Councilman Castro stated the Mr. Tabarez can be a good Police Chief.

Mayor Hurtado supports Councilman Moreno's concerns with the selection process. She stated that is very unfortunate to hear Council Members indicating that the selection process was unflawed. A lot of what occurred was in closed session, however, Council Members due elaborate what happens in closed session. For example, Mayor Pro Tem Hodge mentioned that he had major concerns over criminal background on certain candidates which were also Mayor Hurtado's concern as well. Mayor Hurtado stated that if there were concerns and no one sees a problem with that it doesn't give a fair opportunity to the applicants when they already have a certain biased opinion. She continued to state that Item No. 7 is to approve the appointment of the new Police Chief and the City Council has not received the background results. Mayor Hurtado mentioned that it does not seem right to hire an individual for a high ranked position without a background check. This is a bad situation for the community. The City let go a fine Police Chief who was experienced, very well liked in the community, experienced in budgets and processes. Mayor Hodge stated that in her opinion the candidate doesn't have what it takes in the current situation of the City. She mentioned that this process has felt like peer pressure on management and City Council which does not make sense to her. Mayor Hurtado stated that in closed session she has given neutral solutions as well as Councilman Moreno and certain Council Members have been fixed on one (1) candidate.

Councilman Castro asked how many applications were received for Police Chief. City Manager Rodriquez stated that the City received thirteen (13) applications.

Ian Lopez, 2018 South 9th Street, El Centro, CA, asked the City Council why the candidate is being looked at if he has not passed the background check.

Morris Reisin, 2125 Banda, Calexico, CA, stated that the City Manager is suppose to select the new Police Chief and that City Council is micromanaging. He said that he has never agreed with Councilman Kim but 3,200 people do and Councilman Castro 2,600 did so if they want to appoint Mr. Tabarez as the new Police Chief lets agree and move on.

Raul Urenia, E. Rivera Avenue, Calexico, CA, said it was his first time attending a City Council meeting and was in shock to see five (5) Police Officers in attendance. If the City Council want to involve people they should not drive them away by putting men with guns around the building. Mr. Urenia stated that Mr. Tabarez is a good man, he is educated, teaches at IVC and was retired sheriff. He strongly recommended that the City Council appoint him as the new Police Chief and if he does not do his job correctly than they can fire him the next day.

Karla Miramon, 718 South Preston, Calexico, CA, stated that Councilman Castro raising his voice a little while ago was very unprofessional. She continued to state that she does not

understand how the City Council can hire a Police Chief without a full criminal background being completed.

Jaime Jimenez, 5 Palm Drive, Calexico, CA, said that the Police Chief is the head person in charge of the security of his family, himself, residents of Calexico and visitors of Calexico. It is a very heavy and serious responsibility. Mr. Jimenez stated that from his point of view the Police Chief should have hands on experience, proven technical experience, administrative experience, diplomatic and political ability. If the appointed new Police Chief does a good job than that is great but if he doesn't that the Council Members that put him in needs to step down from being City Council.

Mohamed Aciad, stated that Councilman Moreno speech was excellent but should have been done a long time ago before this item was recommended for approval. He mentioned that Mr. Tabarez is a family man, all his children are in law enforcement and have served in the military. He has thirty six (36) years experience serving in law enforcement throughout the valley and asked the City Council to give Mr. Tabarez a chance.

Eddie Guzman, 344 E. 3rd Street, Calexico, CA, stated that the right process was that the City Manager chose the Police and Fire Chief. The residents of Calexico want a Police Chief that has experience and was high ranked in their selection process.

Maribel Padilla, 1232 AC Nogales, Calexico, CA, feels that this controversy would have been averted if the City Manager would have done his job. She stated that she agrees with Councilman Moreno that this selection process needs to be thrown out and start all over again. She would like this position to be advertised national wide in order to avoid hiring a compadre. Ms. Padilla stated that the people where not represented in this process and that is not right. She asked City Council how four (4) former Police Chiefs with years of experience rank lower than the chosen one. Ms. Padilla stated that she does not care how deep his ties are to the valley. She want to know what are his qualifications that ranked him so high and how does anyone get hired without a background check.

Rudy Alarcon, Calexico Police Officers Association (CPOA) Representative, stated that Councilman Moreno gave a pretty good presentation and wished that presentation would have been around when his cousin got hired. His cousin was not even on the list and got hired. Mr. Alarcon stated that change is here and let City Council appoint the new Police Chief today who has come out to be the No. 1 candidate. He stated he was part of the interview process to select the new Police Chief and its offensive that the District Attorney who is the highest authority in this valley be insulted by saying he was flawed or persuade. Mr. Alarcon stated that the City should move on and turn a new page. Let's go out there and serve the community.

Daniel Romero stated that the whole process of hiring the new candidate to date started in 2008 when Councilman Castro was eyeing the dismissal of Jim Neujahr to get this gentleman in. Two (2) years later a another Council Member was giving him his support and it did not happen. Now there is a third Council Member. Mr. Romero stated that he doesn't know why this item was placed on the agenda without having the final background check on any of the candidates including Mr. Tabarez. He mentioned that Mayor Pro Tem Hodge mentioned integrity,

professionalism and also bias. Back in February before Mr. Neujahr retired from his post there was a quote on the newspaper by Mayor Pro Tem Hodge stating that he was approached by two (2) Council Members to hire the proposed candidate which is biased. Mr. Romero stated that he would question the integrity of at least one (1) member of the interview panel. He mentioned that he has the upmost respect for all Police Officers in the City of Calexico but he does not have respect for CPOA leadership. Mr. Romero congratulated Councilman Moreno for his presentation but unfortunately it was too late and hopes that the City Council does not make a final decision until the final selection is made.

Jennifer Lyon, City Attorney recommended that Section 2 of resolution be amended to reflect that the appointment be made upon completion of all pre-employment requirements.

Motion was made by Councilman Kim to approve a resolution of the City Council of the City of Calexico approving the appointment of Pompeyo Tabarez as the Police Chief, approving the employment agreement, and authorizing the City Manager to sign the employment agreement for the position of Police Chief contingent upon all pre-employment requirements. Motion seconded by Councilman Castro and passed by the following:

AYES: Hodge, Castro, Kim
NOES: Hurtado, Moreno
ABSENT: None

INFORMATIONAL ITEMS

ITEM NO. 9 – ACKNOWLEDGEMENT OF BUSINESS LICENSE DELINQUENT LIST FOR MONTH OF APRIL 2013

City Council acknowledged receipt of business license delinquent list for the month of April 2013

ITEM NO. 10 - ACKNOWLEDGEMENT OF DEPARTMENT OVERTIME/ JUSTIFICATION REPORT FOR APRIL 2013

City Council acknowledged receipt of Department Overtime/Justification Report for April 2013

ITEM NO. 11 – ACKNOWLEDGEMENT OF 2012-13 MONTHLY FINANCIAL REPORT AS OF MARCH 31, 2013

City Council acknowledged receipt of 2012-13 monthly Financial Report as of March 31, 2013

ADJOURNMENT

There being no further business the meeting adjourned at 8:57 p.m.

Maritza Hurtado, Mayor

Attest:

Gabriela T. Garcia, Deputy City Clerk

THE CITY COUNCIL/CALEXICO COMMUNITY REDEVELOPMENT AGENCY SUCCESSOR AGENCY/CALEXICO FINANCING AUTHORITY MET IN REGULAR SESSION ON THE 18TH DAY OF APRIL, 2013 AT 6:30P.M. AT THE FERNANDO "NENE" TORRES COUNCIL CHAMBERS, 608 HEBER AVENUE, CALEXICO, CALIFORNIA. THE DATE, HOUR AND PLACE DULY ESTABLISHED FOR THE HOLDING OF SAID MEETING.

CLOSED SESSION – 5:30P.M.

CALL TO ORDER

The Special Closed Session portion of the agenda was called to order at 5:30p.m.

ATTENDANCE

Mayor: Maritza Hurtado
Mayor Pro Tem: Bill Hodge
Councilman: John M. Moreno
Councilman: Joong S, Kim
Councilman: Luis J. Castro

The City Council convened into Closed Section at 5:30p.m. to discuss the following:

- A. CONFERENCE WITH LEGAL COUNSEL- EXISTING LITIGATION Pursuant to Government Code section 54956.9(d)(1)- (4 cases)- (CASE NOS. ECU06863/ ECU07106/ECU07368/ ECU06787)
- B. CONFERENCE WITH LABOR NEGOTIATORS
Agency Representatives: City Manager, City Attorney
Employee Organizations: SEIU/CMEA; SEIU/Water-Wastewater Operators Assoc.; Supervisors Assoc.; Police Officers Assoc.; Fire Fighters Assoc.; and Unrepresented Employees.
- C. PUBLIC EMPLOYEE PERFORMANCE EVALUATION
Title: City Manager
- D. CONFERENCE WITH LEGAL COUNSEL- ANTICIPATED LITIGATION
Significant exposure to litigation pursuant to Government Code section 54956.9(d)(2)(1 case)

Jennifer Lyon, City Attorney reported that the City Council meet in closed session and discussed Item A, B, C and D direction was given. No reportable action.

REGULAR SESSION – 6:30P.M.

CALL TO ORDER

The regular session portion of the agenda was called to order at 6:50 p.m. by Mayor Hurtado.

PLEDGE OF ALLEGIANCE

Willie Hermosillo led those present in the Pledge of Allegiance

ATTENDANCE

(All Council members were present: Hodge, Moreno, Hurtado, Kim, Castro)

APPROVAL OF AGENDA

Councilman Kim stated that the agenda item for February spending is not on agenda. He also stated that the City Council closing comments and future item sections of the agenda have been removed from the agenda.

Motion was made by Councilman Moreno to approve the agenda, seconded by Mayor Pro Tem Hodge and passed by the following vote to wit:

AYES:	Hodge, Moreno, Hurtado, Castro
NOES:	Kim
ABSENT:	None
ABSTAIN:	None

PRESENTATION

A. PROCLAMATION FOR "VETERANS APPRECIATION MONTH" FOR MAY 2013

Mayor Hurtado read the Proclamation of Veteran's Appreciation Month

B. PRESENTATION BY BUSINESS IMPROVEMENT DISTRICT (BID) REGARDING ON-GOING ACTIVITIES

Jaime Jimenez, BID President, provided a background history of when BID was established. The BID committee meets on a regular basis since 1909. The BID with the assistance of the City has accomplished promotional events and advertisement. In 2012, the BID had three (3) promotional events: 4th Annual Car Show, Music on the Street, Halloween Carnival. Mr. Jimenez stated that the BID is also taking care of steam cleaning alley's and streets in downtown Calexico as well as portable toilets during the agricultural season. The goals of the BID for 2013 are to keep the same zone limits and same assessment fees. Morris Reisin stated that the BID is currently working on putting lighting on Third Street. In addition, BID is planning to hire a person for four (4) hours a day to sweep the streets and sidewalks.

C. PRESENTATION BY IMPERIAL IRRIGATION DISTRICT ON THE 2013 IID COPPER THEFT DETERRENT CAMPAIGN

Mario Escalera from Imperial Irrigation District (IID) thanked the City Council for allowing him to make a presentation regarding IID's Copper Theft Program. Copper theft is not only affecting IID but also everyone. One (1) of the major reasons copper theft has gone up is because several years ago the pound of copper would be \$0.77 per lb. and now its \$3.00 per lb. IID receives complaints of street lights not working and the majority of the time is because the copper wire has been stolen. The Copper Theft Program was established in 2008. IID has done various improvements, for example, physical barriers deterrence, security devices, and public outreach. Mr. Escalera stated that when IID goes and replaces and/or fixes what has been stolen the cost is paid by residents of the Valley. Copper theft compromises the reliability and safety of the IID system. Current legislation states that the crimes against IID substation are federal offenses. Substations are considered to be critical to the infrastructure in the United States. Recycling companies that accept stolen copper can receive a \$3,000 fine according to State legislation. IID works with all local law enforcements. Mr. Escalera stated that last year IID \$1 million in copper theft repair. The IID has established a strong deterrent program in which they have invested funding in the security of their equipment, offer up to \$2,500 for lead information to the arrest and conviction of a theft, coordination with local law enforcement and community outreach. Mr. Escalera requested the City's support in handing out brochures and/or distribution material throughout City facilities.

ANNOUNCEMENTS/PUBLIC APPEARANCES/PUBLIC COMMENTS

Rudy Alarcon, Calexico Police Officers Association (CPOA) Representative, stated the Interim Police Chief Gonzalo Gerardo in attempt to save the City some money changed existing policy. Interim Police Chief reduced minimum staffing levels from one (1) patrol supervisor with four (4) patrol officers to one (1) patrol supervisors with three (3) patrol officers. Mr. Alarcon stated that this change is a violation of existing Police Department policy. This should be a concern because by minimizing staffing the safety of each community member is in jeopardy. In addition, this type of decision is reckless and gambles with the life of police officers.

Luis Cota stated that the Baja Runners have been active since the 1990. For over 20 years this organization has helped the youth by supporting little league teams, softball, football and scholarship programs. Mr. Cota invited the City Council and those present to attend the Tri-Tip Cook-off on April 27, 2013 at Crummett Park, where teams will be competing for 1st prize. Mr. Cota requested from the City that additional benches be provided as well as waive the fee for the use of the park.

GENERAL COMMENTS BY COUNCIL MEMBERS

Oscar Rodriquez, City Manager stated administration has begun the preparation of FY 2013-2014 budget. Staff is repairing a manhole and sewer line on Hwy 98 and Ollie Avenue, which will take about two (2) weeks. The 1st Noche Bohemia will be held on April 26th. The Mariachi Festival festivities will be from May 13th through May 18th. The Acting State Librarian will be visiting Enrique "Kiki" Camarena Library and Carnegie Tech Center on April 29, 2013.

Councilman Kim stated that on Hwy 98 and Ollie Avenue there is not enough detour signs. Nick Servin, Public Works Director/City Engineer informed Councilman Kim that there is cones and traffic control. A City employee is stationed at the post office 24/7.

Councilman Moreno sent prayers to the Boston Marathon Runners for the tragedy that happened earlier this week. He attended the Relay for Life. Councilman Moreno informed the City Council that he has visited the baseball parks with Little League members. He hopes that Rodriguez, American Legion and Rivera Field get much needed work for the safety of the players. Councilman Moreno thanks Mayor Hurtado for an outstanding State of the City Address. It was very informative, entertaining and provided a lot of positive things that are happening on in Calexico.

Mayor Pro Tem Hodge stated that he approached City Manager Rodriguez to hold a meeting regarding parks and thanked the stakeholders for attending. He also met with the City Manager and German Duran from Adrian Cordova Foundation to bring a boxing program for the City. Mayor Pro Tem Hodge thanked Mayor Hurtado for an excellent State of the City Address.

Mayor Hurtado stated that the video shown at the State of City Address was produced by Mi Calexico.

