ATTACHMENT #1

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

Office of Airport Compliance
and Management Analysis

800 Independence Ave., SW.
Washington, DC 20591

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JAN 8 2018
JUNEAU
INTERNATIONAL AIRPORT

January 2, 2019

Patty Wahto
Airport Manager
Juneau International Airport
1873 Shell Simmons Drive, Suite 200
Juneau, AK 99801

Dear Ms. Wahto:

Re: Transmittal of Draft Financial Compliance Report

The Federal Aviation Administration (FAA), Office of Airport Compliance and Management Analysis conducted a financial compliance review at the City/Borough of Juneau (CBJ) from August 14 through August 24, 2017. The purpose of the review was to determine if CBJ, as the airport sponsor accepting Airport Improvement Program funds, and Juneau International Airport (JNU), are in compliance with the FAA *Policy and Procedures Concerning the Use of Airport Revenue* (Revenue Use Policy), 64 Fed. Reg. 7697 (Feb 16, 1999).

Our review focused on CBJ's 2016 calendar year, but included prior years when necessary. The attached draft report summarizes the review and identifies areas for your response as part of an action plan.

We thank you and your staff for your assistance and timely responses to our questions. Please provide your response within 60 days of the receipt of this letter. We would be happy to discuss these findings further with you and your staff, as well as review any additional information before submitting your plan. For questions regarding the technical aspects of this letter, please call Mr. Olu Okegbenro at (202) 267-3785.

Sincerely,

Kevin C. Willis

Kevin C. Willis, Director
Office of Airport Compliance
and Management Analysis

ATTACHMENT #1

Federal Aviation Administration
Office of Airports Compliance and Management Analysis
DRAFT Financial Compliance Review

Juneau International Airport
August 14, 2017 - August 24, 2017

ATTACHMENT #1

Federal Aviation Administration
Office of Airports Compliance and Management Analysis
DRAFT Financial Compliance Review

The Federal Aviation Administration (FAA) Office of Compliance and Management Analysis, ACO-1, conducted a compliance review at the Juneau International Airport (JNU or Airport) to evaluate compliance with Federal statutes and FAA requirements. The FAA conducted this review at the Juneau International Airport and the City and Borough of Juneau (CBJ) offices from August 14 through August 24, 2017.

As the airport sponsor, CBJ manages JNU and is responsible for ensuring compliance with federal statutes, the Airport Improvement Program Grant Assurances, and FAA policies for federally obligated airports. Airport sponsors agree to certain obligations when they accept federal grant funds or federal property transfers for airport purposes. The FAA enforces these obligations through its Airport Compliance Program. The Compliance Division conducts a financial compliance review of several airports each fiscal year.

Unlawful revenue diversion, as defined in the Airport Compliance Manual, " is the use of airport revenue for purposes other than the capital or operating costs of the airport, the local airport system, or other local facilities owned or operated by the airport owner or operator and directly and substantially related to air transportation or property." The Compliance Division is responsible for ensuring that airports adhere to this policy as well as to FAA Grant Assurances and the Policy Concerning the Use of Airport Revenue (Revenue Use Policy) 64 Fed. Reg. 7697 (Feb 16, 1999).

We reviewed the following areas at JNU:

- Form 126 & 127 Reporting
- Financial transactions between the Borough/City and JNU
- Possessory taxes
- Property taxes on aircraft
- Police
- Fire Fighting (ARFF)
- Uses of Airport Property
- Marketing/Air Carrier Incentives
- Cost Allocations
- Attorney Fees
- Art in Public Places

The following report addresses the FAA's concerns about the use of airport revenue at Juneau International Airport. Accordingly, the FAA requests JNU and the City/Borough, as airport sponsor, provide certain additional information indicated below and submit a corrective action plan. The federal statute of limitations is six years, so a corrective action plan must include the period of April 30, 2011 through May 31, 2017, plus any occurrences up to the time of the review.

