ATTACHMENT #2

HEADQUARTERS

ALASKA WING, CIVIL AIR PATROL

AUXILIARY OF THE UNITED STATES AIR FORCE

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November 9, 2021

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

Ms. Wahto:

Mr. Coleman, the JNU Business Manager, provided a draft lease extension for the Civil Air Patrol (CAP) airport lease on Lot1, Block 1. The CAP has been a tenant on the Juneau Airport for many years. Our old lease expired and was placed in holdover due top the airport's desire to relocate CAP to a different location. The expired lease had a $1 per year annual rental rate per Ordinance 93-18. We request an application to the Airport Board or Assembly, whichever is appropriate, to seek a waiver to the minimum rental rate.

Historically the CAP received annual operation funding from the State of Alaska. For the past three years, Gov Dunleavey has vetoed this appropriation. This has forced each of the Squadrons in the Alaska Wing to fund their own operational costs for such things as rent, lease fees, heat, electricity, and communications. Our Juneau Squadron would not be able to fund the lease rate in the draft lease. Other airports have asked about other revenue sources, such as the US Air Force to fund CAP operations. The US Congress provides CAP aircraft and training money through the US Air Force, but neither the Congress or the US Air Force can provide operation money.

The CAP is a 501(c)(3) organization, IRS Tax ID 75-6037853. I have included a Federal Register Notice, Docket 48272, titled Policy and Procedures Concerning Use of Airport Revenue. Page 10 discusses use of airport revenue to support charitable and community service organizations. Page 18 specifically addresses the use of nominal and reduced rents to support the work of the CAP. Thus, providing CAP with a reduced rental rate is not a revenue diversion and would not place the airport in jeopardy of non-compliance with your FAA Grant Assurances.

Thank you for considering our request for a reduced rental rate.

Respectfully,

Carl Siebe

Carl Siebe, Major
Real Estate Officer
Alaska Wing
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provision for general promotional expenses.

Except as discussed above, the Final Policy does not limit the amounts of airport revenue that can be spent for all permitted promotional marketing and advertising activities. The FAA expects that expenditure of airport revenues for these purposes would be reasonable in relation to the airport's specific financial situation. Disproportionately high expenditures for these activities may cause a review of the expenditures on an *ad hoc* basis to verify that all expenditures actually qualify as legitimate airport costs. Examples of permissible and prohibited expenditures are included in the Final Policy itself.

b. Reimbursement of Past Contributions

The Proposed Policy permitted airport revenue to be used to reimburse a sponsor for past unreimbursed capital or operating costs of the airport. The Proposed Policy did not include a limit on how far back in time a sponsor could go to claim reimbursement, in accordance with the law in effect at the time. In addition, the Preamble noted that the FAA had not to date permitted a sponsor to claim reimbursement for more than the principal amount actually contributed to the airport. The FAA requested comment on whether the FAA should permit recoupment of interest or an inflationary adjustment or whether, in the case of contributed land, recoupment should be based on current land values.

Airport operators: ACI–NA/AAAE and a number of individual airport operators supported recoupment of interest or inflation adjustment on previous contributions or subsidies to the airport.

Air carriers: The ATA objected to the Proposed Policy and commented that recoupment should be subject to a number of requirements to prevent abuses.

The Final Policy: After the proposed policy was issued, Congress enacted legislation to limit the use of airport revenue for reimbursement of past contributions, and to limit claims for interest on past contributions. 49 U.S.C. §§ 47107(l)(5), 47107(p). The Final Policy incorporates these statutory provisions. Based on Congressional intent evidenced by the legislative history of these provisions, airport revenue may be used to reimburse a sponsor only for contributions or expenditures for a claim made after October 1, 1996, when the claim is made within six years of the contribution or expenditure. In addition, a sponsor may claim interest only from the date the FAA determines that the sponsor is entitled to reimbursement, pursuant to section 47107(p). The FAA interprets these statutory provisions to apply to contributions or expenditures made before October 1, 1996, so long as the claim is made after that date.

If an airport is unable to generate sufficient funds to repay the airport owner or operator within six years, the Final Policy permits repayment over a longer period, with interest, if the contribution is structured and documented as an interest bearing loan to the airport when it is made. The interest rate charged to the airport should not exceed a rate that the sponsor received for other investments at the time of the contribution.

c. Donations of Airport Revenue to Charitable/Community Service Organizations

The Supplemental Proposed Policy addressed the use of airport property for public recreational purposes, and addressed the use of airport funds to support community activities and for participation in community events. The FAA proposed that the use of airport revenue for such donations would not be considered a cost of operating the airport, unless the expenditure is directly related to the operation of the airport. For example, expenditures to support participation in the airport's federally approved disadvantaged business enterprise program would be considered permissible as supporting a use directly related to the operation of the airport. In contrast, expenditures to support a sponsor's participation in a community parade would not be considered to be directly related to the operation of the airport.