Councilman Kim stated that there is a plan to close the Court House in Calexico and encouraged the community to send concern letters to the Superior Court regarding the closure. He stated that he has various issues pertaining to Calexico: parks, streets, closing City Hall on Fridays. In addition, he stated that the budget is unclear.

Councilman Castro stated that he concurs with Councilman Kim related to the closure of the Court House. He congratulated Mayor Hurtado for an outstanding job on the State of the City Address.

Mayor Hurtado stated that the parks subcommittee met with different organization (little league, softball league, soccer league, etc.) to discuss the ideas and managing of facilities. In the meeting an inventory was done for one (1) year goal and five (5) year goal. Mayor Hurtado stated that on April 17th she attended a Dispatcher Luncheon at the Cultural Art Center to honor local agencies dispatchers. Last week she attended a working group meeting with Mexicali officials, Imperial County Transportation Commission (ICTC) representatives, Imperial County Board Supervisor and others to discuss plans and funding for the expansion of the west port-of-entry.

CONSENT AGENDA

Motion was made by Councilman Castro, seconded by Mayor Pro Tem Hodge to approve consent agenda consisting of the following: Approval of Warrant Register of claims paid for the month of March 2013; motion passed by the following vote to wit:

AYES: Hodge, Moreno, Hurtado, Castro
NOES: None
ABSENT: None

ABSTAIN: Kim

ITEM NO. 2 - CONSIDERATION ON REQUEST BY IMPERIAL VALLEY ASSISTED LIVING, INC. (IVAL) OF FEE PAYMENT POSTPONEMENT ON ZONING TEXT AMENDMENT AND SITE PLANS APPROVAL

City Manager Rodriquez stated that the Imperial Valley Assisted Living, Inc. (IVAL) has been working on the project for sometime know and they believe they can apply for funding through Housing Urban Development (HUD). IVAL is requesting that the City defer \$15,393.00 in fees for some of the services. Once IVAL has the funding, they will pay the City the fees. One (1) of the conditions from IVAL is that the City gives them eleven (11) months to pay the fees once they secure the funding. City Manager Rodriquez stated that IVAL is proposing to put a piece of property estimated at \$70,000.00 as a security.

Arturo Rioseco stated that IVAL is requesting a one-time deferment on fees for zone amendment. The financing cannot proceed if IVAL does not have the appropriate zoning. This project is allowable in a light industrial zone, however, the City never designate this area as such. Mr. Rioseco said that they are not trying to rezone only amend the current zoning.

City Manager Rodriquez informed the City Council that if they consider this item an agreement will be prepared and brought back to City Council for review and approval.

Mayor Pro Tem Hodge asked Mr. Rioseco why they cannot pay the fees at the time. Mr. Rioseco informed Mayor Pro Tem Hodge that they are a non-profit organization and they currently do not have the money to do so.

Councilman Kim stated that he fully supports this project but if they do not secure the funding how they will reimburse the City. City Manager Rodriquez informed Councilman Kim that the property will serve as collateral and the agreement will stipulate how the City will be reimbursed: sale of property, IVAL purchase back the property, etc.

Motion was made by Councilman Kim to give direction to staff to formulate agreement for consideration of deferral of fees. Motion seconded by Councilman Moreno and passed by the following:

AYES: Hurtado, Hodge, Moreno, Castro, Kim
NOES: None
ABSENT: None

INFORMATIONAL ITEMS

ITEM NO. 3 – ACKNOWLEDGEMENT OF BUSINESS LICENSE DELINQUENT LIST FOR MONTH OF MARCH 2013

City Council acknowledged receipt of business license delinquent list for month of March 2013

ITEM NO. 4 - ACKNOWLEDGEMENT OF ATTENDANCE FOR ALL CITY BOARDS AND COMMISSIONS

Councilman Moreno stated he did not see attendance for Planning Commission.

Councilman Kim stated that several Planning Commissioners do not receive their agenda on time. In addition, the City Council does not get copies of the agendas for the commissions.

City Manager Rodriquez informed the City Council that he will be sending out a memorandum to all boards and commissions requested that copies of agendas be provided to City Council.

Mayor Pro Tem Hodge requested that the minutes of all boards and commissions be presented to City Council on a timely manner. In addition, he requested that the boards and commissions continue to come before City Council to provide their on-going activities.

Councilman Castro stated that Daniel Gutierrez has resigned from the Police Commission and requested that the position be advertised.

City Council acknowledged receipt of attendance for all City boards and commissions.

ITEM NO. 5 - APPROVAL OF RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALEXICO IN ITS CAPACITY AS THE SUCCESSOR AGENCY TO THE CALEXICO COMMUNITY REDEVELOPMENT AGENCY APPROVING THE OTHER FUNDS AND ACCOUNTS DUE DILIGENCE REVIEW PURSUANT TO CALIFORNIA HEALTH AND SAFETY CODE §34179.6

City Manager Rodriquez stated this is one (1) of the many steps needed for the elimination of the Redevelopment Agency. The Diligence Report specifies if the City owns money to the State and in this case, the City does not.

Motion was made by Councilman Moreno to approve resolution of the City Council of the City of Calexico in its capacity as the Successor Agency to the Calexico Community Redevelopment Agency approving the other funds and accounts due diligence review pursuant to California Health and Safety Code §34179.6. Motion seconded by Mayor Pro Tem Hodge and passed by the following:

AYES:	Hurtado, Hodge, Moreno, Castro, Kim
NOES:	None
ABSENT:	None

ADJOURNMENT

There being no further business the meeting adjourned at 8:55p.m.

Maritza Hurtado, Mayor

Attest:

Gabriela T. Garcia, Deputy City Clerk

THE CITY COUNCIL/CALEXICO COMMUNITY REDEVELOPMENT AGENCY SUCCESSOR AGENCY/CALEXICO FINANCING AUTHORITY MET IN SPECIAL SESSION ON THE 9TH DAY OF SEPTEMBER, 2014 AT 5:30 P.M. AT THE FERNANDO "NENE" TORRES COUNCIL CHAMBERS, 608 HEBER AVENUE, CALEXICO, CA. THE DATE, HOUR AND PLACE DULY ESTABLISHED FOR THE HOLDING OF SAID MEETING.

CALL TO ORDER.

Mayor Moreno called the meeting to order at 5:41 p.m.

ATTENDANCE.

Mayor: John Moreno
Mayor Pro Tem: Joong S. Kim
Council Member: Maritza Hurtado
Council Member: Bill Hodge

ABSENT:

Council Member: Luis J. Castro

PLEDGE OF ALLEGIANCE:

Mayor led those present in the Pledge of Allegiance.

APPROVAL OF AGENDA.

Motion was made by Council Member Hodge, seconded by Council Member Hurtado to approve agenda as presented. Motion passed by the following vote-to-wit:

AYES: Moreno, Kim, Hurtado, Hodge
NOES: None
ABSENT: Castro

ANNOUNCEMENTS/PUBLIC APPEARANCES/PUBLIC COMMENTS:

Maribel Padilla, AC Nogales asked who had requested the item for the agenda. She was informed it was the City Attorney to which she further stated that the City Attorney does not call meetings and wanted to know who from the Council requested the meeting. Mayor informed her that he was not at liberty to discuss the matter. Mrs. Padilla also commented on the reasons why there is an investigation into possible violations of the Brown Act by the District Attorney and cautioned the Council on said matters.

Ben Horton spoke about polling the council as a violation of the Brown Act. He mentioned the investigation on the violations of the Brown Act. He informed the Council that he had contacted the District Attorney and sent a message to the Attorney General regarding this matter. Mr. Horton provided an example of what he considered to be polling.

Council Member Kim stated that what Mr. Horton explained was a serial meeting.

City Council convened in Closed Session at 5:52 p.m. to discuss the following:

1. PUBLIC EMPLOYEE APPOINTMENT

Title: Permanent City Manager (Govt. Code section 54957)

City Council reconvened from closed session at 6:45 p.m. Mayor Moreno reported that direction was given, no reportable action taken.”

ADJOURNMENT

There being no further business, meeting was adjourned at 6:45 p.m.

John M. Moreno, Mayor

ATTEST:

Gabriela T. Garcia, Deputy City Clerk

THE CITY COUNCIL/CALEXICO COMMUNITY REDEVELOPMENT AGENCY SUCCESSOR AGENCY/CALEXICO FINANCING AUTHORITY MET IN SPECIAL SESSION ON THE 3RD DAY OF DECEMBER, 2013 AT 6:00P.M. AT THE FERNANDO "NENE" TORRES COUNCIL CHAMBERS, 608 HEBER AVENUE, CALEXICO, CALIFORNIA. THE DATE, HOUR AND PLACE DULY ESTABLISHED FOR THE HOLDING OF SAID MEETING.

CALL TO ORDER

ATTENDANCE

Mayor: Bill Hodge
Mayor Pro Tem: John M. Moreno
Councilwoman: Maritza Hurtado
Councilman: Joong S, Kim
Councilman: Luis J. Castro

SPECIAL SESSION – 6:08P.M.

CALL TO ORDER

The regular session portion of the agenda was called to order at 6:08p.m. by Mayor Hodge.

PLEDGE OF ALLEGIANCE

Ben Horton led those present in the Pledge of Allegiance

ATTENDANCE

(All Council members were present: Hodge, Moreno, Hurtado, Kim, Castro)

APPROVAL OF AGENDA

Motion was made by Mayor Pro Tem Moreno to approve the agenda, seconded by Councilman Castro and passed by the following vote to wit:

AYES: Hodge, Moreno, Hurtado, Castro
NOES: Kim
ABSENT: None
ABSTAIN: None

ANNOUNCEMENTS/PUBLIC APPEARANCES/PUBLIC COMMENTS:

None

BUSINESS ITEM

ITEM NO. 1 – APPROVAL OF A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALEXICO APPROVING THE TRUST AGREEMENT, ASSIGNMENT AGREEMENT, THE LEASE AGREEMENT, PROJECT LEASE AND THE COMMUNITY DISCLOSURE AGREEMENT IN CONNECTION WITH THE CALEXICO FINANCING AUTHORITY MEASURE “H” SALES TAX/LEASE REVENUE BONDS, ISSUE OF 2013 AND TAKING CERTAIN OTHER ACTIONS IN CONNECTIONS THERETO

Mayor Hodge stated that Councilwoman Hurtado and he requested a public meeting be held next Wednesday, December 11, 2013, to get public input on issuance of the bond.

Councilman Castro stated that this is the third (3rd) revision to the bond. He believes this third (3rd) revision is the correct one. Mayor Hodge assured Councilman Castro that there will no more changes. Next Wednesday meeting will only allow the public to give their input

Councilman Castro stated that there is no backup documentation showing how much the interest rate will be and for how long will the term of the bond be. Marshall Linn, Urban Future, Inc. Financial Advisor informed Councilman Castro that the term for the \$7 million dollar bond will be sixteen (16) years with an estimated rate of 4.935±%.

Mayor Pro Tem Moreno asked why City Council wants to prolong this item another week. Mayor Hodge informed Mayor Pro Tem Moreno that he has previous stated his reason for prolonging this item another week.

Motion was made by Councilwoman Hurtado to approve the revision of this item with the language from the memorandum to be incorporated into the bond documentation. Motion seconded by Mayor Pro Tem Moreno and passed by the following:

AYES: Hodge, Moreno, Hurtado
NOES: Kim, Castro
ABSENT: None

ADJOURNMENT

There being no further business the meeting adjourned at 6:39p.m.

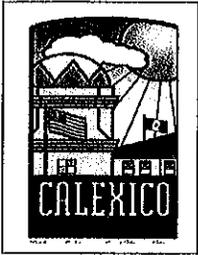
Bill Hodge, Mayor

Attest:

Erica LaCuesta, Deputy City Clerk

**AGENDA
ITEM**

3



AGENDA STAFF REPORT

DATE: September 16, 2014

TO: Mayor and City Council

APPROVED BY: Richard N. Warne, Interim City Manager *RNW*

PREPARED BY: Teri Nava, Housing Manager

SUBJECT: Approval of Resolution Authorizing the Community Development Block Grant (CDBG) Revised Program Income Reuse Plan and Program Income Reuse Plan Agreement

=====

Recommendation:

Staff is recommending City Council approval of Community Development Block Grant Program (CDBG) Program Income (PI) Reuse Plan Resolution and Program Income Reuse Plan Agreement.

Background:

Execution of the PI Reuse Agreement by both the City of Calexico and the California State Department of Housing and Community Development (Department) provides official notification of the Department’s approval for City of Calexico to expend PI funds under the State’s administration of the federal Community Development Block Grant Program (CDBG) for State non-entitlement jurisdictions pursuant to provisions of 42 U.S. Code (U.S.C) 5301 et seq., 24 Code of Federal Regulations (CFR) Part 570, Subpart I, and 25 California Code of Regulations (CCR), Sections 7050 et seq. CDBG funding is listed in the Catalog of Federal Domestic Assistance as 14.22 – CDBG Community Development Block Grant Program. The Agreement also includes asset repayments from activities administered under Disaster Recovery Initiative (DRI) contracts.

Discussion & Analysis:

The Program Income Reuse Plan establishes policies and procedures for the administration and utilization of PI received as a direct result of eligible activities funded under CDBG and DRI contracts with the Department.



Fiscal Impact:

None

Coordinated With:

None

Attachment:

Resolution Authorizing the Community Development Block Grant (CDBG) Revised
Program Income Reuse Plan

Program Income Reuse Agreement

RESOLUTION NO. _____

THE GOVERNING BOARD OF THE CITY OF CALEXICO

HEREBY AUTHORIZES THE RESOLUTION AUTHORIZING THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) REVISED PROGRAM INCOME REUSE PLAN

WHEREAS:

- A. City of Calexico, a political subdivision of the State of California, authorizes the revised Program Income Reuse Plan; and
- B. The California Department of Housing and Community Development (hereinafter referred to as "HCD") "Need for Plan Governing Reuse of Program Income: This Reuse Plan is intended to satisfy the requirements specified in Federal statute and regulation at Section 104 (j) of CFR 570.489 (e). These statutory and regulatory sections permit a unit of local government to retain Program Income for CDBG-eligible community development activities. Under Federal guidelines adopted by the State of California's CDBG program, local governments are permitted to retain Program Income so long as the local government has received advance approval from the state of a local plan that will govern the expenditure of the Program Income. This plan has been developed to meet that requirement; and
- C. The City of Calexico wishes to distribute the Program Income funds received as follows:
 - 25% - Housing Rehabilitation
 - 50% - First Time Homebuyer
 - 10% - Business Assistance
 - 15% - Microenterprize Financial Assistance

IT IS NOW THEREFORE RESOLVED THAT:

1. The City of Calexico shall approved the Revised Program Income Reuse Plan, and
2. The City of Calexico will distribute the Program Income received as follows:
 - 25% - Housing Rehabilitation
 - 50% - First Time Homebuyer
 - 10% - Business Assistance
 - 15% - Microenterprize Financial Assistance
3. If the Program Income Reuse Plan is approved, the City Council authorizes the City manager to execute any and all agreements and documents necessary or required by the Housing and Community Development Act as amended in 1992. The City Council agrees to use the Program Income Reuse funds as outlined in this Resolution.