Financial Data Reported to FAA

FAA Form 126 and 127 Operating and Financial Summary

Section 111 of the Federal Aviation Administration Authorization Act of 1994 established the requirement for commercial service airports to file financial reports with the FAA. These reports are the Financial Government Payment Report (Form 5100-126) and the Operating and Financial Summary (Form 5100-127). Airport management and CBJ's Finance Department prepare the FAA Forms 5100-126 Financial Government Payment Report and 5100-127, Operating and Financial Summary. On Form 5100-127, JNU and CBJ report balance sheet, income statement, and statistical information on airport operations. The FAA asked JNU to reconcile selected amounts reported on Form 5100-127 to CBJ's general ledger and annual financial statements. In addition, the FAA reconciled discrepancies between JNU's Form 5100-126 to CBJ's financial accounting system.

Conclusion: FAA was able to reconcile the amounts reported on JNU's Forms 5100-126 and 5100-127 to CBJ's accounting records and financial statements. No follow-up is needed.

Uses of Airport Property

Background

Each federally assisted airport owner/operator is required by statute and grant assurances 24 and 25 to have an airport fee and rental structure that will make the airport as self-sustaining as possible and minimize the airport's reliance on federal funds and local tax revenues. The FAA has generally interpreted the self-sustaining assurances to require airport sponsors to charge fair market value commercial rates for non-aeronautical uses of airport property. The FAA identified several areas that require attention, action or explanation.

Leases

ARFF/Structural Fire Station No. 3

The City/Borough No. 3 fire station is a shared structural/ARFF station located on JNU land. The station is not dedicated exclusively to ARFF and part of its focus is on structural firefighting services for the surrounding communities by Capital City Fire Rescue. The station currently has seven ARFF positions which serve three shifts. Two ARFF staff must stay on airport at all times. The building was recently remodeled using AIP funds. JNU airport management was unsure as to whether the City/Borough or the airport paid for the original construction of the building. Currently, the structural firefighting side pays no rent to JNU.

Conclusion: Since the fire station is not 100% dedicated to ARFF function, the Borough/City should be paying FMV for the use of the building that pertains to structural firefighting services provided by Capital City Fire Rescue to the local communities. [1] This may include both a ground and building rent. For example; if the City constructed the building, then the structural side would only need to pay a FMV ground rent rate. However, if JNU paid for the construction of the building, then the structural side would pay both a ground and building rent rate.

The FAA understands that the City/Borough has made significant capital contributions in the past to JNU. If the Borough/City can demonstrate in-kind services provided by the fire station to the JNU, this may be used to offset the FMV rates due to the Airport. If the value of services received by JNU does not exceed the fair market rent, then City/Borough would need to reimburse the Airport for the difference, plus interest for the prior six years.

Going forward, JNU and DBJ should determine which party paid for the construction of the fire station, whether CBJ provides JNU with in-kind services and to what extent, and whether JNU is due rent from CBJ. Once determined, JNU should formalize an agreement with CBJ to ensure JNU receives fair market value rent from Capital City Fire Rescue.

US Fish and Wildlife Lease

The FAA's on-site inspection of Juneau International Airport (JNU) revealed a 20,000 square-foot hangar belonging to The United States Fish and Wildlife Service (USFWS or Service).

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[1] The *Revenue Use Policy*, Section *VII. C. Policy on Charges for Non-Aeronautical Facilities and Services,* states "The FAA interprets the self-sustaining assurance to require that the airport receive fair market value for the provision of non-aeronautical facilities and services, the extent practicable considering the circumstances of the airport."

However, no lease agreement or other agreement documented the relationship between the Airport and the Service was located.

The USFWS runs regional law enforcement operations in southeast Alaska, but the exact operation is unclear to airport management. Their operation does not complement or support aeronautical operations of the airport; its sole function is law enforcement. The Civil Aeronautical Administration gave initial approval of the USFWS operation decades ago.

The USFWS built the hangar over two decades ago. It does not presently pay ground rent to the Airport. However, the Service pays the $10,000 per year for snow removal and brush clearing. No other payments are on record.