Airport operators: ACI–NA/AAAE contended that the expenditure of airport revenue for community or charitable purposes is appropriate and should be recognized as legitimate. Airports, regardless of their size, type, and certification or lack thereof, are important members of their local communities and, therefore, must be able to maintain their prominent, highly visible roles in their respective communities. Airports are regarded by their communities as local business enterprises and, consequently, are expected to contribute to local non-profit charitable concerns in the same manner as other local business enterprises.

Individual airport operators generally supported the position of ACI–NA/AAAE, although some individual operators acknowledged that some limitation on the expenditures may be appropriate. One suggested a *de minimis* standard; another proposed a ''safe harbor'' based on a percentage of the airport's total budget. Another urged that airport owners/operators be allowed leeway to make contributions of airport funds, in reasonable amounts and consistent with the local circumstances, and to use airport property for charitable purposes on the same basis.

Other airport operators commented that the Final Policy should give comparable treatment to the use of airport funds and airport property for community goodwill by recognizing the limited use of airport revenue to support charitable and community organizations as a legitimate operating cost of the airport.

Air carriers: Air carriers did not comment specifically on charitable contributions, although they commented extensively on the use of airport property for community or charitable purposes. Generally the air carriers suggested that use of airport property should be subject to strict conditions to avoid abuse.

Other commenters: An advocacy group in support of a particular airport commented that, in order for an airport to be as self-sustaining as possible, the use of each income dollar is critical, and that federally assisted airports must be fully responsive to the citizens of the community by providing information on the use of airport funds.

Final Policy: The Final Policy generally follows the approach of the Supplemental Notice. Airport funds may be used to support community activities, or community organizations, if the expenditures are directly and substantially related to the operation of the airport. In addition, the policy provides explicitly that where the amount of the contribution is minimal, the airport operator may consider the ''directly and substantially related to air transportation'' standard to be met if the contribution has the intangible benefit of enhancing the airport's acceptance in local communities impacted by the airport.

Expenditures that are directly and substantially related to the operation of the airport qualify inherently as operating costs of the airport. The FAA recognizes that contributions for community or charitable purposes can provide a direct benefit to the airport through enhanced community acceptance, but that benefit is intangible and not quantifiable. Where the amount of the contribution is minimal, the value of the benefit will not be questioned as long as there is a reasonable connection between the recipient organization and

the benefit of community acceptance for the airport.

However, if there is no clear relationship between the charitable or community expenditure and airport operations, the use of airport revenue may be an expenditure for the benefit of the community, rather than an operating cost of the airport. The different treatment of the use of airport funds (direct payments to charitable and community organizations) and the use of airport property (less than FMV leases for charitable or community purposes) is grounded in the applicable laws: the revenue-use requirement (section 47107(b)), which governs the use of airport funds, provides far less flexibility than the requirement for a self-sustaining rate structure (section 47107(a)(13)), which applies to the use of airport property.

Examples of permitted and prohibited expenditures are included in the Final Policy.

d. Use of Airport Revenue to Fund Mass Transit Airport Access Projects

The Supplemental Proposed Policy addressed in Part VII.C., the circumstances in which an airport sponsor could provide airport property at less than fair market value to a transit operator. The Supplemental Proposed Policy did not address the use of airport revenue to finance the construction of transit facilities. That issue, however, was raised in the comments.

Airport Operators: Two airport operators supported the use of airport revenue for the construction of transit facilities. One commenter stated that an airport should be permitted to use airport revenues and assets to provide mass transit service to on-airport commercial uses. Another commenter referred to the AIP Handbook, FAA Order 5100.38A § 555, which provides AIP project eligibility for rapid transit facilities.

Air carriers: Air carriers did not specifically discuss the use of airport revenue to finance transit facilities. However, as discussed below, they objected to providing airport property for transit facilities at nominal lease rates.

Other Commenters: Two commenters representing transit operator interests supported the expenditure of airport revenues to finance transit facilities. A transit operator stated that in order to create a better balance between transit and highway interests, transit facilities should be totally eligible expenses, paid for in the same manner as other road and parking enhancements. A transit trade association urged the FAA to take appropriate actions to ensure that passenger fees and other airport revenues are widely eligible to fund a range of airport surface transportation modes, including public transportation.