PASSED AND ADOPTED THIS 19TH DAY OF AUGUST, 2014, by the following vote:

AYES: _____

NAYES: _____

ABSTAIN: _____

ABSENT: _____

The undersigned _____ (title of officer) of the _____ (name of applicant) there before named does hereby attest and certify that the foregoing is a true and full copy of a resolution of the Governing Board adopted at a duly convened meeting on the date above-mentioned, which has not been altered, amended or repealed.

Signature

Date

**COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM
(CDBG)
PROGRAM INCOME (PI) REUSE AGREEMENT**

Execution of the this PI Reuse Agreement by both the Jurisdiction and the California, State Department of Housing and Community Development (Department) provides official notification of the Department's approval for the Jurisdiction to expend PI funds under the State's administration of the federal Community Development Block Grant Program (CDBG) for (1) state non-entitlement jurisdictions; and (2) former state non-entitlement jurisdictions that are now entitlement jurisdictions;, pursuant to the provisions of 42 U.S. Code (U.S.C.) 5301 et seq., 24 Code of Federal Regulations (CFR) Part 570, Subpart I, and 25 California Code of Regulations (CCR), Sections 7050 et seq. CDBG funding is listed in the Catalog of Federal Domestic Assistance as 14.228 - CDBG Community Development Block Grant Program. The Agreement also includes asset repayments from activities administered under DRI contracts.

By completing this PI Reuse Agreement and signing the end of this document, the Authorized Representative certifies the Jurisdiction has read, understands and will adhere to the Program Income (PI) Reuse Overview and Process discussed in the first section of this document, the Jurisdictional Certifications in the second section of this document, and Department of Housing and Community Development (hereinafter Department) terms and conditions in the third section of this document.

SECTION ONE: OVERVIEW AND PROCESS

JURISDICTION: City of Calexico

GOVERNING BODY ADOPTED ON: September 16, 2014

This PI Reuse Agreement establishes policies and procedures for the administration and utilization of PI received as a direct result of eligible activities funded under CDBG and DRI contracts with the Department. *For payments generated under DRI contracts, while the funding was loaned under DRI, when a payment is received, per DRI regulation, the payment becomes CDBG program income.*

Applicability of this Agreement:

This PI Reuse Agreement between the Jurisdiction and Department is required by CDBG federal regulation. This Agreement allows Jurisdictions receiving repayments from CDBG and DRI assets to spend those PI funds in the absence of an active Department CDBG grant contract. This Agreement applies to all current Department-eligible Non-Entitlement Jurisdictions and HUD Entitlement Jurisdictions that are still receiving Non-Entitlement PI revenue from previous State grants (CDBG and/or DRI).

RECEIPT OF PROGRAM INCOME

Pursuant to the definition of program income found at 24 CFR 570.489(e)(2), repayments of assets generated from use of CDBG funds received by the Jurisdiction from the Department are PI. These repayments of loans, lease payments, and proceeds of asset sales will be deposited into one of three separate local PI accounts depending on what activity generated the PI. It is possible that the Jurisdiction may have up to three separate accounts with which to manage PI.

1. If the Jurisdiction has a Department approved Revolving Loan Fund (RLF) for Housing and/or ED, any PI from Housing or ED activities must be deposited into the RLF associated with the activity that generated the PI.

This means:

- a. Housing PI must be deposited into the Housing RLF.
- b. ED PI must be deposited into the ED RLF.

Note: *The accounts for each RLF must be separate accounts, however they both must be interest bearing.*

2. If RLF(s) are not approved for use, the Jurisdiction must deposit all CDBG repayments into a single regular PI account which must be separate from either of the RLF accounts, but it must also be interest bearing.
3. If repayment comes from a loan or asset that was originally paid with CDBG and non-CDBG funds, the PI accounting and reporting must reflect the correct amounts and proportions of CDBG PI and non-CDBG funds invested in the asset. Only the CDBG portion of the repayment is deposited into one of the three PI accounts.

OVERVIEW OF WAYS TO USE PROGRAM INCOME

There are five (5) ways to manage PI under the Agreement.

They are:

1. *Expend PI and RLF monies first on active grant contract activities;*
2. *Expend PI General Administration (PI GA) for GA Activities (up to allowable limits)*
3. *Expend through an approved PI Revolving Loan Fund (RLF)*
4. *Expend PI on an approved waiver activity when no active contract is in force;*
5. *Return PI annually to the Department.*

The undersigned Jurisdiction certifies that PI will be expended first when there is an active grant contract with the Department. PI being received when there is no active grant contract will be deposited into separate accounts for approved activities under this Agreement (via GA, PI Waiver or RLF) and only be distributed and expended, as follows:

1. **Expend PI and RLF Monies First on Active Grant Contract Activities:**

If the undersigned Jurisdiction has an active grant contract with the Department, all PI on hand must be expended on open grant activities, prior to requesting grant funds from the Department.

If the undersigned Jurisdiction has a Department approved PI Revolving Loan Fund (RLF) per this Agreement, and has an active grant contract which includes the same eligible CDBG activity as the RLF, the RLF monies must be expended first before requesting any contract funds from the Department. PI must always be expended first on active contract activities, prior to requesting grant contract funds.

See the Chapter on Program Income and Revolving Loan Funds in the Department's CDBG Grant Management Manual for additional information regarding use of PI to pay costs for activities under an active grant contract in the Department.

2. Expend PI General Administration (PI GA) for GA Activities (up to allowable limits)

The undersigned Jurisdiction must track a calculation of up to seventeen percent (17%) of PI received annually for eligible GA costs. However, the seventeen percent (17%) PI GA only applies to PI received that is **not** generated by a RLF activity.

Since all PI must be expended first, GA funds cannot be held and used only as PI GA costs are incurred. All PI must be spent on the next funds request submitted. Thus, the Jurisdiction can choose to keep an accounting of the total amount of PI GA available for use based on all regular PI received.

PI GA funds cannot be used for planning studies or technical assistance activities, these activities can only be funded under awarded grant contracts. See the Program Income Chapter for further details on eligible PI GA activities under this Agreement.

3. Expend PI through an approved PI Revolving Loan Fund (RLF):

To establish one or both of the RLFs discussed below, the undersigned Jurisdiction must submit formal written request for Department approval using the required process included with this Agreement.

The undersigned Jurisdiction agrees to all the Department's RLF requirements as stated in this Agreement and detailed in the GMM Chapter.

The two RLFs and their corresponding definitions, as permitted by this agreement, are:

1) **Housing Revolving Loan Fund (RLF)**

Eligible housing activities under this RLF include:

- I. Housing Rehabilitation - Single Unit Residence program for **owner and/or tenant occupied** properties. Matrix code **14A**.
- II. Housing Rehabilitation - 2-4 Units program for **tenant occupied** properties. Matrix code **14B**.
- III. Housing Acquisition - Single Family program for homebuyer assistance. Matrix code **13**.

2) **Economic Development (ED) Revolving Loan Funds (RLF)**

Eligible ED activities under this RLF include:

- i. Business Assistance program (direct financial assistance to a for-profit business). Matrix code **18A**; and
- ii. Microenterprise Financial Assistance (loans). Matrix code **18C**.

The undersigned Jurisdiction will provide program guidelines for all eligible RLF activities as part of the approval process when obtaining Department approval of a RLF. Department written approval must be received before incurring any activity or activity delivery costs associated with implementing any activities under the approved RLF. All approved RLF projects, will be required to be reported to the Department via the applicable CDBG Set-up/Completion reports.

4. **Expend PI on an Approved PI Waiver Activity when no active contract is in force.**

The undersigned Jurisdiction may only utilize the Department's PI Waiver process when it has no active grant contracts with the Department. Once there are no active contracts with the Department, the undersigned Jurisdiction can have up to two active eligible CDBG activities approved by the Department, for which PI may be expended. Waivers will consist of a single program, service or single project activity. If it is a single program activity, it cannot be the same program activity as funded under an approved RLF.

The undersigned Jurisdiction will follow all PI Waiver procedural requirements as stated in the Program Income Chapter of the Grant Management Manual (GMM).

Written Department approval is required before expending any PI funds on a Waiver activity. Each Waiver activity must clear the activity General and any Special Conditions which include federal overlays as posted on Department's webpage.

A PI Waiver project can only be approved if the total project / program cost for

the proposed activity is on hand in the Jurisdiction's PI account. Future PI may not be committed for PI Waivers.

The undersigned Jurisdiction understands that PI Waiver activities are limited to two active projects, services and/or programs, and will remain active until close out has been completed and approved by the Department. Each approved Waiver activity will be set up with the Department using current Set-Up Report.

The undersigned Jurisdiction understands if they receive a subsequent award of CDBG funds, upon execution of the new grant contract all waiver activities are to be completed first, after which, PI must be expended first on the active grant contract activities. PI Waivers will not be included in the grant, because Supplemental activities will be included in contracts.

5. Return PI to the Department

The undersigned Jurisdiction has the option to return PI back to the Department. However, semi-annual and annual reports are still required to confirm PI being returned.

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SECTION TWO: CERTIFICATION FOR PROCESS AND USE OF PROGRAM INCOME

Since CDBG is a federal funding source, Citizen Participation is required when utilizing any of the five (5) ways to use PI listed above. Those requirements are incorporated below.

The **City of Calexico** certifies that:

1. **Resolution:**

The PI Reuse Agreement was formally adopted via resolution on **September 16, 2014** by the Jurisdiction's Governing Body, executed by the Authorized Representative and submitted to Department with certified copy of the approving resolution attached for full execution.

2. **Citizen Participation:**

Each of the processes discussed in this Agreement will be carried out in compliance with the CDBG Citizen Participation process as specified in federal regulations at 24 CFR 570.486, and Jurisdiction's public hearing requirements.

3. **Governing Compliance:**

The undersigned Jurisdiction certifies the administration of all CDBG eligible activities conducted under the above described Ways to Spend PI, will be conducted in compliance with all current State and federal regulations and policies, including all applicable Grant Management Manual (GMM) chapters and Department Management Memos.

4. **Ineligible Activities and Costs:**

The undersigned Jurisdiction acknowledges that if ineligible activities or costs are paid for with CDBG PI, those funds must be returned to the Jurisdiction's PI or RLF account (whichever account expended ineligible funds) using local Jurisdiction funds.

The undersigned Jurisdiction acknowledges that ineligible activities or costs paid for with PI under an active grant contract must be repaid to the Department using local non-federal funds.

5. **Jurisdictions Leaving the State Non-Entitlement Program and Jurisdictions Entering the State Non-Entitlement Program:**

The undersigned Jurisdiction certifies that it will follow these procedures when leaving or entering the State CDBG Program:

A. 24 CFR 570.489(e)(3)(iii) Transfer of program income to Entitlement program.

Jurisdictions that are entitlement communities or part of an urban agreement, or grantees that at a later date become an entitlement community or join a urban agreement, have the following options for PI and RLFs:

PI not associated with a RLF, the jurisdiction must:

- 1) Complete the process to certify they will be reporting the State PI into the Entitlement Programs process, including receipting the CDBG proceeds into IDIS, or,
- 2) Return all State CDBG Program Income to the Department, the amounts on hand once the HUD agreement is signed and as it is received until all PI generated by State CDBG funding has been returned.

PI in an approved RLF:

Entitlement jurisdictions and those who are part of an urban agreement may keep their RLF(s) and monies within an RLF as long as the following is met:

- 1) They have a State Reuse Plan (Agreement) signed by the Department and the City/County Authorized Representative.
- 2) Agree to operate the RLF under the Department's RLF rules going forward
- 3) Report all expenditure, and accounting of RLF(s) as required by the Department.
- 4) The Jurisdiction shall be required to have loan servicing policies and asset management policies and procedures, pursuant to the Department's Grant Management Manual Chapter on Asset and Real Property Management

B. 24 CFR 570.489(e)(3) (iv) Transfer of program income of grantees losing Entitlement status.

Upon entry into the State CDBG program, a unit of general local

government that has lost or relinquished its Entitlement status must submit a letter to the department, signed by the Authorized Representative stating which of the following options the jurisdiction will be implementing. Keep in mind, that retaining Entitlement PI while participating in the State CDBG program will require PI reporting for both sets of funding. Entitlement PI and any PI generated by State CDBG fund cannot be comingled.

Within 90 days of leaving the Entitlement Program to join the State CDBG program, the jurisdiction must certify that it will either:

- 1) Retain program income generated under Entitlement grants and continue to comply with Entitlement program requirements for program income, including reporting it into IDIS or the urban county; or
- 2) Retain the program income and transfer it to the State CDBG program, in which case the jurisdiction must comply with the State's rules for PI and RLF address within this Memo, the Reuse Plan and Chapter 14 of the Grant Management Memo.

6. Requirements of Program Income

This PI Reuse Agreement is intended to satisfy the requirements specified in federal statute and regulation at Section 104(j) of the Housing and Community Development Act ("the Act"), as amended in 1992 and 24 CFR 570.489(e) and (f). These statutory and regulatory sections permit a unit of local government to retain PI for CDBG-eligible activities, with Department approval. Under federal guidelines adopted by the State of California's CDBG Program, local governments are permitted to retain PI as long as the local government has received advance approval from the State of a local Agreement that will govern the expenditure of the PI. This Agreement has been developed to meet that requirement when an active contract between the Department and the undersigned Jurisdiction is not in force.

The undersigned Jurisdiction certifies their PI will be used to fund eligible CDBG activities that meet a National Objective and any public benefit requirements. Eligible activities, National Objective and public benefit requirements are specified in Federal Statute at Sections 104(b), 105(a) of The Housing and Community Development Act of 1974, and in Federal Regulations at 24 CFR 570.482 and 24 CFR 570.483. The Jurisdiction understands, if it is determined that an activity/project funded with PI that does not meet a National Objective and/or meet the public benefit requirement, the Jurisdiction will be required to use its own local funds to repay the PI Account.

7. Definition of Program Income

"Program Income" means gross income earned by the Jurisdiction from grant-funded activities and is subject to CDBG regulatory requirements pursuant to

24 CFR, Part 570.489(e) - Program Administrative Requirements as amended in the CDBG Final Rule, 24 CFR, Part 570.504 - Program Income, 24 CFR Part 85 – Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments, and OMB Circulars A-87 and A-122 as applicable. These regulations include the requirement that the Jurisdiction record the receipt and expenditure of PI as part of the financial transactions of the grant activity(ies).

For activities generating PI that are only partially funded with CDBG funds, such income is prorated to reflect the actual percentage of CDBG participation. Examples of PI include but are not limited to: payments of principal and interest on housing rehabilitation or business loans made using CDBG funds; interest earned on PI pending its disposition; interest earned on funds that have been placed in a revolving loan account; net proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG funds; and, income (net of costs that are incidental to the generation of the income) from the use or rental of real property that has been acquired, constructed or improved with CDBG funds and that is owned (in whole or in part) by the participating Jurisdiction or Sub-recipient.

