

ORDER

**DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION**

6030.40

11/15/73

**SUBJ: FAA POLICY FOR RECEIVING ASSURANCES WHEN ESTABLISHING
F&E FACILITIES AT PRIVATELY-OWNED, PUBLIC-USE AIRPORTS**

1. PURPOSE. This order provides guidance for executing operational agreements with the airport operator prior to installation of facilities under the Facilities and Equipment (F&E) Program at privately-owned, public-use airports.
2. DISTRIBUTION. This order is distributed to branch level in FAA Headquarters, Regions and Centers. Minimum distribution to all Air Traffic Field Offices and Airway-Facilities Sectors.
3. BACKGROUND. As a result of Change 3 dated January 3, 1972, to Handbook 7031.2A, Airway Planning Standard Number One, privately-owned airports open to and available for use by the public, which are recognized by and contained within the National Airport System Plan, are also candidates for the various facilities and services described in agency Handbook 7031.2A provided that they meet the same facility establishment standards and implementation criteria as those specified for publicly-owned airports, and, in addition, that the operator(s) of such airports enter into appropriate assurances and covenants as detailed in Appendix A of this order. For the purpose of this order Airport Operator is defined as, "the owner(s) or person(s) having a controlling interest both in the real estate and the functions of the airport and would have legal status for executing an operating agreement of this type."
4. ASSURANCES. In order to protect the Government investment and the public interest through continuing operation of the facilities for the public use for long enough periods to permit amortization of the investment, the following assurances are required:
 - a. The Airport Operator shall not grant or permit any exclusive right forbidden by Section 308a of the Federal Aviation Act of 1958 at the airport, or at any other airport now owned or controlled by the Airport Operator.

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- b. The Airport Operator shall operate the airport as such for the use and benefit of the public. The Airport Operator shall keep the airport open to all types, kinds, and classes of aeronautical use on fair and reasonable terms without discrimination between such types, kinds and classes. However, the Airport Operator may establish fair, equal, and not unjustly discriminatory conditions to be met by the users of the airport as may be necessary for the safe and efficient operation of the airport. This is not to be interpreted as limiting the Airport Operator from exercising his obligation to impose such actions as may be necessary and appropriate to protect the surrounding community from excessive noise and other environmental intrusions which could ultimately result in public pressure to limit or otherwise derogate the efficient utilization of the airport.
- c. All public-use facilities at the airport shall be open to all persons regardless of race, color, creed, sex, or national origin.
- d. The Airport Operator shall operate and maintain the airport and all facilities thereon, other than those owned and operated by the Federal Government, in a safe and serviceable condition necessary to serve the aeronautical users of the airport.
- e. The Airport Operator shall do all he can to prevent the construction, erection, alteration or growth of any structure, tree, or other object in the approach areas of the runways, which would constitute an obstruction to air navigation.
- f. The Airport Operator shall do all he can to restrict the use of the land in the immediate vicinity of the airport to uses compatible with normal airport operations.
- g. The Airport Operator shall furnish without cost such areas of land or water, or estate therein, or rights in buildings as the FAA may consider necessary or desirable for construction of facilities at Federal expense, including appropriate parking areas for FAA employees who will operate and maintain

such facilities. Refer to FAA Order 4665. 3A, "Policy in Parking Accommodations at FAA Occupied Buildings and Facilities" for more details. In addition, the Airport Operator shall provide the necessary roads, walkways, etc. for FAA personnel access to agency owned and operated facilities.

- h. The Airport Operator shall not transfer any of his rights and powers to perform any or all of the covenants herein, unless the person assuming the rights and powers is eligible to carry out such obligations.
 - i. The Airport Operator shall reimburse the Government the initial facility cost, as determined by the Government, less salvable material, reduced one-twentieth (1/20) for each year the airport continues in operation following the signing of an operational agreement, if the Airport Operator does not continue operation of said airport for twenty (20) years. In addition, the Airport Operator shall reimburse the Government any expenses incurred in terminating this agreement due to default by the Airport Operator.
 - j. The Airport Operator shall comply with Title VI of the Civil Rights Act of 1964 and all requirements imposed by or pursuant to Part 21 of Title 49, Code of Federal Regulations.
5. EQUAL OPPORTUNITY CLAUSE. The operational agreement constitutes a "Government Contract" under the regulations of the Secretary of Labor implementing Executive Order 11246, NONDISCRIMINATION UNDER FEDERAL CONTRACTS. As such, the Airport Operator is deemed to be a "contractor" under this order and subject to its non-discrimination provisions and implementing regulations. The equal opportunity clause of Section 202 of Executive Order 11246 shall be included in the agreement between FAA and the Airport Operator.
6. IMPLEMENTATION. The standard operational agreement to be used when installing F&E facilities at privately-owned, public-use airports shall be that contained in Appendix A. This agreement should be executed separately and prior to execution of any required leases for the land or space required for the facility or activity. This agreement should be maintained in the lease file.