The hangar occupies a space which impedes the development of surrounding parcels, which are suggested to have large revenue potential. The Airport asked the USFWS to relocate the hangar. The Service asked the Airport to pay for the relocation but the Airport lacks funds.

Conclusion: The USFWS should be paying the Airport fair market value ground rent on the hangar. Land leases for nonaeronautical purposes at less than fair market value, except to the extent permitted by SectionVII.D of the Revenue Use Policy, is a prohibited use of airport revenue. Ground rent is due to the Airport because the hangar was built by the Service. We recommend that an appraisal take place to obtain the value of the property and determine the ground rent due to the Airport—both retroactive payments to the Airport for six years and the rent payments going forward.

Other Issues

Channel Flying Commercial Through The Fence Operation

Channel Flying (Channel) operates a commercial through the fence operation at JNU. Channel's parcel is in a unique location. Although Channel is not on airport property, it is surrounded on all sides by airport owned land. Channel pays the Airport for access to and use of the airfield as a through-the-fence operation. Channel has no lease agreement with JNU and only pays $200 per year to JNU for its airport access. Also, Channel does not collect any landing fees on behalf of JNU. Currently, Coastal Fueling stores planes at Channel and pays Channel for airfield access. In addition, Channel houses other aviation-related tenants such as Coastal Helicopter. The FAA Regional Office determined there are no security issues because Channel provides access to only aviation tenants operating at JNU.

JNU management indicated they would like to purchase the property and charge Channel an appropriate lease rate for access. JNU is unable to pay more than 90 percent of assessed value, which is required per CBJ regulations; however, Channel would like to sell at a much higher price. As a result, JNU's effort to purchase the property has stalled.

Conclusion: The FAA does not prohibit an airport's participation in commercial through-the-fence operations; however, they are discouraged. The federal obligation to make an airport available for the use and benefit of the public does not impose a requirement to permit access by aircraft from adjacent property. The existence of such an arrangement could conflict with the sponsor's federal obligations unless the sponsor retains the legal right to require the off-site property owner or occupant to conform in all respects to the requirements of existing or proposed grant agreements.

The sponsor is entitled to seek recovery of capital and operating costs for providing a public use airfield. The development of aeronautical enterprises on land off-airport and not controlled by the sponsor can result in an economic competitive advantage for the through-the-fence operator to the detriment of on-airport tenants. To equalize this potential advantage, the sponsor must obtain from off-airport enterprises or entities a fair return for their access to and use of the airfield by assessing fees for through-the-fence access. For example, if the sponsor charges $100 per month for a single-engine aircraft tie-down on the airport, then any other single-engine aircraft operator using the airport through-the- fence should be charged no less than a similar fee. The same is true for the ground lease on a privately owned hangar and the fees charged to through-the-fence operators with a hangar off the airport. The airport sponsor must not discriminate against those aeronautical users within the airport.

CBJ should also be aware that a through-the-fence access agreement may violate a number of the sponsor's federal obligations:

a. Placing contractual and legal encumbrances or conditions upon the airport property, in violation of Grant Assurance 5, *Preserving Rights and Powers*.

b. Limiting the airport's ability to ensure safe operations in both movement and non-movement areas in violation of Grant Assurance 19, *Operation and Maintenance.*

c. Creating unjustly discriminatory conditions for on-airport commercial tenants and other users by granting access to off-airport competitors or users in violation of Grant Assurance 22, *Economic Nondiscrimination*.

d. Effectively granting an exclusive right to the though-the-fence operator in violation of Grant Assurance 23, *Exclusive Rights*, if the operator conducts a commercial business and no on-airport operator is able to compete because the terms given to the through-the-fence operator are so much more favorable.

e. Affecting the airport's ability to be self-sustaining, in violation of Grant Assurance 24, *Fee and Rental Structure*, because the airport may not be in a position to charge through-the-fence operators adequately for the use of the airfield.

f. Weakening the airport's ability to remove and mitigate hazards and incompatible land uses, in violation of Grant Assurance 20, *Hazard Removal and Mitigation*, and Grant Assurance 21, *Compatible Land Use*.