8. Fiscal Reporting of Program Income Receipts, Deposits and Disbursements

The undersigned Jurisdiction certifies that CDBG PI will be accounted for using the Department's fiscal year timeframe (July 1 to June 30). All receipts of PI or RLF revenue (and the depositing of those funds into separate account(s)) and expenditures of PI in accordance with this PI Reuse Agreement will be monitored and reported per the Department's fiscal year cycle. The undersigned Jurisdiction certifies that they will report using the Department's reports/forms and will submit them in a timely manner.

9. Duration of This Program Income Reuse Agreement

The undersigned Jurisdiction certifies that it and its Governing Body understand that this document is effective for five (5) years from the execution date by the authorized CDBG Representative listed in this Agreement. At that time unless here are no further CDBG PI assets generating repayments, or the Jurisdiction has become a HUD entitlement Jurisdiction and uses these funds for entitlement activities, a new PI Reuse Agreement will be submitted to the Department. The Department has the Authority to void the Agreement with notice for cause.

10. Program Income General Administration (PI GA)

- A. After the PI Reuse Agreement is executed, the Jurisdiction reserves the right to calculate and track up to seventeen percent (17%) of PI received pursuant to Section 1, item 2 above, for payment of eligible PI GA costs. PI GA will not

be calculated for any RLF deposits. PI GA funds will not be used until General Conditions for PI GA are cleared and Departmental written approval is received. As noted above, these funds cannot be set aside since all PI must be expended first on whatever CDBG cost must be paid next, however tracking the amount of PI GA generated by the Jurisdiction's PI revenue permits the Jurisdiction to use that amount on eligible CDBG costs that don't have to meet a national objective, and ensures the Department is not exceeding the administrative funding cap of twenty percent (20%), as set by federal statute.

- B. If more funds are expended than what is available under PI GA calculation, the Jurisdiction will be required to return the over-expended PI GA amount back into their PI Account.
- C. Ineligible PI GA costs will be required to be returned to their PI Account.
- D. PI GA funds, once approved for use, may be used to pay for costs associated with receiving Department approval of PI activities funded under this agreement. Before submitting any proposed PI activities (Waivers or RLF) for Department approval, the Jurisdiction must hold at least one formal public hearing to discuss eligible activities and proposed PI activities. Department recommends that this public hearing be conducted to review current fiscal year PI activities and proposed and possible activities for future Department applications.

11. Revolving Loan Funds (RLFs)

- A. Pursuant to the criteria noted below, the undersigned Jurisdiction may be eligible to apply for the Housing RLF and/or the ED RLF.
- B. RLFs listed under the Agreement will only be utilized after the Jurisdiction submits written certification as well as the required guideline documents, and receives written Departmental approval certifying that the proposed RLF meets the Department's definition as follows:
 - 1) There are existing loans and assets from past RLF eligible activities that can be reasonable expected to generate repayments.
 - 2) The existing loans and assets have generated at least one loan repayment in the current fiscal year.
- C. The two RLFs and their respective CDBG eligible activities listed in this Agreement will be administered under the guidance and requirements provided in this Agreement and in the Department's current GMM Chapter on Program Income, and any subsequent policy, regulation, or statutory guidance, from the Department.
- D. Pursuant to Management Memorandum 14-05, the undersigned Jurisdiction

certifies acknowledgement that the Department reserves the right to cancel the grantee's RLF and require the funds to be returned to the Department as a corrective action for significant, ongoing non-compliance with RLF rules.

- E. The two (2) RLFs listed below each have a multiple eligible CDBG program activities. All CDBG rules pertaining to eligible RLF program activities will be followed.

1) Housing Revolving Loan Fund

There are three (3) housing programs that must be made available under this RLF. The Jurisdiction will get written Department approval for all three programs as part of Housing RLF approval.

Eligible housing activities under this RLF include:

- i. Housing Rehabilitation - Single Unit Residence program for owner and/or tenant occupied properties. Matrix code **14A**.
- ii. Housing Rehabilitation - 2-4 Units program for owner and/or tenant occupied properties. Matrix code **14B**.
- iii. Housing Acquisition - Single Family program for homebuyer assistance. Matrix code **13**.

2) Economic Development (ED) Revolving Loan Funds (RLF)

Eligible ED activities under this RLF include:

- i. Business Assistance program (direct financial assistance to a for-profit business). Matrix code **18A**; and
- ii. Microenterprise Financial Assistance. Matrix code **18C**.

- F. Each approved RLF will offer all eligible activities under the RLF definition.
- G. Separate and formally adopted program guidelines for each eligible activity will be provided to the Department as part of General Conditions for all eligible RLF activities when obtaining Department approval of a RLF.
- H. The undersigned Jurisdiction acknowledges that although all eligible activities under each approved RLF must be available, the Jurisdiction has the discretion to fund RLF loans for the activity or activities they deem to address the greatest need in their community.
- I. RLF receipts on deposit may be used for one or both single family housing program activities. Although both activities are required to be approved by the Department for use under the RLF, the Jurisdiction may choose to only operate one program at time or both simultaneously.
- J. In addition, each approved RLF will meet the following criteria:

- 1) RLFs will operate on a fiscal year of July 1 to June 30 for accounting and performance reporting.
- 2) Jurisdictions will set up RLFs as separate accounts (Housing and ED RLF accounts must be separate) with separate fund and transaction numbers. All other CDBG funds received as PI must be accounted for in a separate account.
- 3) All accounts set up pursuant to 2.G.2 will be interest bearing.
- 4) RLF monies will be expended first when the same RLF activity is funded under an awarded active grant contract.
- 5) RLF projects may be funded with both RLF monies and an active grant contract.
- 6) RLFs will be expended primarily on loans since RLFs must revolve. Thus, activities under an active contract that are funded using only grants rather than loans, will use contract funds not RLF monies to pay for the activity. Microenterprise grants, home repair grants and closing cost grants, that do not have loans associated with them, will not become RLF assets and therefore will not require RLF funds to be spent first on the active grant activities.
- 7) The RLFs will primarily provide financing instruments that will revolve, (i.e. loans), RLFs cannot fund projects primarily or solely with grants or forgivable loans.
- 8) RLF receipts from loans or assets generated from the same program activity, (i.e. single family housing rehabilitation loan repayments will only be deposited into a Housing RLF). Thus, repayments from the same program activities that go into an RLF must be used for originating loans for the same program activities.
- 9) RLF PI balances will not be moved to another approved RLF account or to the Jurisdiction's regular PI account. The Department may use a state or federal disaster declaration to formally allow for re-purposing of PI funds by the Jurisdiction. Funds approved by the Department for re-purposing to meet an urgent need are considered PI and must be expended first under active grant contracts or under approved waivers if there is no active contract.
- 10) RLFs that become depleted of funds and do not have additional asset repayments to sustain revolving activities, such that no longer meeting the Departments RLF definition, will be canceled by the Department.
- 11) RLF PI received and deposited is not allowable for PI GA expenses thus, seventeen percent (17%) cannot be set aside as with Jurisdictions with separate PI accounts.
- 12) RLFs with no annual revolving activities, (i.e. approved loans), are not able to be used by the Jurisdiction for reimbursement of non-revolving

costs therefore, activity delivery (AD) costs are not eligible. **AD costs are only eligible if one or more projects are funded and accomplishment data (i.e. beneficiaries), for those activity(ies), on an annual basis, are reported.**

- 13) RLF projects must be documented as meeting a national objective. If a project does not meet a national objective, then all expenses associated with the project (activity and activity delivery funds) must be repaid to the RLF with non-federal funds.
- 14) Given that RLF revenue cannot be "banked", to remain eligible, a RLF must revolve. To meet the definition of revolving, the undersigned Jurisdiction will not have more than \$100,000 on deposit in an RLF within a fiscal year without making at least one loan. Nor will the undersigned Jurisdiction have more than \$500,000 on hand even if making loans, each fiscal year.
- 15) The undersigned Jurisdiction certifies they are aware that the Department will address excess funds and revolving compliance by issuing finding letters to the grantee which could result in the Department cancelling the grantee's RLF, which immediately converts the funds to PI; and, therefore, must be used prior to drawing down grant funds.
- 16) RLF activity delivery funds (AD) may be used to pay for loan servicing costs.
- 17) Citizens of the Jurisdiction must be the primary beneficiaries of all RLF program activities.
- 18) Financial and performance reporting, on RLF projects will be done using current eligible activity set up, performance and completion reports for National Objective data and beneficiary demographics as HUD required accomplishment information.
- 19) Additional financial reports for RLF PI deposits and expenditures will be done twice a year using the Department's current PI fiscal reporting forms.
- 20) The Jurisdiction will be required to repay the RLF account for ineligible costs or activities with local non-federal funds.
- 21) RLF programs will meet the CDBG National Objective of benefit to Low/Moderate-income (Low/Mod) households. per 24 CFR Part 5, and in accordance with the Department's Income Manual.
- 22) Loan servicing costs under the RLFs are not eligible as PI GA costs but are eligible AD costs. As such, loan servicing costs are only eligible if one or more loans are made fiscally.

K. Activity Specific Requirements:

1) **Housing RLF:**

- a. All Housing Rehabilitation and Homeownership Assistance programs will only fund projects that meet a National Objective and comply with other State and federal requirements, including Department Management Memorandums and GMM Chapters on Housing Rehabilitation, Multi-Family Rehabilitation (2-4 units), and Homeownership Assistance.
- b. No more than nineteen percent (19%) of funds expended for **Housing Rehabilitation** in the RLF will be used for AD costs on an annual fiscal basis.
- c. No more than eight percent (8%) of funds expended in a fiscal year for **Homeownership Assistance** will be used to reimburse eligible AD costs.
- d. AD costs are not eligible until one loan is approved, closed and project beneficiary information is submitted.
- e. Projects cannot be solely funded as a grant.

2) **ED RLF:**

- a. Both ED programs will only fund projects that meet a National Objective and comply with other State and federal requirements, including Department Management Memorandums and GMM Chapters on Microenterprise and BA program.
- b. Income eligibility must be met per 24 CFR Part 5 and in accordance with the Department's Income Manual.
- c. No more than 15 percent (15%) of the total funds expended for **BA or Microenterprise financial assistance** activities shall be used to reimburse Jurisdiction for eligible activity delivery (AD) costs on an annual fiscal basis.
- d. Annual AD costs are not eligible until one loan is approved, closed and project beneficiary information is submitted.
- e. For **Business Assistance (BA)**, local review and underwriting of business assistance projects requesting a CDBG loan under this RLF shall be conducted under the Business Assistance Program Guidelines that have been adopted by the Governing Body of the undersigned Jurisdiction and approved in writing by the Department, as part of RLF approval.
- f. For **Microenterprise Assistance (ME)** The CDBG eligible activity

of direct financial assistance to eligible Microenterprise businesses will be conducted under this RLF. Local review and approval of microenterprise business assistance projects requesting a CDBG loan under this RLF shall be conducted under the Microenterprise Financial Assistance Program Guidelines that have been adopted by the Governing Body of the undersigned Jurisdiction and approved in writing by the Department as part of the General Conditions clearance. *Note: this subsection applies to ME loans only, not ME grants. Financial Assistance that is solely a grant cannot be made through an RLF.*

12. Loan Portfolio and Asset Management Policies and Costs

- A. The undersigned Jurisdiction certifies that it has asset management policies and loan portfolio servicing policies that are in compliance with HUD standards per 24 CFR Part 570, OMB Circulars A-87, A-122 A-133, and 24 CFR Part 85.
- B. The use of CDBG funds creates public financial assets. The public financial assets created can be in the form of loans or other repayment instruments which result in PI. Financial assets may also be in the form of real property or chattel (equipment and fixtures). All assets created from the use of CDBG funds must be administered in compliance with OMB Circulars A-87, A-122 A-133, 24 CFR Part 85. These policies will be used for managing all CDBG assets, including those which generate PI and RLF PI.
- C. General Administration PI funds may be used to reimburse the Jurisdiction for loan servicing and asset management costs. If the Jurisdiction has no PI GA available, GA funds from active grant contracts may be used to pay for eligible loan servicing costs.

13. Program Income Waivers

- A. The PI Waiver Submission Process will only be conducted when the undersigned Jurisdiction has no active grant contract(s) with the Department.
- B. The process below will be followed if a PI Waiver is to be requested:
 - 1) All PI Waiver requests will be submitted on approved Departmental forms for the Department's written approval.
 - 2) After the Department's review of the activity for eligibility and national objective compliance, the PI Waiver will be formally adopted via public hearing and resolution of the Jurisdiction's Governing Body, as part of the PI Waiver General (and Special Conditions if applicable) Clearance process.
 - 3) Expenditure of PI Waiver funds will not commence until clearance of all

required General and Special Conditions have been met, and written Departmental approval has been issued to the Jurisdiction.

- 4) Possible Waiver activities will be discussed at a properly noticed public hearing, held in front of the Jurisdiction's Governing Body, prior to submission of a Certified Resolution as part of a PI Waiver Request to the Department.
 - 5) The PI Waiver request must be submitted in accordance with current Department policy, and any subsequent policy, regulation, or statutory guidance.
 - 6) PI Waiver activity reporting will be submitted per current Departmental policies and includes financial accounting of all PI received and expended, including PI Waivers and PI Waiver activity performance.
 - 7) PI Waiver activities must be fully funded with program income already on hand.
 - 8) Only two (2) PI Waivers may be open and active at any one time.
 - 9) RLF funds will not be used for PI Waivers, since RLF monies must be expended on the activity that generated the payments.
 - 10) PI Waivers will not be approved for the same program activities for approved RLFs.
- C. PI GA and PI Waiver financial and performance reporting will be done using current eligible activity set up and completion reports which will collect national objective data and beneficiary demographics for HUD required accomplishment information.
- D. Additional financial reports for PI GA, PI Waivers, PI deposits and expenditures will be done semi-annually using the Department's current PI fiscal reporting forms.
- E. Ineligible costs will be required to be repaid to the PI Account. In some cases with ongoing significant compliance issues, the Department reserves the right to require the jurisdiction return all PI to the Department until it is satisfied that the jurisdiction has resolved all compliance issues.

14. Program Income Not Associated with an RLF

- A. Provided the undersigned Jurisdiction has made the Department aware at the beginning of the fiscal year they intend to exercise the \$35,000 rule, PI which is received annually that has a cumulative amount up to \$35,000 (RLF receipts are not included in the \$35,000 calculation) may be "re-categorized" as non-CDBG funds. In electing to exercise the \$35,000 rule, the Jurisdiction agrees not to expend CDBG revenue until either the fiscal year ends or the amount received goes above \$35,000, at which point the jurisdiction must consider the revenue as CDBG PI and must use it, first prior to drawing CDBG contract funds.

- B. The undersigned Jurisdiction certifies that it acknowledges if it has PI on hand and has not applied for or been awarded CDBG funds with the past three NOFAs, the Jurisdiction will be required to submit a PI Expenditure Plan for its PI on hand. The plan must be submitted via the CDBG PI Waiver process. If the Jurisdiction does not initiate the request, the Department will send the Jurisdiction a letter requiring submission of the plan within a set time frame. If the Jurisdiction does not respond to the Department's letter, the Jurisdiction will be required to return all PI on hand to the Department, regardless of the amount of PI.