7. RESPONSIBILITY. Regional Directors are responsible to ensure that:

- a. Coordination is effected between regional personnel and the airport operator to assure his future acceptance of the FAA facility or activity prior to any program planning action to obtain the facility or activity; and,
- b. A signed operational agreement with the airport operator exists prior to the start of construction of any facility or activity under the F&E program.


James E. Dow
Acting Administrator

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Appendix A

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

OPERATIONAL AGREEMENT FOR A NAVIGATIONAL FACILITY
(Constructed by the Government)

I. THIS AGREEMENT Number _____ is to be executed between the United States of America acting by and through the Federal Aviation Administration, hereinafter called Government, and _____ operating the Airport known as _____ located at _____, hereinafter known as the Airport Operator and this said Agreement shall be executed by the parties hereto independently of any leases for the land or space required for the facility.

II. WHEREAS, a _____ will be erected on the leased plot (or installed in the leased space) by and at the expense of the Government; and

III. WHEREAS, it is in the public interest that the said _____ on the above Airport be operated by the Government, subject to the availability of funds, in accordance with standards established by the Government.

IV. IN ADDITION, if the facility constructed is an Airport Traffic Control Tower, the Airport Operator agrees to the following additional conditions:

1. The Airport Operator shall, at no expense to the Government, provide airport lighting control panels in the said Tower and shall provide all electrical circuits and current, on a continuing basis, necessary for the operation of boundary, flood and obstruction lights, including those which may be operated by the Government; all airport lighting which the Government determines is essential to aircraft operations, including the foregoing, and all such air traffic control

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Devices which are designated to be directly or remotely controlled from the Airport Traffic Control Tower shall be operationally under the control of the Government's Air Traffic Controllers, and the Airport Operator shall be responsible for the proper and continued functioning of any locally-installed lights or other device placed under the Government's control.

2. The Airport Operator shall be responsible for the proper and continued functioning of all equipment and devices which the Government determines are necessary for air traffic control, but which cannot be placed in operation or controlled from said Tower, or are not otherwise operated by or under the control of the Government.

3. The Airport Operator, upon request from the Government, shall provide two-way ground control communication equipment in its maintenance and emergency vehicles scheduled to regularly operate in the airport landing area, and such equipment shall be capable of maintaining radio communications with the Government's Tower on said Airport.

4. The Airport Operator shall, either by the acquisition and retention of easements or other interests in or rights for the use of land on or around the airport or by sponsoring or promoting the adoption of zoning regulations, prevent the construction, erection, alteration or growth of any structure, tree or other objects which would impair line-of-sight visibility from the tower cab to all aircraft movement areas. The Airport Operator shall also move, adjust, shield or otherwise resolve any problem that may be caused by the airport beacon light glaring into the cab at night.

5. The Airport Operator shall be responsible for extension of utilities to the structure (power, water, sewage, and telephone).

V. FOR ALL facilities, including a tower:

1. The Airport Operator shall promptly advise the Government's duly authorized representative(s) of any conditions which render all, or any, area(s) of the Airport unsafe for normal utilization by aircraft and will, upon demand, appropriately mark any such area(s) in a manner approved by the Government which properly indicates the existing condition(s); the Airport Operator shall promptly give notice to the Government's representative(s) prior to the time any maintenance or construction is begun on the Airport landing area unless such action is in accordance with a schedule which has been previously coordinated; said notice shall be given not less than thirty (30) days prior to commencement date and said approved schedule shall be submitted for approval no less than thirty (30) days prior to

the scheduled date for beginning the first item of construction and/or maintenance on the schedule.

2. The Government shall have absolute control of the operation of the facility and its associated equipment at all times and shall not be subject to direction from the Airport Operator in this regard; however, the Airport Operator shall not be responsible for any such acts of claims resulting from the negligent or wrongful act or mission of any government employee operating at the facility.

