



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

Northwest Mountain Region
Colorado, Idaho, Montana
Oregon, Utah, Washington
Wyoming

Denver Airports District Office
26805 E. 68th Avenue, Room 224
Denver, Colorado 80249

July 2, 2018

Mr. Craig Hoggan
Dart, Adamson & Donovan
257 East 200 South, Suite 1050
Salt Lake City, Utah 84111

Dear Mr. Hoggan,

This letter is in response to your informal complaint under Federal Aviation Regulation (FAR) Part 13, *FAA Investigative and Enforcement Procedures (Part 13)* in which you raised several allegations of grant obligation violations by Heber City, in its sponsorship of Heber City Municipal Airport, Heber City, UT.

The FAA takes allegations of grant assurance violations seriously and we have therefore conducted a thorough review of your complaint. Our evaluation of your complaint consisted of reviewing your written complaint, the Sponsor's response, and the Sponsor's response to our request for additional information.

We have reviewed your allegations under Part 13 and determined that the City is not currently in violation of its grant obligations. Our written evaluation is attached. This letter serves to close your FAR Part 13 complaint. Please note that this review is not a final agency action subject to judicial review.

Sincerely,

Marc Miller
Colorado State Engineer / Compliance Specialist

Cc: Peter Doyle, FAA, Regional Compliance Program Manager (email)
Peter Kirsch, Kaplan Kirsch Rockwell (email)

Informal Complaint Review under 49 CFR Part 13

AH Aero Service, LLC, dba OK3 AIR (OK3 AIR), has filed an informal complaint against Heber City (Sponsor) alleging grant assurance violations in its sponsorship of Heber City Municipal Airport (Airport).

OK3 AIR raises the following allegations pertaining to Grant Assurance #5 "Preserving Rights and Powers", #22 "Economic Nondiscrimination", #23 "Exclusive Rights", and #29 "Airport Layout Plan":

- Resolutions 2016-9 and 2016-10 place control of airport development outside of the Sponsor's control – Issue #1
- The Sponsor's Airport Layout Plan (ALP) is out-of-date – Issue #2
- The Sponsor is attempting to restrict and limit access to the airport through revisions to the landing fee policy and structure– Issue #3
- The Sponsor is attempting to restrict and limit access by refusing to lease land for large hangars – Issue #4
- The Sponsor is attempting to restrict and limit access by not adequately plowing the runway – Issue #5
- The Sponsor has not applied its minimum standards to Dave's Custom Sheetmetal/Aircraft – Issue #6
- The Sponsor has not applied its minimum standards to Barry Hancock and Worldwide Warbirds and Pilotmakers – Issue #7

Review of Allegations by Issue

RESOLUTIONS 2016-9 AND 2016-10 – Issue #1

Did the Sponsor violate its grant assurances when it passed Resolutions 2016-9 and 2016-10 by seeking outside input on the possible future of the airport prior to conducting a master plan?

OK3 AIR alleges that the Sponsor, by failing to repeal Resolutions 2016-9 and 2016-10, which expressed the Sponsor's preliminary opposition to expanding the airport to C-II standards, resolved the Sponsor to obtain assistance in understanding the financial implications of remaining a B-II airport, and committed the Sponsor to seek the opinion of the public before further consideration of an expansion of the airport, has relinquished its rights and thus acted contrary to Grant Assurance #5 "Preserving Rights and Powers".

The Sponsor responded that they do not agree that either of the subject Resolutions in any manner, compromises their Grant Assurances. Instead, the Resolutions merely reflect the Sponsor's long-standing commitment to public engagement in any planning for changes at the Airport. Nevertheless,

the Sponsor appreciated that there is a perception by some users that the Resolutions reflected a prejudgment of future planning efforts. Therefore, on February 2, 2017, the City Council unanimously voted to repeal Resolutions 2016-9 and 2016-10.

FAA Grant Assurance #5 “Preserving Rights and Powers”

“... It will not take or permit any action which would 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.”

FAA Compliance Handbook 5190.6B

Chapter 6, Rights and Powers and Good Title

6.3.b. Grant Assurance 5, Preserving Rights and Powers. *A sponsor cannot take any action that may deprive it of its rights and powers to direct and control airport development and comply with the grant assurances.*

FAA shared its concerns with Resolution 2016-9 in a letter dated May 19, 2016 to the Sponsor, stating that the City is eliminating options that would otherwise be considered under a normal planning process resulting in a reduced effectiveness of the planning study to analyze the safety of current and future operations at the airport.

Initial Determination of Issue #1

By repealing both Resolutions 2016-9 and 2016-10 on February 2, 2017, the Sponsor has addressed this issue and resolved it.

AIRPORT LAYOUT PLAN OUT-OF-DATE – Issue #2

Is the Sponsor’s ALP out of date and thus contrary to Grant Assurance #29?

OK3 AIR alleges that the Sponsor last completed an airport feasibility study in 2003. The Sponsor originally planned to complete its new master plan in 2016, and then pushed it to 2017. The Sponsor’s new capital improvement plan (CIP) does not include funding for a master plan until 2020.

OK3 AIR further alleges that an ALP becomes out-of-date when it doesn’t provide for four things, including failing to adequately provide for future needs and/or failing to reflect airport changes which may affect the navigable airspace or the ability of the airport to expand.

FAA Order 5100.38D

Chapter 5. How does the grant process work?

5-9. ADO Verification that the Airport Layout Plan is Current. Per 49USC 47107(a)(16), the sponsor must maintain a current layout plan of the airport in order to receive an airport design, construction, or equipment grant as defined under 49 USC 47102(3). The ALP that is on file with the ADO must reflect the current and proposed conditions at the airport and all proposed and existing access points used to taxi aircraft across the airports property boundary.