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SECTION THREE: DEPARTMENT TERMS, CONDITIONS AND AUTHORIZATION

TERMS AND CONDITIONS: The undersigned Jurisdiction certifies that all terms and conditions listed below have been read and understood, and will be implemented and followed:

1. Authority & Purpose

This Agreement provides official notification of the Jurisdiction's PI Reuse Agreement's approval under the State's administration of the Federal CDBG for Non-entitlement Jurisdictions pursuant to the provisions of 42 U.S. Code (U.S.C.) 5301 et seq., 24 Code of Federal Regulations (CFR) Part 570, Subpart I, and 25 California Code of Regulations (CCR), Sections 7050 et seq. The Program is listed in the Catalog of Federal Domestic Assistance as 14.228 - CDBG Community Development Block Grant Program.

In accepting the PI Reuse Agreement approval, the Jurisdiction agrees to comply with the terms and conditions of this Agreement, all exhibits hereto and the representations contained in the Jurisdiction's PI Reuse Agreement. Any changes made to the PI Reuse Agreement after this Agreement is accepted must receive prior written approval from the Department.

2. Distribution for Reuse of PI

A. The Jurisdiction shall perform PI funded activities as described in the Distribution for Reuse in the PI Reuse Agreement. All written materials or alterations submitted as addenda to the original PI Reuse Agreement and which are approved in writing by the Department are hereby incorporated as part of the PI Reuse Agreement.

The Department reserves the right to require the Jurisdiction to modify any or all parts of the PI Reuse Agreement in order to comply with CDBG requirements. The Department reserves the right to review and approve all work to be performed by the Jurisdiction in relation to this Agreement. Any proposed revision to the work must be submitted in writing for review and approval by the Department and may require an amendment to this Agreement. Approval shall not be presumed unless such approval is made in writing by the Department.

B. The PI funded activities shall principally benefit Low/Mod-income persons or households residing in the Jurisdiction. HUD defines Low/Mod as having an annual income that is no more than 80 percent (80%) of the

county median area income, adjusted for household size.

3. Sufficiency of Funds and Termination

The Department may terminate this Agreement at any time for cause. . The Jurisdiction will have at least 14 days upon receipt of the Departments written notice. Termination shall consist of violations of any terms and/or conditions of this Agreement, upon the request of HUD, or withdrawal of the Department's expenditure authority.

The Department reserves the right, for any significant on-going non-compliance with RLF or Program Income rules, to cancel any RLF and require, all RLF and PI funds, to be returned to the Department.

4. Meeting National Objectives

All activities performed under this Agreement must meet one of the National Objectives determined by the HUD regulations as included in the Application authorized under Title I of the Housing and Community Development Act of 1974, as amended.

- A. Benefit to HUD defined Low/Mod-income person or household (LMI). The term Low/Mod-income is defined under CDBG as no more than 80 percent (80%) of the median area income, as determined by HUD, per Federal Regulation 24 CFR, Part 570.483(b); and/or;
- B. Prevention or elimination of slums or blight. In order for an activity to meet the National Objective of elimination of slums and blight, the activity must take place in an area that meets the definition of a blighted area and the project must be shown to eliminate blight or prevent further blight per Federal Regulation 24 CFR, Part 570.483(c).
- C. For Microenterprise Assistance activities, the Jurisdiction must only meet the benefit to Low/Mod-income person or household (LMI) National Objective.

5. Inspections of Activities

- A. The Department reserves the right to inspect any activity(ies) performed hereunder to verify that the activity(ies) is in accordance with the applicable federal, State and/or local requirements and this Agreement.
- B. The Jurisdiction shall inspect any activity performed by contractors and subrecipients hereunder to ensure that the activity(ies) is in accordance with the applicable federal, State and/or local requirements and this Agreement.

The Jurisdiction agrees to require that all activity(ies) found by such inspections not to conform to the applicable requirements be corrected, and to withhold payment to its contractor or subcontractor, respectively, until it is so corrected.

6. Insurance

The Jurisdiction shall have and maintain in full force and effect during the term of this Agreement such forms of insurance, at such levels as may be determined by the Jurisdiction and the Department to be necessary for specific components of the activity(ies) described in this Reuse Agreement.

7. Contractors and Subrecipients

A. The Jurisdiction shall not enter into any agreement, written or oral, with any contractor or subrecipient without the prior determination that the contractor or subrecipient is eligible to receive CDBG funds and is not listed on the Federal Consolidated List of Debarred, Suspended, and Ineligible Contractors.

- 1) Contractors are defined as program operators or construction contractors who are procured competitively.
- 2) Subrecipients are defined as public or private non-profit agencies or organizations and certain (limited) private for-profit entities who receive CDBG funds from an awarded Jurisdiction to undertake eligible activities.

B. An agreement between the Jurisdiction and any contractor or subrecipient shall require:

- 1) Compliance with the applicable State and federal requirements of this Agreement, which pertain to, among other things, labor standards, non-discrimination, Americans with Disabilities Act, Equal Employment Opportunity, and Drug-Free Workplace; and, Compliance with the applicable provisions relating to Labor Standards/Prevailing Wages. In addition to these requirements, all contractors and subcontractors shall comply with the applicable provisions of the California Labor Code.
- 2) Maintenance of, at minimum, the State-required Workers' Compensation Insurance for those employees who will perform the activity(ies) or any part of it.
- 3) Maintenance of, if so required by law, unemployment insurance, disability insurance and liability insurance, which is reasonable to compensate any person, firm, or corporation, who may be injured

or damaged by the contractor, or any subcontractor in performing the activity(ies) or any part of it.

- 4) Compliance with the applicable Equal Opportunity Requirements described in this Agreement.

C. Contractors shall:

- 1) Perform the activity(ies) in accordance with federal, State and local housing and building codes, as are applicable.
- 2) Provide security to assure completion of the project by furnishing the borrower and construction lenders with Performance and Payment Bonds, or other security approved in advance in writing by the Department.

D. Subrecipients shall:

- 1) Retain all books, records, accounts, documentation, and all other materials relevant to this Agreement for a period of five (5) years from date of termination of this Agreement, or five (5) years from the conclusion or resolution of any and all audits or litigation relevant to this Agreement, and any amendments, whichever is later.
- 2) Permit the State, federal government, the Bureau of State Audits, the Department and/or their representatives, upon reasonable notice, unrestricted access to any or all books, records, accounts, documentation, and all other materials relevant to the agreement for the purpose of monitoring, auditing, or otherwise examining said materials.

8. Obligations of the Jurisdiction with Respect to Certain Third Party Relationships

The Jurisdiction shall remain fully obligated under the provisions of this Agreement notwithstanding its designation of any third party or parties for the undertaking of all or any part of the Activities funded under this agreement with respect to which assistance is being provided under this Agreement to the Jurisdiction.

The Jurisdiction shall comply with all lawful requirements of the Department necessary to ensure that the Program, with respect to which assistance is being provided under this Agreement to the Jurisdiction, is carried out in accordance with the Department's Assurance and Certifications, including those with respect

to the assumption of environmental responsibilities of the Department under Section 104(g) of the Housing and Community Development Act of 1974.

9. Periodic Reporting Requirements

During the term of this Agreement, the Jurisdiction must submit the following reports by the dates identified, respectively, or as otherwise required at the discretion of the Department. The Jurisdiction's performance under this Agreement will be based, in part, on whether it has submitted the reports on a timely basis.

- A. Semi-Annual PI Expenditure/Performance Report: Submit by January 31 and July 31 of each year regardless of whether or not the Jurisdiction has any unexpended PI. PI Waivers or open Grants with no accomplishment are not excluded to the reporting requirement.
- B. Annual Federal Overlay Reporting: Submit by July 31 starting from the contract effective date to subsequent June 30, and for each State Fiscal Year. Annual Reporting includes but is not limited to: Section 3, and Minority Owned Business/Women Owned Business (MBE/WBE).
- C. Wage Compliance Reports: Semi-annual Wage Compliance Reports are to be submitted by October 7 and April 7 during the entire construction period. The final Wage Compliance Report is to be submitted thirty (30) days after construction is completed.
- D. Any other reports that may be required as a Special Condition of this Agreement.

10. Monitoring Requirements

The Department shall perform a program and/or fiscal monitoring of the activity(ies). The Jurisdiction shall be required to resolve any monitoring findings to the Department's satisfaction by the deadlines set by the Department. If findings are not adequately resolved in a timely manner, the Department may deduct points from the Jurisdiction's performance score on future applications.

Additionally, the Department reserve the right to suspend a Jurisdiction's authority to expend PI (Waiver, RLF and/or PI attached to an open grant) based on significant compliance issues, reporting concerns or serious lack of cooperation in clearing PI monitoring findings.

11. Signs

If the Jurisdiction places signs stating that the Department is providing financing, it shall indicate in a typeface and size commensurate with the Department's

funding portion of the project that the Department is a source of financing through the CDBG Program.

12. Audit/Retention and Inspection of Records

- A. The Jurisdiction must have intact, auditable fiscal records at all times. If the Jurisdiction is found to have missing audit reports from the SCO during the term of this Agreement, the Jurisdiction will be required to submit a Agreement to the State, with task deadlines, for submitting the audit to the SCO. If the deadlines are not met, the Jurisdiction will be subject to termination of this Agreement and disencumbrance of the funds awarded. The Jurisdiction's audit completion Agreement is subject to prior review and approval by the Department.
- B. The Jurisdiction agrees that the Department or its designee will have the right to review, obtain, and copy all records pertaining to performance of this Agreement. The Jurisdiction agrees to provide the Department or its designee with any relevant information requested and shall permit the Department or its designee access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with California Public Contract Code (PCC) Section 10115 et seq., Government Code (GC) Section 8546.7 and 2 CCR 1896.60 et seq. The Jurisdiction further agrees to maintain such records for a period of five (5) years after final payment under this Agreement. The Jurisdiction shall comply with the caveats and be aware of the penalties for violations of fraud and for obstruction of investigation as set forth in PCC 10115.10.
- C. An expenditure which is not authorized by this Agreement or which cannot be adequately documented shall be disallowed and must be reimbursed to the Department or its designee by the Jurisdiction.
- D. Absent fraud or mistake on the part of the Department, the determination by the Department of allowable expenditures shall be final.
- E. For the purposes of annual audits under OMB Circular A-133 (The United States Office of Management and Budget Circular for Audits of States and Local Governments), Jurisdiction shall use the Federal Catalog Number 14.228 for the State CDBG Program.
- F. Notwithstanding the foregoing, the Department will not reimburse the Jurisdiction for any audit cost incurred after the expenditure deadline of this Agreement.

- G. The Jurisdiction understands that the expenditure of PI is covered under the OMB A-133 Single Audit Requirements and will meet all these requirements and report said PI Expenditure along with grant funds each fiscal year.

13. Conflict of Interest of Members, Officers, or Employees of Contractors, Members of Local Governing Body, or other Public Officials

Pursuant to 24 CFR 570.611, no member, officer, or employee of the Jurisdiction, or its designees or agents, no member of the Governing Body of the locality in which the program is situated, and no other public official of such locality or localities who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this part, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract or agreement with respect to a CDBG-assisted activity or its proceeds, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one (1) year thereafter. The Jurisdiction shall incorporate, or cause to be incorporated, in all such contracts or subcontracts a provision prohibiting such interest pursuant to the purposes of this Section.

14. Waivers

No waiver of any breach of this Agreement shall be held to be a waiver of any prior or subsequent breach. The failure of the Department to enforce at any time the provisions of this Agreement or to require at any time performance by the Jurisdiction of these provisions shall in no way be construed to be a waiver of such provisions nor to affect the validity of this Agreement or the right of the Department to enforce these provisions.

15. Litigation

- A. If any provision of this Agreement, or an underlying obligation, is held invalid by a court of competent Jurisdiction, such invalidity, at the sole discretion of the Department, shall not affect any other provisions of this Agreement and the remainder of this Agreement shall remain in full force and effect. Therefore, the provisions of this Agreement are, and shall be, deemed severable.
- B. The Jurisdiction shall notify the Department immediately of any claim or action undertaken by or against it which affects or may affect this Agreement or the Department, and shall take such action with respect to the claim or action as is consistent with the terms of this Agreement and the interests of the Department.

16. Lead-Based Paint Hazards

Activity(ies) performed with assistance provided under this Agreement are subject to lead-based paint hazard regulations contained in Title 8 (Industrial Relations) and Title 17 (Public Health) of the CCR and 24 CFR, Part 35 (Lead Disclosure). Any grants or loans made by the Jurisdiction with assistance provided under this Agreement shall be made subject to the provisions for the elimination or mitigation of lead-based paint hazards under these Regulations. The Jurisdiction shall be responsible for the notifications, inspections, and clearance certifications required under these Regulations.

17. Prevailing Wages

- A. Where funds provided through this Agreement are used for construction work, or in support of construction work, the Jurisdiction shall ensure that the requirements of California Labor Code (LC), Chapter 1, commencing with Section 1720, Part 7 (pertaining to the payment of prevailing wages and administered by the California Department of Industrial Relations) are met.
- B. For the purposes of this requirement "construction work" includes, but is not limited to rehabilitation, alteration, demolition, installation or repair done under contract and paid for, in whole or in part, through this Agreement. All construction work shall be done through the use of a written contract with a properly licensed building contractor incorporating these requirements (the "construction contract"). Where the construction contract will be between the Jurisdiction and a licensed building contractor, the Jurisdiction shall serve as the "awarding body" as that term is defined in the LC. Where the Jurisdiction will provide funds to a third party that will enter into the construction contract with a licensed building contractor, the third party shall serve as the "awarding body." Prior to any disbursement of funds, including but not limited to release of any final retention payment, the Department may require a certification from the awarding body that prevailing wages have been or will be paid.

18. Compliance with State and Federal Laws and Regulations

- A. The Jurisdiction agrees to comply with all State laws and regulations that pertain to construction, health and safety, labor, fair employment practices, equal opportunity, and all other matters applicable to the Jurisdiction, its subcontractors, contractors or subcontractors, and the Reuse activity(ies), and any other State provisions as set forth in this Agreement.
- B. The Jurisdiction agrees to comply with all federal laws and regulations applicable to the CDBG Program and to the activity(ies), and with any other federal provisions as set forth in this Agreement.

19. Anti-Lobbying Certification

The Jurisdiction shall require that the language of this certification be included in all contracts or subcontracts entered into in connection with this activity(ies) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and no more than \$100,000 for such failure.

"The undersigned certifies, to the best of his or her knowledge or belief, that:

- A. No federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement; and,
- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions."