g. Making it more difficult for an airport sponsor to implement future security requirements that may be imposed on airports. Grant Assurance 19, *Operation and Maintenance.*

The FAA requests JNU to explore options to acquire the land. If this is not possible, then an agreement should be created with Channel to better protect the interest of the Airport. The agreement should at a minimum include the following elements:

- It must include the conditions and terms for airport access which imposes charges no less than a similar charge imposed on on-airport tenants. FAA 5190.6b Chapter 18.5 b states aeronautical fees must not discriminate against aeronautical users.
- JNU must retain the ability to take action should a safety or security concern require fencing around the airport.
- Access to the field to third parties should be assigned based on the terms proposed by the through the fence access agreement.
- The agreement must comply with TSA requirements at JNU.
- JNU should have the right to terminate the agreement at any time.
- The agreement should not otherwise put the other JNU tenants at an economic disadvantage.
- It should incorporate safety considerations.

We recently learned that the facility was sold to a developer. We request JNU provide FAA an update on the status of the property.

Possessory Interest Tax

The City/Borough of JNU assesses a 5 percent tax on all commercial leases at JNU. The tax does not specifically target the airport but every City/Borough lease is taxed at the same rate.

The taxation authority arises from the following State statute:

69.05.020 - Imposition of rate.
(a) There shall be levied and collected a tax equal to the percentage of the selling price on retail sales and rentals made and services performed within the City and Borough as follows:

(1) Within the entire City and Borough -1%

(2) Within the entire City and Borough-An additional 3%

(3) Effective October 1, 2013, within the entire City and Borough-An additional 1%.

Subsection (a)(3) of this section shall be automatically repealed on September 30, 2018.

The tax has been in place since at least the early 1980s. CBJ officials indicated the collected amounts go to the general fund, but may return to JNU to support capital projects. For leases, there is no actual sale that triggers the tax. The tax is levied on all commercial leases and the term sales tax is used rather than *rental* tax or *service* tax.

Conclusion: No follow-up is required because FAA noted no irregularities with the tax.

Marketing/ Air Carrier Incentives

JNU does not have an airport marketing program. No airport revenues are spent on marketing of JNU. In addition, JNU does not have an air carrier incentive program and has no plans to enact one in the near future.

Conclusion: None

Airport Advertising

Alaska Channel is the advertising concessionaire at JNU. It is responsible for managing all of the advertising inside the terminal at JNU. The Airport gets a percentage of revenue ranging from 25-40 percent for wall displays, vinyl wraps, billboards, exhibit cases, and banners displayed inside the terminal. JNU management must approve all advertising.

Conclusion: None

Art in Public Places

JNU airport management reviews all art work for display, which mostly consists of donated art from the local community. The Juneau Arts & Humanities Council assists with art rotation, cleaning, and set-up to ensure art work is returned to the owner. No artwork is currently for sale in the terminal. JNU adheres to CBJ's requirement that 1 percent of capital projects costs must be spent on art projects. JNU has a hanging birds display in the terminal, which was purchased with 1 percent of construction costs from terminal expansion and upgrades.

Currently, liability for damage or theft of displayed art may fall on JNU; however, airport management is working to correct this arrangement by now requiring all owners to sign a waiver to release the airport of any liability.

Conclusion: None

Police Services/Law Enforcement

JNU contracts its police services from CBJ. Currently three officers are assigned to the airport. Overtime costs were high when only two officers were assigned; but now with its three officers assigned, overtime has reduced drastically.

The JNU police substation performs all law enforcement functions at the airport, with few off-airport tasks. Timesheets and logs are maintained to support hours worked at JNU.

JNU has no K-9, bomb squad, asset forfeiture, or counter terrorism operation. In addition, there are no training or helicopter facilities at JNU. Emergency operations are routed through CBJ, and no fee is charged to the airport.