3. In the event that said facility and/or its associated facilities are required to be relocated due to Airport improvements or changes occasioned by the Airport Operator that impair the technical and/or operational characteristics of said facility and its associated facilities and/or equipment; the Airport Operator agrees to pay all costs for the relocation, replacement or modification of said facilities and/or associated facilities and/or equipment made necessary. In the event that uninterrupted service is required from the facility, then funding for provision of temporary facilities required to maintain continuity of service shall be the responsibility of the Airport Operator. It shall be the responsibility of the FAA to fund the following:

- a. Relocation into quarters provided by the Airport Operator when requested by the FAA.
- b. Relocation of facilities to meet operational requirements or because of technical reasons inherent in the site and not caused by airport improvements or changes.
- c. Modernization expansion costs to meet FAA operational requirements.
- d. Relocation occasioned by recognition by the FAA of the necessity for a new or newly designated instrument runway on the same airport, in order to achieve more effective use of these facilities except when the facilities must be relocated, replaced or modified to permit the extension of runways or construction of new runways and taxiways or other improvements to the existing airport facilities.
- e. In the event that relocations, replacements or modifications of facilities are necessitated due to causes not attributable to either FAA or the airport owner, funding responsibility shall be determined by the FAA on a case-by-case basis.

Appendix A

VI. FURTHER, at any Airport on which said facility is constructed, the Airport Operator agrees to the following additional provisions:

1. The Airport Operator shall not grant or permit any exclusive right forbidden by Section 308a of the Federal Aviation Act of 1958 (49 U. S. C. 1349(a)) at the Airport, or at any other airport now owned or controlled by the Airport Operator.

- a. Agrees that, in furtherance of the policy of the FAA under this covenant, unless authorized by the FAA Administrator, the Airport Operator shall not either directly or indirectly, grant or permit any person, firm or corporation the exclusive right at the Airport, or at any other airport now owned or controlled by the Airport Operator, 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.
- b. Agrees that any exclusive right shall be terminated at the earliest renewal, cancellation, or expiration date applicable to the agreement establishing the exclusive right, to conduct an aeronautical activity now existing at such an Airport before the facility is installed.
- c. Agrees that in any agreement, contract, lease, or other arrangement under which a right or privilege at the Airport is granted to any person, firm, or corporation to conduct or engage in any aeronautical activity for furnishing services to the public at the Airport, the Airport Operator shall insert and enforce provisions requiring the contractor:
 - (1) to furnish said service on a fair, equal, and not unjustly discriminatory basis to all users thereof.
 - (2) to charge fair, reasonable, and not unjustly discriminatory prices for each unit or service. In furtherance of this objective, a list of charges will be maintained and available for inspection by the public for all services, materials, supplies and privileges provided by the Airport Operator

- and any airport tenant. However, the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.
- d. That the Airport Operator will not exercise or grant any right or privilege which would operate 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 and repair) that it may choose to perform.
 - e. In the event the Airport Operator exercises any of the rights and privileges referred to in Subsection c., the services involved will be provided on the same conditions as would apply to the furnishing of such services by contractors or concessionaires of the Airport Operator under the provisions of Subsection c.
 - f. Nothing contained herein shall be construed to prohibit the granting or exercise of an exclusive right for the furnishing of nonaviation products and supplies or any service of a non-aeronautical nature or to obligate the Airport Operator to furnish any particular nonaeronautical service at the Airport.

2. The Airport Operator shall operate the Airport as such for the use and benefit of the public. In furtherance of this covenant (but without limiting its general applicability and effect), the Airport Operator specifically agrees that it will keep the Airport open to all types, kinds, and classes of aeronautical use on fair and reasonable terms without discrimination between such types, kinds, and classes; provided that the Airport Operator may establish such fair, equal, 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; provided further, that the Airport Operator may prohibit or limit any given type, kind, or class of aeronautical use of the Airport if such action is necessary to serve the civil aviation needs of the public or as may be necessary and appropriate to protect the surrounding community from excessive noise and other environmental intrusions which could ultimately result in public pressure to limit or otherwise derogate the efficient utilization of the airport.

3. The Airport Operator agrees that in the operation of the Airport and all public use facilities under his control on the Airport, neither the Airport Operator nor any person or organization occupying space or facilities thereon shall discriminate against any person or class of persons by reason of race, sex, color, creed, or national origin in the use of any of the facilities provided for the public on the Airport.

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4. The Airport Operator shall operate and maintain in a safe and serviceable condition the Airport and all facilities thereon and connected therewith which are necessary to serve the aeronautical users of the Airport other than facilities owned or controlled by the Federal Government, and will not permit any activity thereon which would interfere with its use for airport purposes; provided that nothing contained therein shall be construed to require that the Airport be operated for aeronautical uses during temporary periods when snow, flood, or other climatic conditions interfere with such operation and maintenance and provided further that 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 of circumstance beyond the control of the Airport Operator. In the event that the Airport Operator deems it inadvisable to replace or repair the damaged or destroyed structure or facilities and that such decision affects the operating or safety characteristics of the Airport, the FAA may elect to discontinue provision of facilities and/or service to the Airport. Under these circumstances, the agreement shall be considered mutually cancelled and the FAA shall pay any and all costs involved in the discontinuance of such facility or service. In furtherance of this covenant the Airport Operator will have in effect at all times arrangements for:

- a. Operating the Airport's aeronautical facilities whenever required;
- b. Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and
- c. Promptly notifying airmen of any condition affecting aeronautical use of the Airport.