20. Bonus or Commission. Prohibition Against Payments of

The assistance provided under this Agreement shall not be used in the payment of any bonus or commission for the purpose of:

- A. Obtaining the Department's approval of the Application for such assistance; or,
- B. The Department's approval of the Applications for additional assistance; or,
- C. Any other approval or concurrence of the Department required under this Agreement, Title I of the Housing and Community Development Act of

1974, or the State regulations with respect thereto; provided, however, that reasonable fees for bona fide technical, consultant, managerial or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as program costs.

21. Citizen Participation

The Jurisdiction is subject to the requirements concerning citizen participation contained in Federal Regulations at 24 CFR, Part 570.486, Local Government Requirements, Part 91.105 and 91.115.

22. Clean Air and Water Acts

This Agreement is subject to the requirements of the Clean Air Act, as amended, 42 USC 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR, Part 15, as amended from time to time.

23. Conflict of Interest of Certain Federal Officials

No member of or delegate to the Congress of the United States, and no resident commissioner, shall be admitted to any share or part of this Agreement or to any benefit to arise from the same. The Jurisdiction shall report all perceived or actual conflicts of interest cases to the State for review before financial benefits are given.

24. Environmental Requirements

The Jurisdiction shall comply with the provisions of the National Environmental Policy Act (NEPA) by following the procedures contained in 24 CFR, Part 58. The Jurisdiction shall not undertake any activity that would have an adverse environmental impact or limit the choice of reasonable alternatives under 24 CFR, Part 58.22 until HUD or the Department has issued an environmental clearance.

25. Equal Opportunity

A. The Civil Rights, Housing and Community Development, and Age Discrimination Acts Assurances

During the performance of this agreement, the Jurisdiction assures that no otherwise qualified person shall be excluded from participation or employment, denied program benefits, or be subjected to discrimination based on race, color, national origin, sex, age, handicap, religion, familial status, or religious preference, under any activity funded by this Agreement, as required by Title VI of the Civil Rights Act of 1964, Title I of the Housing and Community Development Act of 1974, as amended, the

Age Discrimination Act of 1975, the Fair Housing Amendment Act of 1988, and all implementing regulations.

B. Rehabilitation Act of 1973 and the "504 Coordinator"

The Jurisdiction further agrees to implement the Rehabilitation Act of 1973, as amended, and its regulations, 24 CFR, Part 8, including, but not limited to, for Jurisdiction's with fifteen (15) or more permanent full or part time employees, the local designation of a specific person charged with local enforcement of this Act, as the "504 Coordinator."

C. The Training, Employment, and Contracting Opportunities for Business and Lower-Income Persons Assurance of Compliance

- 1) The activity(ies) to be performed under this Agreement are subject to the requirements of Section 3 of the HUD Act of 1968, as amended, 12 U.S.C. 1701u. Recipients, contractors and subcontractors shall direct their efforts to provide, to the greatest extent feasible, training and employment opportunities generated from the expenditure of Section 3 covered assistance to Section 3 residents in the order of priority provided in 24 CFR, Part 135.34(a)(2).
- 2) The parties to this Agreement will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of HUD set forth in 24 CFR, Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Agreement. The parties to this Agreement certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
- 3) The Jurisdiction will include these Section 3 clauses in every contract and subcontract for Work in connection with the activity(ies) and will, at the direction of the Department, take appropriate action pursuant to the contract or subcontract upon a finding that the Jurisdiction or any contractor or subcontractor is in violation of regulations issued by the Secretary of HUD, 24 CFR, Part 135 and, will not let any contract unless the Jurisdiction or contractor or subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
- 4) Compliance with the provisions of Section 3, the regulations set forth in 24 CFR, Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Agreement shall be a condition of the federal financial assistance provided to the activity(ies), binding upon the Jurisdiction, its successors, and assigns. Failure to fulfill these requirements shall

subject the Jurisdiction, its contractors and subcontractors and its successors, to such sanctions as are specified by 24 CFR, Part 135 and those sanctions specified by this Agreement.

D. Assurance of Compliance with Requirements Placed on Construction Contracts of \$10,000 or More

The Jurisdiction hereby agrees to place in every contract and subcontract for construction exceeding \$10,000 the Notice of Requirement for Affirmative Action to ensure Equal Employment Opportunity (Executive Order 11246), the Standard Equal Employment Opportunity, and the Construction Contract Specifications. The Jurisdiction furthermore agrees to insert the appropriate Goals and Timetables issued by the U.S. Department of Labor in such contracts and subcontracts.

26. Flood Disaster Protection

- A. This Agreement is subject to the requirements of the Flood Disaster Protection Act (FDPA) of 1973 (Public Law 93-234). No portion of the assistance provided under this Agreement is approved for acquisition or construction purposes as defined under FDPA, Section 3 (a) of said Act, for use in an area identified by the Secretary of HUD as having special flood hazards which is located in a community not then in compliance with the requirements for participation in the national flood insurance program pursuant to FDPA, Section 102(d) of said Act.
- B. The use of any assistance provided under this Agreement for such acquisition or construction in such identified areas in communities then participating in the national flood insurance program shall be subject to the mandatory purchase of flood insurance requirements of FDPA, Section 102(a) of said Act.
- C. Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Agreement shall contain certain provisions. These provisions will apply if such land is located in an area identified by the Secretary of HUD as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 et seq.
- D. These provisions shall obligate the transferee and its successors or assigns to obtain and maintain, during the ownership of such land, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under FDPA, Section 102(s) of the Flood Disaster Protection Act of 1973. Such provisions shall be required notwithstanding the fact that the construction on such land is not itself funded with assistance provided under this Agreement.

27. Federal Labor Standards Provisions

The Jurisdiction shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of:

- A. Davis-Bacon Act (40 U.S.C. 3141-3148) requires that workers receive no less than the prevailing wages being paid for similar work in their locality. Prevailing wages are computed by the Federal Department of Labor and are issued in the form of federal wage decisions for each classification of work. The law applies to most construction, alteration, or repair contracts over \$2,000.
- B. "Anti-Kickback Act of 1986" (41 U.S.C. 51-58) prohibits any person from (1) providing, attempting to provide, or offering to provide any kickback; (2) soliciting, accepting, or attempting to accept any kickback; or (3) including directly or indirectly, the amount of any kickback prohibited by clause (1) or (2) in the contract price charged by a subcontractor to a prime contractor or a higher tier subcontractor or in the contract price charged by a prime contractor to the United States.
- C. Contract Work Hours and Safety Standards Act - CWHSSA (40 U.S.C. 3702) requires that workers receive "overtime" compensation at a rate of one to one-half (1-1/2) times their regular hourly wage after they have worked forty (40) hours in one week.
- D. Title 29, Code of Federal Regulations CFR, Subtitle A, Parts 1, 3 and 5) are the regulations and procedures issued by the Secretary of Labor for the administration and enforcement of the Davis-Bacon Act, as amended.

The Jurisdiction shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the Department for review upon request.

28. Procurement

The Jurisdiction shall comply with the procurement provisions in 24 CFR, Part 85.36: Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments.

29. Non-Performance

The Department shall review the actual National Objective and/or Public Benefit achievements of the Jurisdiction. In the event that the National Objective and/or Public Benefit requirements are not met, the Department will require the recapture of the entire PI expended on that project/activity. Additional remedies

may include suspending the Jurisdiction's authority to use PI funds until the Jurisdiction has developed capacity to ensure future PI funds will be used for eligible activities that will meet a National Objective.

30. Relocation, Displacement, and Acquisition

The provisions of the Uniform Relocation Act, as amended, 49 CFR, Part 24, and Section 104(d) of the Housing and Community Development Act of 1974 shall be followed where any acquisition of real property is carried out by the Jurisdiction and assisted in whole or in part by funds allocated by CDBG.

31. Uniform Administrative Requirements

The Jurisdiction shall comply with applicable Uniform Administrative Requirements as described in 24 CFR, Section 570.502, including cited Sections of 24 CFR, Part 85.

32. Section 3

The Jurisdiction will comply with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and implementing Regulations at 24 CFR, Part 135.

33. Affirmatively Furthering Fair Housing

The Jurisdiction will affirmatively further fair housing, which means that it will conduct an analysis to identify impediments to fair housing choice within the Jurisdiction, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions in this regard.

34. General Contract Conditions

The following conditions apply to all activities, including set aside activities. The Jurisdiction must meet the conditions within ninety (90) days of this Agreement's execution. Failure to meet the following Special Conditions may result in termination of this Agreement.

A. Environmental Compliance

The Jurisdiction shall have satisfied all National Environmental Policy Act (NEPA) requirements and California Environmental Quality Act (CEQA) requirements. CEQA shall be approved by the Jurisdiction. The level of compliance varies by activity. NEPA review must be completed by the Jurisdiction for each activity and approved in writing by Department staff prior to incurring costs on the activity(ies).

B. Acquisition/Relocation Compliance

The Jurisdiction must document its compliance with the Uniform Relocation Act, Section 104(d) before release of funds by the Department. The Jurisdiction must submit a specific relocation assistance Agreement for each activity which may result in temporary or permanent displacement. For projects where there will be temporary or permanent displacement, the Jurisdiction must submit signed General Information Notices (GINs) from each tenant who was residing in the project at the time of Application submittal. If the Jurisdiction believes that there will be no displacement as a result of their activities, they must submit a letter explaining why no displacement or relocation will occur, which will be subject to written approval by the Department.

C. Site Control

The Jurisdiction shall demonstrate site control of the proposed project property by submitting evidence of one or more of the following to the Department:

- 1) Fee title;
- 2) A leasehold interest on the project property with provisions that enable the lessee to make improvements on and encumber the property provided that the terms and conditions of any proposed lease shall permit compliance with all Program requirements;
- 3) An option to purchase or lease;
- 4) A disposition and development agreement with a public agency;
- 5) A land sale contract, or other enforceable agreement for the acquisition of the property; or,
- 6) All easements and right-of-ways (required for completion of the CDBG project) must be obtained.

D. Funding Commitments and Project Cost Estimates

All funding required for project completion must be documented and committed. If all funding is not committed, the Department shall terminate this Agreement. If the Jurisdiction has applied for other funding prior to the execution of this Agreement, the Jurisdiction must notify the Department as soon as that application is approved or denied. If the Jurisdiction must apply for other funding after the execution date of this Agreement, the Jurisdiction must apply at the earliest possible opportunity offered by the

other funding source(s) and notify the Department as soon as that application is approved or denied.

A current third-party cost estimate must be provided by the engineer or architect for the project.

E. Activity Administration Documentation

There are four methods of administering and/or completing RLF activities:

- 1) Use of in-house staff only;
- 2) Subrecipient agreement(s) with qualified non-profit(s);
- 3) Consultants/contractors/others obtained through federal procurement procedures; and,
- 4) Any combination of the above methods.

The Jurisdiction must provide the following documentation demonstrating that one or more of these methods were used for the GA of the RLF and for all activities carried out under this Agreement.

- 1) Use of in-house staff only: If not previously provided in the Application, submit staff resumes and duty statements that clearly identify that Jurisdiction staff has capacity and experience to complete administration of the proposed activities in the Application.
- 2) Subrecipient agreement(s) with qualified non-profit(s): Subrecipients and their respective agreements with the Jurisdiction must adhere to all Program requirements. Submit the subrecipient agreement that was executed between the non-profit and the Jurisdiction. (Submitting draft documents for review prior to execution is recommended.) The scope of work in the subrecipient agreement must match the description of activity in this Agreement. Any parts of the activity description in this Agreement not covered by the subrecipient agreement must have separate procurement information. If the subrecipient is using CDBG funds to hire other consultants or subrecipients to do part or all of the Work then the procurement documentation or additional subrecipient agreements must be provided to the Department for review and approval.
- 3) Consultants: Submit procurement documentation that all third-party consultants are procured in accordance with Federal Procurement Procedures and the Grant Management Manual, as follows:

- a. A copy of the document used to notify prospective consultants, such as a Request for Proposal or similar document.
- b. A list of all bid respondents, showing respondents' contact information and the dollar amount of each proposal.
- c. A brief description of the process used to select the consultant/ contractor/other, including the rationale for the selection.
- d. Additional information may be found in the Grant Management Manual, Program Operators.

F. Compliance With All Loans and/or Grant Agreements

Pursuant to this Agreement, the Jurisdiction must comply with State and Federal Laws and Regulations that pertain to matters applicable to the Jurisdiction. Prior to disbursement of any funds under this Agreement, the Jurisdiction shall be in compliance with all loan and/or grant agreements to which it is a party, which are administered by the Department.

G. Easements and Rights-of-Way

If required for the completion of a CDBG project, the Jurisdiction must obtain all easements and rights-of-ways required for completion of the CDBG project within twelve (12) months of execution of this Agreement. Failure to obtain these may result in termination of this Agreement.

H. Section 504 Accessibility Requirements

- 1) Section 504 Regulations apply when CDBG funds are used on a new construction housing or public facility project or when an existing public facility or housing project with fifteen (15) or more units is being purchased and/or "substantially" rehabilitated. Qualified CDBG assisted housing projects are required to have a certain percentage of the units designed for and accessible to persons with mobility and sensory impairments.
- 2) For a federally assisted new construction housing project, Section 504 requires five percent (5%) of the dwelling units, or at least one unit, whichever is greater, to meet Uniform Federal Accessibility Standards or a standard that is equivalent or stricter, for persons with mobility disabilities. An additional two percent (2%) of the dwelling units, or at least one unit, whichever is greater, must be accessible for persons with hearing or visual disabilities.

- 3) Under Section 504, alterations are substantial (i.e. substantially rehabilitated) if they are undertaken to a housing project that has 15 or more units and the cost of the alterations is seventy-five percent (75%) or more of the replacement cost of the completed facility; and require that a minimum of five percent (5%) of the dwelling units, or at least one unit, whichever is greater, shall be made accessible to persons with mobility disabilities and an additional two percent (2%) of the dwelling units, or at least one unit, whichever is greater, shall be made accessible to persons with hearing or visual disabilities.
- 4) The Jurisdiction shall provide documentation satisfactory to the Department verifying that the required housing units or public facility described in the project comply with the accessibility standards. CDBG funds will not be released until the necessary documentation is provided. All CDBG funded programs must, to the greatest degree possible, be conducted in buildings which meet Section 504 accessibility standards.

I. Grantee's Data Universal Numbering System (DUNS)

The Jurisdiction shall provide the Department with a DUNS number for any contractor or subcontractor prior to release of any funds under this Agreement.

35. Community Development Activity Conditions

A. Homeownership Assistance

If the Work to be performed under this Agreement involves Homeownership Assistance, the following additional special conditions apply:

- 1) Program Guidelines: The Jurisdiction must submit a copy of its Homeownership Assistance Program Guidelines and its PI Re-Use Agreement to the Department for review and approval within ninety (90) days of the execution date of this Agreement.
- 2) If the Jurisdiction proposed to assist homebuyers to purchase newly constructed units in its CDBG application under the Homeownership Assistance activity, the following requirements must be met:
 - a) The units must have been available for sale to the general public;

- b) Development of the new subdivision must not be dependent upon the funding of the homebuyer loan;
- c) CDBG funds shall not be used for construction; and,
- d) Homeownership Assistance loans will not be approved prior to the foundation of the housing being in place.