Conclusion: None

Cost Allocation Plan - Review of Full Cost Allocation Plan FY 2015 & 2016

General Comments:

- The FAA understands the indirect costs charged to the airport are developed in a full cost allocation plan based on budgeted expenditures, which is generally considered an internal management tool. The sponsor may prepare an indirect cost allocation plan (ICAP) based on budgeted amounts is allowable. See 49 USC § 47107(b) & Revenue Use Policy, 7705. However, such budgeted amounts must still be reconciled to actual expenditures. During this review, the FAA found that budgeted expenditures are not being reconciled to actual amounts for the allocations to the airport. "…budget estimates cannot be relied on as documentary evidence to show that the funds claimed for reimbursement were actually expended for the benefit of the airport." (Revenue Use Policy, 7708). Consequently, the FAA requires a reconciliation to actual expenditures as part of the corrective action plan.
- Schedule .3 Departmental Expenditures should have more detail showing expenses that could be allowable/unallowable.
- Departmental activities appear to be percentage estimates. Any true-ups to actual in the subsequent year?
- Legend and Abbreviations:
    - AB – Allocation Basis statistic

List of FAA Findings:

Department – City Attorney

- The City attorney is broken down to the activities of Legal Support, MPF Activities, and Other. Does legal support include litigation? Litigation is not an allowable cost to the airport unless it directly involves the airport.
- The AB is time spent by the attorneys. The 500 hours are not very many hours compared to Salaries of $1,533,300. How many attorneys are contributing to this statistic? The department has 11 FTEs. Please clarify the basis of the 500 hour breakdown.

Department – City Manager

- Where are the costs for the Adolescent Health Care Coordinator included? Budget reflects approximately $140,000 in salaries. Narrative provides an activity not being allocated. Does the Adolescent Health Care Coordinator provide a service to the airport?

Department – City Clerk

- Public Information
  - What is the function of the Public Information activity? In the FY 2016 budget, we notice 30% of core services are used to facilitate activities of the Assembly and 5% is to administer appeals. Elections, print shop, et. al. are separate activities.
  - Please explain packets and the nature of web postings used in AB.
  - Print Shop allocations are listed as charges, but the statistics add up to 100. The AB appears to be an estimated percentage and charges are used as direct billed amounts. Are these actual charges or estimates? Are estimates reconciled to actual charges?
  - Records management is allocated equally to all departments. However, it would appear that this allocation base is not equitable as police, human resources, finance, Mayor and Assembly would have a large amount of records processed. Please explain or remedy this allocation.

- Department – Building Maintenance
  - There is no detail of expenses for Schedule .3 - Other Expense & Cost. Are there any capital outlays?
  - Are specific salaries assigned to each building for breakdown of the activities?

- Department – Human Resources
  - No Issues

- Department – MIS
  - No expenditure detail for Schedule .3 Other Expense & Cost. Any unallowable costs such as capital outlay?
  - What is AB based on? CPU usage, data storage, or a combination?

- Department – Finance Administration
  - Activity - Citywide Finances: please explain the correlation between financial data and FTEs as an AB. Total expenditures less debt service and capital expenditures would be more equitable as an AB.
  - Activity – Budget: AB is combination of percentage of effort and weighted FTE's. Is the percentage of effort based on estimates? Why did the sponsor use FTE's? FAA considers budgeted expenditures less debt service and capital outlay to be equitable for the type of activity and level of effort without creating a burden on sponsor.
  - Activity – Department Management: AB is percent of effort. Is the AB an estimate? We recommend salaries or expenditures of departments supervised or actual hours for supervision.

- Department – Controller
  - Activity – Accounting: The AB is a percent of time spent. What is this percentage based on? If estimate, is there a reconciliation to actual?

- Department – Treasury

  - Activity – Cash: The allocation is based on estimates. Are the estimates reconciled to actual?
  - Activity – Collections: The allocation is based on estimates. Are the estimates reconciled to actual?
  - Activity – A/R General: The allocation is based on estimates. Are the estimates reconciled to actual?

- Department – Purchasing
  - Activity – PO (Data Entry): Please explain why only 50% of P-Cards transactions are included in the AB?