The FAA also received extensive comments on providing airport property for use by transit providers at less than FMV rents. These comments are addressed separately below.

Final Policy: The Final Policy has been modified to provide guidance on the use of airport revenues to finance airport ground access projects. The Final Policy states that airport revenue may be used for the capital or operating costs of such a project if it can be considered an airport capital project, or is part of a facility owned or operated by the airport sponsor and directly and substantially related to air transportation of passengers or property, relying directly on the statutory language of § 47107(b).

As an example, the Final Policy summarizes the FAA's decision on the use of airport revenue to finance construction of the rail link between San Francisco International Airport and the Bay Area Rapid Transit (BART) rail system extension running past the airport. In that decision, the FAA approved the use of airport revenues to pay for the actual costs incurred for structures and equipment associated with an airport terminal building station and a connector between the airport station and the BART line. The structures and equipment were located entirely on airport property, and were designed and intended exclusively for use of airport passengers. The BART extension was intended for the exclusive use of people travelling to or from the airport and included design features to discourage use by through passengers. Based on these considerations, the FAA determined that the possibility of incidental use by nonairport passengers did not preclude airport revenues from being used to finance 100 percent of the otherwise eligible cost items. For purposes of this analysis, the FAA considered ''airport passengers'' to include airport visitors and employees working at the airport.

4. Accounting Issues

a. Principles for Allocation of Indirect Costs

Based on the comments to the Proposed Policy, the FAA addressed the principles of indirect cost allocation in its Supplemental Notice. The Supplemental Notice made clear that the allocation of indirect costs is allowable under 49 USC § 47107(b), and that no particular method of cost allocation will be required, including OMB Circular A–87. To ensure, however, that indirect costs are limited to allowable capital and operating costs, the FAA proposed to apply certain general principles and prohibitions to the allocation of costs. The Supplemental Notice did not limit significantly the development of local cost allocation methodologies, or interfere with the application of Generally Accepted Accounting Principles (GAAP) and other accounting industry recognized standards.

In the Supplemental Notice, the FAA stated that it would expect that a Federally approved cost allocation plan that complied with OMB Circular A–87 or other Federal guidance and was consistent with GAAP would be reasonable and transparent, and would generally meet the requirements of section 47107(b). However, the use of a Federally approved cost allocation plan does not rule out the possibility that a particular cost item allowable under that guidance would be in violation of the airport revenue retention requirement if allocated to the airport.

The Supplemental Notice also required specifically that indirect cost allocations be applied consistently across departments to the sponsoring government agency, and not unfairly burden the airport account. The general sponsor cost allocation plan could not result in an over-allocation to an enterprise fund. In addition, the sponsor would have to charge comparable users, such as enterprise accounts, for indirect costs on a comparable basis.

Lastly, the Supplemental Notice proposed to prohibit the allocation of general costs of the sponsoring government to the airport. However, this prohibition would not affect direct or indirect billing for actual services provided to the airport by local government.

Airport Operators: Generally, airport operators agreed with the proposal to acknowledge that the allocation of indirect costs as allowable under 49 USC § 47107(b), and to provide that no particular allocation methodology, including OMB Circular A–87, be required.

One airport operator requested the FAA to further clarify that it is not imposing on airport sponsors all of the specific elements of OMB CircularA–87. The operator was concerned that the statement in the Supplemental Notice that the FAA ''believe[s] the specific principles identified by the OIG are an appropriate construction of the revenue retention requirement'' may lead to confusion over whether adherence to OMB Circular A–87 is mandatory for

The Final Policy permits but does not require below-market rental rates, including nominal rates. The airport operator is free to treat a qualified not-for-profit aeronautical education program as it would any other aeronautical activity in setting rental rates and other fees to be paid by the education program.

d. Civil Air Patrol Leases

Reduced-rental leases, including nominal leases, to the Civil Air Patrol/United States Air Force Auxiliary (CAP) at a number of airports have also been criticized in OIG audits. As a result of this criticism, some airport operators have been seeking higher rents from the CAP when leases have come up for renewal.

In its comments, the CAP contends that the current standard airport industry practice of permitting CAP use of airport property for a nominal rent confers substantial benefits to the airport and, in general, to the aviation community. The CAP, therefore, requests that a policy be adopted which would formally permit CAP units to continue to occupy facilities on federally obligated airports at a nominal rent, whether under formal lease arrangements, or otherwise, at the discretion of the airport owner/operator.