B. Housing Rehabilitation

If the Work to be performed under this Agreement involves Housing Rehabilitation, the following additional special conditions apply:

- 1) Program Guidelines: The Jurisdiction must submit a copy of its Housing Rehabilitation Program Guidelines and its PI Re-Use Agreement to the Department for review and approval.
- 2) Affordable Rent: If the Jurisdiction's Housing Rehabilitation Program provides for rehabilitating rental properties, the Jurisdiction must submit to the Department its provisions for assuring affordable rent for the LMI occupants. Jurisdiction may include this information as part of the Housing Rehabilitation Program Guidelines.

36. Economic Development Activity-Specific Conditions

A. Restrictions on CDBG-Assisted Public Property

CDBG funds can be used by the Jurisdiction to purchase or rehabilitate public property. The change of use of real property provisions contained in 24 CFR 570.489(i) apply to real property within the unit of general local government's control (including activities undertaken by subrecipients), which was acquired or improved in whole or in part using CDBG funds in excess of the threshold for small purchase procurement (currently \$100,000). The restrictions shall apply from the date CDBG funds are first expended for the property until five (5) years after completion of the project. See the Federal Regulations for the full text of this regulation. The Jurisdiction must provide documentation of proper restriction on assisted property.

B. Business Assistance Activity

- 1) Jurisdictions implementing Business Assistance (BA) Loans, shall submit program guidelines that ensure compliance with CDBG underwriting requirements as described in 24 CFR 570, Appendix

A, "Guidelines and Objectives for Evaluating Project Costs and Financial Requirements" and with public benefit requirements contained in 24 CFR 570.482(f).

- 2) Jurisdictions implementing a BA loan shall provide a written Employment Agreement required to be executed between the Jurisdiction and the business owner [requirements of the Employment Agreement are described in 24 CFR 570.506 (b), (5), and (6)]. The written Employment Agreement must include a commitment by the business that the jobs are to be created or retained by the termination date of this Agreement and that at least fifty-one percent (51%) of all jobs created or retained (on a FTE basis) will be held by LMI persons. The Employment Agreement shall specify that, prior to receiving assistance, the business shall agree to:
 - a) Provide a listing, by job title, of the permanent jobs projected to be created;
 - b) Identify which jobs, if any, are part-time and the annual hours of work for each position;
 - c) Identify which jobs are projected to be filled by LMI; and,
 - d) Provide periodic reporting (semi-annual) not limited to: listing jobs, by job title, of all the permanent jobs actually filled, and which of those jobs are held by members of the LMI.

C. Microenterprise Assistance Activities

- 1) Jurisdictions implementing a Microenterprise Assistance activity for technical assistance and/or microenterprise loans, shall submit program guidelines that ensure compliance with CDBG requirements. Specifically, guidelines must ensure that all beneficiaries of the program are eligible micro enterprises, per HUD definitions. A microenterprise must:
 - a) Have all owners of the business documented as meeting HUD family income eligibility standards; and,
 - b) Have documentation that the business's owners and employees are five (5) or fewer in number.
- 2) When implementing a Microenterprise Program, the program guidelines shall include the proposed benefits, eligible activities and ongoing evaluation of program services. The guidelines will include

a Beneficiary Tracking Agreement, which defines the goals; identifies the roles and responsibilities of the service providers; identifies the market and focuses the outreach; defines the screening and referral process; and, tracks the beneficiaries through the program's level of service. The Beneficiary Tracking Agreement shall also describe the roles and responsibilities of the Jurisdiction and/or program operator for meeting the reporting requirements of the State CDBG Program.

- 3) When implementing a Microenterprise Program that is part of an integrally-related component of a larger project where non-LMI persons will be extended training and supportive services, shall submit guidelines including the methodology describing how CDBG funds will only be used towards the assistance of LMI to LMI persons under the Jurisdiction's activity.
- 4) Jurisdictions implementing a Microenterprise activity for loans to microenterprises made with Grant funds or PI funds, shall submit guidelines that ensure compliance with CDBG underwriting requirements as described in 24 CFR, Part 570, Appendix A, "Guidelines and Objectives for Evaluating Project Costs and Financial Requirements."
- 5) If under this Agreement, a Microenterprise Façade Improvement activity is being implemented, the Jurisdiction shall submit program guidelines that ensure compliance with CDBG National Objective requirements, as described in 24 CFR 570, Appendix A, "Guidelines and Objectives for Evaluating Project Costs and Financial Requirements."

D. Required Agreements for Assisted Businesses

The Jurisdiction shall execute a written agreement between the Jurisdiction and the business receiving CDBG funds (loans or grants) under this Agreement to ensure compliance with CDBG State and federal regulations. The written agreement shall contain language to ensure each business complies with the terms of this Agreement, Exhibit A, as well as each of the criteria as set forth in 24 CFR 570.506 (b)(4) and (c).

- 1) Each agreement between the Jurisdiction and the business(es) shall be submitted to the Department for review and written approval, prior to execution by the business and the Jurisdiction.
- 2) Each agreement shall require the business to report employee information periodically to the Jurisdiction, so that the Jurisdiction can comply with its reporting requirements to the Department. The

report shall list each job position by job title and number of annual hours worked and LMI status. The report shall list all the permanent jobs actually created or retained, and identify which of those job positions are held by members of the LMI. Additionally, the report shall include the demographics of job holders (ethnicity/race, disability, status, gender, and head of household status).

- 3) Each agreement shall require the business(es) submit a Data Universal Numbering System (DUNS) number and be verified as not being on the current federal debarred list, prior to receiving any CDBG financial assistance. The agreement shall require proof of proper insurance for secured collateral and protecting the Jurisdiction. The agreement shall reference this Agreement between the Department and the Jurisdiction. The agreement shall contain all other special conditions as directed by the Department or local loan committee.

37. Community and Economic Development Agreement Activities

Non Implementation Activities and Planning activities are not allowed under this agreement using PI.

A. Implementation Activity

Implementation Activities are not permitted under this Agreement using PI GA funds.

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Certified Approving Resolution Is Attached

I certify that the foregoing is true and correct and the City of Calexico will follow all requirements of this agreement. I understand that my certification also acknowledges that serious compliance issue with the above requirements could result in the State suspending the authority of the City of Calexico to expend PI or may require City of Calexico to return unused PI to the State until the City of Calexico clears the serious compliance issues.

Signature of Authorized Representative

9/16/2014

Date Signed

Richard N. Warne, Interim CM

Name and Title of Authorized Representative

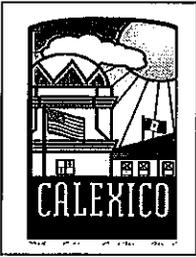
Signature of CDBG Section Chief

Date Signed

Name of CDBG Section Chief

**AGENDA
ITEM**

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AGENDA STAFF REPORT

DATE: September 16, 2014

TO: Mayor and City Council

APPROVED BY: Richard N. Warne, Interim City Manager *rw*

PREPARED BY: Nick Servin, Public Works Director/City Engineer *NS*

SUBJECT: Resolution No. 2014-____ of the City Council of the City of Calexico authorizing the City Manager or his designee to execute grant offer agreement and/or any documentation pertaining to Airport Improvement Program (AIP) Project No. 3-06-0034-016-2014 with the Federal Aviation Administration (FAA)

=====

Recommendation:

1. Resolution No. 2014-____ of the City Council of the City of Calexico authorizing the City Manager or his designee to execute grant offer agreement and/or any documentation pertaining to Airport Improvement Program (AIP) Project No. 3-06-0034-016-2014 with the Federal Aviation Administration (FAA)

Background:

The Calexico International Airport was awarded a \$3,708,081 (\$3,337,273 90% FAA and \$370,808 10% City Match) grant from the Federal Aviation Administration (FAA) for the Construction Phase of the Runway Pavement Rehabilitation Project. The Runway Pavement Rehabilitation project consists of reconstructing the pavement of the runway with a completely new asphalt concrete pavement section, and other incidental improvements such as shoulder and infield grading, installation of drainage improvements, and adjustment to grade of existing airfield lights and signs and other miscellaneous items at the Calexico International Airport.

Discussion & Analysis:

In order to receive the above-mentioned funds, the City of Calexico needs to execute grant offer agreement and/or any necessary documentation to claim the funds. Therefore, the Calexico International Airport is requesting City Council authorization to delegate authority to the City

**AGENDA
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Manager or his designee to execute grant offer agreement and/or any documentation pertaining to Airport Improvement Program (AIP) Project No. 3-06-0034-016-2014 for the Construction Phase of the Runway Pavement Rehabilitation at the Calexico International Airport

Fiscal Impact:

FAA Grant	\$3,337,273
City Match	\$370,808
Total	\$3,708,081

Coordinated With:

Federal Aviation Administration (FAA)

Attachment:

1. Resolution No. 2014-____ of the City Council of the City of Calexico authorizing the City Manager or his designee to execute grant offer agreement and/or any documentation pertaining to Airport Improvement Program (AIP) Project No. 3-06-0034-016-2014 with the Federal Aviation Administration (FAA)
2. FAA Grant Offer

RESOLUTION NO. 2014-____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALEXICO AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE GRANT OFFER AGREEMENT AND/OR ANY DOCUMENTATION PERTAINING TO AIRPORT IMPROVEMENT PROGRAM (AIP) PROJECT NO. 3-06-0034-016-2014 WITH THE FEDERAL AVIATION ADMINISTRATION (FAA)

WHEREAS, the City of Calexico each years is entitled to entitlement funds from the Federal Aviation Administration (FAA) for airport improvement projects; and

WHEREAS, Grant Offer Agreements and any documentation pertaining to Airport Improvement Program (AIP) Project No. 3-06-0034-016-2014 need to be executed with the Federal Aviation Administration (FAA) before such funds could be claimed; and

WHEREAS, the City of Calexico wishes to delegate authorization to execute these Agreements and any amendments thereto to the City Manager or his designee be authorized to execute Grant Offer Agreements and any documentation pertaining to Airport Improvement Program (AIP) Project No. 3-06-0034-016-2014 thereto with Federal Aviation Administration (FAA).

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CALEXICO DOES HEREBY RESOLVE, DECLARE, AND DETERMINE AND ORDER AS FOLLOWS:

1. The City Manager or his designee is authorized to execute Grant Offer Agreement and/or any documentation pertaining to Airport Improvement Program (AIP) Project No. 3-06-0034-016-2014 thereto with the Federal Aviation Administration.

PASSED, APPROVED AND ADOPTED this 16th day of September 2014.

John M. Moreno, Mayor

Attest:

Gabriela Garcia, Deputy City Clerk

Approved as to Form:

Jennifer Lyon, City Attorney

State of California)
County of Imperial) ss.
City of Calexico)

I, Gabriela Garcia, Deputy City Clerk of the City of Calexico do hereby certify the above Resolution No. 2014-__ was approved at a regular City Council meeting held on the 16th day of September, 2014, by the following vote to-wit:

AYES:

NOES:

ABSTAIN:

Gabriela Garcia, Deputy City Clerk



U.S. Department
of Transportation
**Federal Aviation
Administration**

Airports Division
Western-Pacific Region
California

FAA Los Angeles Airports District
Office – LA ADO
15000 Aviation Blvd.
Lawndale, CA 90261

September 04, 2014

Mr. Nick Servin
Public Works Director
Calexico International Airport
608 Heber Avenue
Calexico, CA 92231



Dear Mr. Servin:

We are enclosing the original and two copies of the Grant Offer for Airport Improvement Program (AIP) Project No.3-06-0034-016-2014 at Calexico International Airport in Calexico, California. This letter outlines expectations for success. Please read the conditions and assurances carefully.

To properly enter into this agreement, you must do the following:

- The governing body must have provided authority to execute the grant to the individual signing the grant; i.e. the sponsor's representative.
- The designated sponsor's representative must execute the grant, followed by your attorney's certification, before or by **September 17, 2014**, in order for the grant to be valid. The attorney's signature date must be on or after the sponsor's signature date.
- No change may be made by you or your representative to the Grant Offer.
- After the grant offer has been accepted, attested, and certified, please scan the first eight (8) pages of the Original and email it to your program manager and program specialist (kimchi.hoang@faa.gov and lajuana.thompson@faa.gov)
- Please return the Grant Offer marked "Original" to us by fed ex, the copy marked "State" to your associated State Aviation Officials (Cal Trans, if applicable), and maintain the copy marked "Sponsor" for your records.

Subject to the requirements in 49 CFR § 18.21, each payment request for reimbursement under this grant must be made electronically via the Delphi eInvoicing System. Please see the attached Grant Agreement for more information regarding the use of this System.

Please note Grant Condition No. 4 requires you to complete the project without undue delay. We will be paying close attention to your progress to ensure proper stewardship of these Federal funds. **You are expected to submit payment requests for reimbursement of allowable incurred project expenses in accordance with project progress.** Should you fail to make draws on a regular basis, your grant may be placed in "inactive" status which will impact future grant offers.

Until the grant is completed and closed, you are responsible for submitting formal reports as follows:

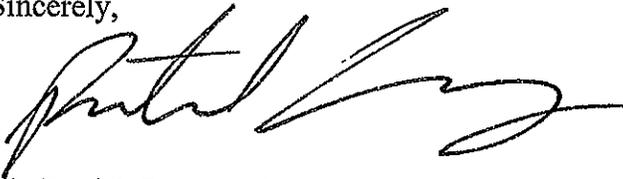
- A signed/dated SF-270 (non-construction projects) or SF-271 or equivalent (construction projects) and SF-425 annually, due 90 days after the end of each federal fiscal year in which this grant is open (due December 31 of each year this grant is open); and
- Quarterly Performance Reports due every quarter.

Once the project(s) is completed and all costs are determined, we ask that you close the project without delay and submit, as a minimum, the following:

- Sponsor Certification for Project Final Acceptance,
- Summary of all applicable change orders, final engineering report, summary of all testing,
- Final SF-271 or equivalent and SF-425

Ms. Kimchi Hoang is the assigned program manager for this grant and is readily available to assist you and your designated representative with the requirements stated herein. We sincerely value your cooperation in these efforts and look forward to working with you to complete this important project.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick Lammerding", with a long horizontal flourish extending to the right.

Mr. Patrick Lammerding
Assistant Manager
Los Angeles Airports District Office

Attachments

ORIGINAL
(FAA)

GRANT AGREEMENT

PART I – OFFER

Date of Offer	<u>9/04/14</u>
Airport/Planning Area	<u>Calexico International Airport</u>
AIP Grant Number	<u>3-06-0034-016-2014</u>
DUNS Number	<u>08-180-2209</u>

TO: City of Calexico
(herein called the "Sponsor") (For Co-Sponsors, list all Co-Sponsor names. The word "Sponsor" in this Grant Agreement also applies to a Co-Sponsor.)