5. Insofar as it is within his power and reasonable, the Airport Operator shall, either by the acquisition and retention of easements or other interests in or rights for the use of land or airspace or by sponsoring or promoting the adoption of zoning regulations, prevent the construction, erection, alteration, or growth of any structure, tree, or other object in the approach areas of the runways of the Airport, which would constitute an obstruction to air navigation according to the criteria or standards prescribed in Section 77.23, as applied to Section 77.25, Part 77 of the Federal Aviation Regulations. In addition, the Airport Operator shall not erect or permit the erection of any permanent structure or facility which would interfere materially with the use, operation, or future development of the Airport,

in any portion of a runway approach area in which the Airport Operator has acquired, or hereafter acquires, property interests permitting it to so control the use made of the surface of the land.

6. The Airport Operator shall do all within his power and is reasonable to restrict the use of the land in the immediate vicinity of the airport to uses compatible with normal airport operations.

7. Whenever so requested by the FAA, the Airport Operator shall furnish without cost to the Federal Government, for construction, operation, and maintenance at Federal expense of facilities for air traffic control activities, or weather reporting activities and communication activities related to air traffic control, such areas of land or water, or estate therein, or rights in buildings of the Airport Operator as the FAA may consider necessary or desirable for construction, operation and maintenance of facilities and activities. The approximate amounts of areas and the nature of the property interests and/or rights so required will be set forth by a separate lease. Such areas or any portion thereof will be made available as provided herein within 4 months after receipt of written request from the FAA. The Airport Operator shall, at no expense to FAA employees, provide parking, equal to that provided his own employees, within a reasonable distance from the facility for official and FAA employee vehicles as necessary.

8. The Airport Operator shall not enter into any transaction which would operate to deprive it of any of the rights and powers necessary to perform any or all of the covenants made herein. If an arrangement is made for management or operation of the Airport by any person other than the Airport Operator or an employee of the Airport Operator, the Airport Operator will reserve sufficient rights and authority to insure that the Airport will be operated and maintained in accordance with these covenants.

9. As a protection to the capital investment by the United States Government, the Airport Operator agrees to continue the operation of said airport in accordance with the terms of this agreement and without reduction in service for a period of not less than twenty (20) years. The Airport Operator further agrees that in the event it fails to do so, it will reimburse the United States Government the sum of _____, the initial facility cost, less salvable material as determined by the Government as reimbursement for costs incurred in the installation of the aviation facility. It is mutually understood and agreed that this sum will be reduced by one-twentieth (1/20) for every year from the date of acceptance of this agreement that the Airport Operator does continue the

operation of the said Airport.

In case of the Airport Operator's failure to perform under one or more of the assurances set forth, the Government may, at its election, terminate this agreement on 90 days notice and remove said equipment and properties from the airport and in which event the airport operator agrees to reimburse the Government for its costs in terminating the agreement and removing said equipment.

10. During the performance of this agreement, the Airport Operator agrees as follows:

- a. The Airport Operator shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Airport Operator will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment; upgrading; demotion; or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Airport Operator agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- b. The Airport Operator shall, in all solicitations or advertisements for employees placed by or on behalf of the Airport Operator, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- c. The Airport Operator shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Government's contracting officer, advising the labor union or workers' representative of the Airport Operator's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. The Airport Operator shall comply with all provisions of Executive Order 11246 of September 24, 1965, all rules, regulations, and relevant orders of the Secretary of Labor, as well as Title VI of

the Civil Rights Act of 1964, 78 Stat. 252, 42 U. S. C. 2000d, 42 U. S. C. 2000d-4 and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964.

- e. The Airport Operator shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- f. In the event of the Airport Operator's failure to comply with the nondiscrimination clauses of this agreement or with any of the above referenced rules, regulations, or orders, this agreement may be cancelled, terminated or suspended in whole or in part and the Airport Operator may be declared ineligible for further Government agreements in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and other sanctions may be imposed and remedies invoked as provided in Executive Order 11246, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- g. The Airport Operator shall take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the Airport Operator becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Airport Operator may request the Federal Government to enter into such litigation to protect the interest of the Federal Government.
- h. The Airport Operator shall include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor.

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II. No member of or delegate to Congress, or resident Commissioner shall be admitted to any share or part of this agreement, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.

VIII. DATED THIS, the _____ day of _____, 19__.

Airport Operator

Government Representative
United States of America