The Final Policy: The Final Policy permits reduced rental rates and fees to CAP units operating at the airport, in recognition of the benefits to the airport and benefits to aviation similar to those provided by not-for-profit aviation museums and aeronautical secondary education programs. As with other not-for profit-aviation entities, the reduction must be reasonably justified by benefits to the airport or to civil aviation. In-kind services to the airport and airport users may be considered in determining the benefits that the CAP unit provides. In addition, this treatment of the CAP, which has been conferred with the status of an auxiliary to the United States Air Force, is not identical to the treatment provided to military units in the Final Policy, as discussed below, but is consistent with that treatment.

The reduced rental rates and fees are available only to those CAP units operating aircraft at the airport. For CAP units without aircraft, a presence at the airport is not critical. The airport operator can accommodate those CAP units with property that is not subject to Federal requirements on maintaining a self-sustaining rate structure, without compromising the effectiveness of the CAP units. Of course, if such units provide in-kind services that benefit the airport, the value of those services may be recognized as an offset to FMV rates.

The Final Policy permits but does not require nominal rental rates. The airport operator is free to treat a qualified not-for-profit aeronautical CAP lease as it would any other aeronautical activity in setting rental rates and other fees to be paid by the education program.

e. Police/Firefighting Units Operating Aircraft at the Airport

Many airports host police or fire-fighting units operating aircraft (often helicopters). The OIG has frequently criticized reduced rate or no-cost leases to these units of government as inconsistent with the self-sustaining and revenue-use requirements.

The Final Policy requires the airport operator to charge reasonable rental rates and fees to these units of government. In effect, these units of government must be treated the same as other aeronautical tenants of the airport. This treatment is consistent with the policy's general approach toward dealings between units of government—fees should be set at the level that would be produced by arm's-length bargaining. The treatment is also justified because police and fire-fighting aircraft units provide benefits to the community as a whole, and not necessarily to the airport. However, as with other police and fire-fighting units located at an airport, the policy does allow rental payments to be offset to reflect the value of services actually provided to the airport by the police and fire-fighting aircraft units.

f. Use of Property by Military Units

The US Air Force Reserve and the Air National Guard both have numerous flying units located on federally obligated, public-use airports. The majority of these aircraft-operating units are located on leased property at civilian airports established on former military airport land transferred by the US Government to the airport owner/operator under the Surplus Property Act of 1944, as amended, or under other statutes authorizing the conveyance of surplus Federal property for use as a public airport. Frequently, the favorable lease terms were contemplated in connection with the transfer of the former military property and may have been incorporated in property conveyance documents as obligations of the civilian airport sponsor. As with other reduced-rate leases, these arrangements have been criticized in individual OIG audits.

The Final Policy: The Final Policy provides that leasing of airport property at nominal lease rates to military units with aeronautical missions is not inconsistent with the requirement for a self-sustaining rate structure. The Department of Defense (DOD) has a substantial investment in facilities and infrastructure at these locations, and its operating budgets are based on the existence of these leases. Moving those facilities upon expiration of a lease or the payment of FMV rent for facilities to support military aeronautical activities required for national defense and public safety would be beyond the capability of the DOD without additional legislation and enlargement of the DOD operating budget. In all of the enactments on the self-sustaining rate structure requirement and use of airport revenue and the accompanying legislative history, the FAA can find no indication that Congress intended the airport revenue requirements to be applied in a way to disrupt the United States' defense capabilities or add significantly to the cost of maintaining those capabilities. Moreover, Congress specifically charged the FAA, in 49 U.S.C. § 47103, with developing a national plan of integrated airport systems (NPIAS) to meet, among other things, the country's national defense needs. Inclusion in the NPIAS is a prerequisite for eligibility for AIP funding. Thus, Congress clearly contemplated a military presence at civil airports. Therefore, the FAA will not construe the requirement for a self-sustaining airport rate structure to prohibit nominal leases to military units operating aircraft at an airport.

The Final Policy permits but does not require nominal rental rates. The airport operator is free to treat a qualified military unit as it would any other aeronautical activity in setting rental rates and other fees to be paid by the military unit.

7. Lease of Airport Property at Less Than FMV for Mass Transit Access to Airports

The Supplemental Notice proposed that airport property could be made available at less than fair rental value for public transit terminals, rights-of-way, and related facilities, without being considered in violation of the requirements governing airport finances, under certain conditions. The transit system would have to be publicly owned and operated (or privately operated by contract on behalf of the public owner) and the transit facilities directly related to the transportation of air passengers and airport visitors and employees to and from the airport. Twenty-one responses addressed this issue.

Airport commenters: The airport operators concur with the principle of making airport land available for mass