FROM: **The United States of America** (acting through the Federal Aviation Administration, herein called the "FAA")

WHEREAS, the Sponsor has submitted to the FAA Project Application dated 03/10/14, for a grant of Federal funds for a project at or associated with the Calexico International Airport which is included as part of this Grant Agreement; and

WHEREAS, the FAA has approved a project for the Calexico International Airport (herein called the "Project") consisting of the following:

Rehabilitate Runway 08/26 - phase 2

which is more fully described in the Project Application.

NOW THEREFORE, According to the applicable provisions of the former Federal Aviation Act of 1958, as amended and recodified, 49 U.S.C. 40101, et seq., and the former Airport and Airway Improvement Act of 1982 (AAIA), as amended and recodified, 49 U.S.C. 47101, et seq., (herein the AAIA grant statute is referred to as "the Act"), the representations contained in the Project Application, and in consideration of (a) the Sponsor's adoption and ratification of the Grant Assurances dated March 2014, and the Sponsor's acceptance of this Offer, and (b) the benefits to accrue to the United States and the public from the accomplishment of the Project and compliance with the Grant Assurances and conditions as herein provided,

THE FEDERAL AVIATION ADMINISTRATION, FOR AND ON BEHALF OF THE UNITED STATES, HEREBY OFFERS AND AGREES to pay 90 percent of the allowable costs incurred accomplishing the Project as the United States share of the Project.

This Offer is made on and **SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:**

CONDITIONS

1. **Maximum Obligation.** The maximum obligation of the United States payable under this Offer is \$3,337,273.
For the purposes of any future grant amendments which may increase the foregoing maximum obligation of the United States under the provisions of 49 U.S.C. § 47108(b), the following amounts are being specified for this purpose:
 - \$0 for planning
 - \$3,337,273 for airport development
 - \$0 for land acquisition.
2. **Ineligible or Unallowable Costs.** The Sponsor must not include any costs in the project that the FAA has determined to be ineligible or unallowable.
3. **Determining the Final Federal Share of Costs.** The United States' share of allowable project costs will be made in accordance with the regulations, policies and procedures of the Secretary. Final determination of the United States' share will be based upon the final audit of the total amount of allowable project costs and settlement will be made for any upward or downward adjustments to the Federal share of costs.
4. **Completing the Project Without Delay and in Conformance with Requirements.** The Sponsor must carry out and complete the project without undue delays and in accordance with this agreement, and the regulations, policies and procedures of the Secretary. The Sponsor also agrees to comply with the assurances which are part of this agreement.
5. **Amendments or Withdrawals before Grant Acceptance.** The FAA reserves the right to amend or withdraw this offer at any time prior to its acceptance by the Sponsor.
6. **Offer Expiration Date.** This offer will expire and the United States will not be obligated to pay any part of the costs of the project unless this offer has been accepted by the Sponsor on or before 09/17/14, or such subsequent date as may be prescribed in writing by the FAA.
7. **Improper Use of Federal Funds.** The Sponsor must take all steps, including litigation if necessary, to recover Federal funds spent fraudulently, wastefully, or in violation of Federal antitrust statutes, or misused in any other manner in any project upon which Federal funds have been expended. For the purposes of this grant agreement, the term "Federal funds" means funds however used or dispersed by the Sponsor that were originally paid pursuant to this or any other Federal grant agreement. The Sponsor must obtain the approval of the Secretary as to any determination of the amount of the Federal share of such funds. The Sponsor must return the recovered Federal share, including funds recovered by settlement, order, or judgment, to the Secretary. The Sponsor must furnish to the Secretary, upon request, all documents and records pertaining to the determination of the amount of the Federal share or to any settlement, litigation, negotiation, or other efforts taken to recover such funds. All settlements or other final positions of the Sponsor, in court or otherwise, involving the recovery of such Federal share require advance approval by the Secretary.
8. **United States Not Liable for Damage or Injury.** The United States is not be responsible or liable for damage to property or injury to persons which may arise from, or be incident to, compliance with this grant agreement.

9. **System for Award Management (SAM) Registration And Universal Identifier.**

- A. Requirement for System for Award Management (SAM): Unless the Sponsor is exempted from this requirement under 2 CFR 25.110, the Sponsor must maintain the currency of its information in the SAM until the Sponsor submits the final financial report required under this grant, or receives the final payment, whichever is later. This requires that the Sponsor review and update the information at least annually after the initial registration and more frequently if required by changes in information or another award term. Additional information about registration procedures may be found at the SAM website (currently at <http://www.sam.gov>).
- B. Requirement for Data Universal Numbering System (DUNS) Numbers
 - 1. The Sponsor must notify potential subrecipient that it cannot receive a contract unless it has provided its DUNS number to the Sponsor. A subrecipient means a consultant, contractor, or other entity that enters into an agreement with the Sponsor to provide services or other work to further this project, and is accountable to the Sponsor for the use of the Federal funds provided by the agreement, which may be provided through any legal agreement, including a contract.
 - 2. The Sponsor may not make an award to a subrecipient unless the subrecipient has provided its DUNS number to the Sponsor.
 - 3. Data Universal Numbering System: DUNS number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D & B) to uniquely identify business entities. A DUNS number may be obtained from D & B by telephone (currently 866-492-0280) or the Internet (currently at <http://fedgov.dnb.com/webform>).

10. **Electronic Grant Payment(s).** Unless otherwise directed by the FAA, the Sponsor must make each payment request under this agreement electronically via the Delphi eInvoicing System for Department of Transportation (DOT) Financial Assistance Awardees.

11. **Informal Letter Amendment of AIP Projects.** If, during the life of the project, the FAA determines that the maximum grant obligation of the United States exceeds the expected needs of the Sponsor by \$25,000 or five percent (5%), whichever is greater, the FAA can issue a letter to the Sponsor unilaterally reducing the maximum obligation. The FAA can also issue a letter to the Sponsor increasing the maximum obligation if there is an overrun in the total actual eligible and allowable project costs to cover the amount of the overrun provided it will not exceed the statutory limitations for grant amendments. If the FAA determines that a change in the grant description is advantageous and in the best interests of the United States, the FAA can issue a letter to the Sponsor amending the grant description.

By issuing an Informal Letter Amendment, the FAA has changed the grant amount or grant description to the amount or description in the letter.

12. **Air and Water Quality.** The Sponsor is required to comply with all applicable air and water quality standards for all projects in this grant. If the Sponsor fails to comply with this requirement, the FAA may suspend, cancel, or terminate this grant.

13. **Financial Reporting and Payment Requirements.** The Sponsor will comply with all federal financial reporting requirements and payment requirements, including submittal of timely and accurate reports.

14. **Buy American.** Unless otherwise approved in advance by the FAA, the Sponsor will not acquire or permit any contractor or subcontractor to acquire any steel or manufactured products produced outside the United States to be used for any project for which funds are provided under this grant. The Sponsor will include a provision implementing Buy American in every contract.

15. **Maximum Obligation Increase For Nonprimary Airports.** In accordance with 49 U.S.C. § 47108(b), as

amended, the maximum obligation of the United States, as stated in Condition No. 1 of this Grant Offer:

- A. may not be increased for a planning project;
- B. may be increased by not more than 15 percent for development projects;
- C. may be increased by not more than 15 percent or by an amount not to exceed 25 percent of the total increase in allowable costs attributable to the acquisition of land or interests in land, whichever is greater, based on current credible appraisals or a court award in a condemnation proceeding.

16.

Audits for Public Sponsors. The Sponsor must provide for a Single Audit in accordance with 2 CFR Part 200. The Sponsor must submit the Single Audit reporting package to the Federal Audit Clearinghouse on the Federal Audit Clearinghouse's Internet Data Entry System at <http://harvester.census.gov/facweb/>. The Sponsor must also provide one copy of the completed 2 CFR Part 200 audit to the Airports District Office.

17. **Suspension or Debarment.** The Sponsor must inform the FAA when the Sponsor suspends or debars a contractor, person, or entity.

18. **Ban on Texting When Driving.**

- A. In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, and DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, the Sponsor is encouraged to:
 - 1. Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving when performing any work for, or on behalf of, the Federal government, including work relating to a grant or subgrant.
 - 2. Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as:
 - a. Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
 - b. Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.
- B. The Sponsor must insert the substance of this clause on banning texting when driving in all subgrants, contracts and subcontracts.

19. **Trafficking in Persons.**

- A. Prohibitions: The prohibitions against trafficking in persons (Prohibitions) that apply to any entity other than a State, local government, Indian tribe, or foreign public entity. This includes private Sponsors, public Sponsor employees, subrecipients of private or public Sponsors (private entity) are:
 - 1. Engaging in severe forms of trafficking in persons during the period of time that the agreement is in effect;
 - 2. Procuring a commercial sex act during the period of time that the agreement is in effect; or
 - 3. Using forced labor in the performance of the agreement, including subcontracts or subagreements under the agreement.
- B. In addition to all other remedies for noncompliance that are available to the FAA, Section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C.

7104(g)), allows the FAA to unilaterally terminate this agreement, without penalty, if a private entity –

1. Is determined to have violated the Prohibitions; or
2. Has an employee who the FAA determines has violated the Prohibitions through conduct that is either—
 - a. Associated with performance under this agreement; or
 - b. Imputed to the Sponsor or subrecipient using 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by the FAA at 49 CFR Part 29.

SPECIAL CONDITIONS

Plans & Specifications Approval Based Upon Certification: The FAA and the Sponsor agree that the FAA approval of the Sponsor’s Plans and Specification is based primarily upon the Sponsor’s certification to carry out the project in accordance with policies, standards, and specifications approved by the FAA. The Sponsor understands that:

- A. The Sponsor’s certification does not relieve the Sponsor of the requirement to obtain prior FAA approval for modifications to any AIP standards or to notify the FAA of any limitations to competition within the project;
- B. The FAA’s acceptance of a Sponsor’s certification does not limit the FAA from reviewing appropriate project documentation for the purpose of validating the certification statements;
- C. If the FAA determines that the Sponsor has not complied with their certification statements, the FAA will review the associated project costs to determine whether such costs are allowable under AIP.

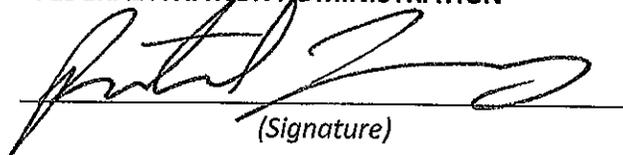
Project which Contain Paving Work in Excess of \$250,000: The Sponsor agrees to:

- A. Furnish a construction management program to the FAA prior to the start of construction which details the measures and procedures to be used to comply with the quality control provisions of the construction contract, including, but not limited to, all quality control provisions and tests required by the Federal specifications. The program must include as a minimum:
 1. The name of the person representing the Sponsor who has overall responsibility for contract administration for the project and the authority to take necessary actions to comply with the contract.
 2. Names of testing laboratories and consulting engineer firms with quality control responsibilities on the project, together with a description of the services to be provided.
 3. Procedures for determining that the testing laboratories meet the requirements of the American Society of Testing and Materials standards on laboratory evaluation referenced in the contract specifications (D 3666, C 1077).
 4. Qualifications of engineering supervision and construction inspection personnel.

5. A listing of all tests required by the contract specifications, including the type and frequency of tests to be taken, the method of sampling, the applicable test standard, and the acceptance criteria or tolerances permitted for each type of test.
 6. Procedures for ensuring that the tests are taken in accordance with the program, that they are documented daily, and that the proper corrective actions, where necessary, are undertaken.
- B. Submit at completion of the project, a final test and quality control report documenting the results of all tests performed, highlighting those tests that failed or that did not meet the applicable test standard. The report must include the pay reductions applied and the reasons for accepting any out-of-tolerance material. An interim test and quality control report must be submitted, if requested by the FAA.
 - C. Failure to provide a complete report as described in paragraph b, or failure to perform such tests, will, absent any compelling justification; result in a reduction in Federal participation for costs incurred in connection with construction of the applicable pavement. Such reduction will be at the discretion of the FAA and will be based on the type or types of required tests not performed or not documented and will be commensurate with the proportion of applicable pavement with respect to the total pavement constructed under the grant agreement.
 - D. The FAA, at its discretion, reserves the right to conduct independent tests and to reduce grant payments accordingly if such independent tests determine that sponsor test results are inaccurate.

The Sponsor's acceptance of this Offer and ratification and adoption of the Project Application incorporated herein shall be evidenced by execution of this instrument by the Sponsor, as hereinafter provided, and this Offer and Acceptance shall comprise a Grant Agreement, as provided by the Act, constituting the contractual obligations and rights of the United States and the Sponsor with respect to the accomplishment of the Project and compliance with the assurances and conditions as provided herein. Such Grant Agreement shall become effective upon the Sponsor's acceptance of this Offer.

**UNITED STATES OF AMERICA
FEDERAL AVIATION ADMINISTRATION**



(Signature)

Patrick Lammerding

*Los Angeles Airports District Office Assistant
Manager*

PART II - ACCEPTANCE

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

I declare under penalty of perjury that the foregoing is true and correct.¹

Executed this _____ day of _____, _____.

(Name of Sponsor)

(Signature of Sponsor's Designated Official Representative)

By:

(Typed Name of Sponsor's Designated Official Representative)

Title:

(Title of Sponsor)

CERTIFICATE OF SPONSOR'S ATTORNEY

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

That in my opinion the Sponsor is empowered to enter into the foregoing Grant Agreement under the laws of the State of California. Further, I have examined the foregoing Grant Agreement and the actions taken by said Sponsor and Sponsor's official representative has been duly authorized and that the execution thereof is in all respects due and proper and in accordance with the laws of the said State and the Act. In addition, for grants involving projects to be carried out on property not owned by the Sponsor, there are no legal impediments that will prevent full performance by the Sponsor. Further, it is my opinion that the said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Dated at _____ this _____ day of _____, _____.

By _____

(Signature of Sponsor's Attorney)

¹ Knowingly and willfully providing false information to the Federal government is a violation of 18 U.S.C. Section 1001 (False Statements) and could subject you to fines, imprisonment, or both.



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.

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.

- 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.

- 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.

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.

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

6. Consistency with Local Plans.

The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.

7. Consideration of Local Interest.

It has given fair consideration to the interest of communities in or near where the project may be located.

8. Consultation with Users.

In making a decision to undertake any airport development project under Title 49, United States Code, it has undertaken reasonable consultations with affected parties using the airport at which project is proposed.

9. Public Hearings.

In projects involving the location of an airport, an airport runway, or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary. Further, for such projects, it has on its management board either voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project.

10. 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,

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

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

20. Hazard Removal and Mitigation.

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

21. Compatible Land Use.

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

22. Economic Nondiscrimination.

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

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

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

23. Exclusive Rights.

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

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

24. Fee and Rental Structure.

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

25. Airport Revenues.

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

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

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

26. Reports and Inspections.

It will:

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

d. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:

- 1) all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and
- 2) all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

27. Use by Government Aircraft.

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

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

28. Land for Federal Facilities.

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

29. Airport Layout Plan.

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

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

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

30. Civil Rights.

It will 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.

- 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

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

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.

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.