FAA Grant Assurance #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 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;"*

Analysis of Issue #2

The Sponsor adopted their master plan in 2006. The ALP associated with this master plan was conditionally approved by the FAA Denver Airports District Office (ADO) on March 3, 2006. The Sponsor submitted an As-Built ALP to the ADO which was reviewed and conditionally approved from a planning standpoint by the ADO on March 24, 2014. The Sponsor has submitted their Capital Improvement Plan (CIP) to the ADO which details a project to conduct a master plan study in 2020.

The FAA Northwest Mountain Region generally recommends airport sponsors update their airport master plan every 7-10 years. Included in a master plan update is an updated ALP. The ADO recognizes that the Sponsor's master plan is 11 years old, and we have been working with the Sponsor to identify a plan to undertake a new master plan study in 2020.

Initial Determination of Issue #2

The Sponsor has not violated Grant Assurance #29. The ALP was updated in 2014, and reflects the current and proposed conditions at the airport. If the opportunity arises, we would encourage the Sponsor to begin a new master plan study before 2020 as identified in their CIP.

Restricted Access Through Landing Fees and Policy – Issue #3

Did the Sponsor violate its grant assurances when it enacted Ordinance 2017-4 which addresses the airport landing fee structure?

OK3 AIR alleges that the new landing fee structure unfairly discriminates against transient aircraft by only applying the landing fees to transient aircraft which are defined as "an aircraft that is not owned by a person having a lease or license agreement with the City related to the storage of such aircraft through

which the person contributed to the capital and operating expenses of the airport, as determined by the Airport Manager.”

They raised the concern that the definition is vague and subject to abuse because it does not further define “license agreement” and does not require the qualifying agreement to be for any particular length of time. Also, it leaves the determination of whether or not an aircraft is “transient” at the sole discretion of the Airport Manager.

OK3 AIR further alleges that the new landing fee structure unfairly discriminates against aircraft based on weight by not providing adequate justification for the overall increased landing fee nor the justification of classifications when comparing the fee of an aircraft below 8,000 lbs. to an aircraft slightly over 8,000lbs.

OK3 AIR also alleges that the Sponsor failed to consult with aeronautical users per the FAA ‘s Rates and Charges Policy.

The Sponsor explained that while time was of the essence in promulgating the revised landing fee, the City made every effort to engage in a transparent deliberative process. The revised landing fee was promulgated after reasonable consultation with Airport tenants and users, as recommended by the FAA’s Rates and Charges Policy.

The Sponsor received written comments submitted by OK3 AIR regarding the Airport Advisory Board’s proposal on November 21, 2016, and considered and addressed OK3 AIR’s concerns in a comprehensive report that was posted for public review in advance of the January 19, 2017, City Council meeting. This report outlined the comments received, the applicable laws, and the analysis of the proposed fee based on local financial considerations and a landing fee survey of other airports in the region.

FAA Compliance Handbook 5190.6B

Chapter 18 “Airports Rates and Charges”

18.5 Principles – *“Federal Law, as implemented by the Rates and Charges Policy, requires that the rates, rentals, landing fees, and other charges that airports impose on aeronautical users for aeronautical use be fair and reasonable.”*

FAA Grant Assurance #22 “Economic Nondiscrimination”

“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”

Analysis of Issue #3

The previous landing fee structure was \$1.66 per 1,000 lbs. Maximum Takeoff Weight (MTOW). This fee did not apply to aircraft with a MTOW of 8,000 lbs. or less, and was only applied to transient aircraft, which was not defined in the original Ordinance. On November 16, 2016, the Airport Advisory Board

considered a motion to raise the landing fees at the airport to \$7.00 per 1,000 lbs. MTOW for all transient aircraft and exempt aircraft with a MTOW of 6,000 lbs. or less. The Airport received comments on the Board's recommendation from OK3 AIR and their outside counsel. Based on OK3 AIR's substantive and thoughtful comments, on January 19, 2017, the airport manager presented City Council a revised recommendation for increased landing fees that included \$4.00 per 1,000 lbs. MTOW for transient aircraft over 8,000 lbs. MTOW, and added a flat \$4.00 for all transient aircraft under 8,000 lbs. MTOW. This recommendation also included a definition of "transient aircraft" which identified an aircraft that is not owned by a person having a lease or license agreement with the City related to the storage of such aircraft.

Per the FAA's Rates and Charges Policy, the Department of Transportation (DOT) primarily relies on the sponsor and its aeronautical users to reach consensus on airport rates and charges. DOT also encourages adequate and timely consultation with users prior to implementing rate changes where practical. Due regard should be given to the views of both the aeronautical users and the airport and its financial needs.

Initial Determination of Issue #3

The Sponsor has not violated Grant Assurance #22. The methodology appears to be reasonable and not unjustly discriminatory as there was user involvement through and after the Airport Advisory Board meeting and the rate was supported by projected long term airport maintenance and operations costs. The new landing fee does not unfairly discriminate against transient aircraft by excluding based aircraft from the fee structure because they already directly contribute to the capital and operating expenses of the airport through their leases.

Restricted Access Through Hangar Leases – Issue #4

Did the Sponsor violate its grant assurances by not leasing land to build larger hangars?

OK3 AIR alleges that the City refused to lease land to build larger hangars, 75x75 foot and 100x100 foot hangars, even though there is land designated on the ALP for hangars of that size. They allege the City has made statements indicating that they are trying to limit hangars that can house larger aircraft.

The Sponsor explained that it has worked diligently over the past several months to prepare the ground identified for seven new 75X75 foot hangars and one new 100x100 foot hangar. At the City Council meeting on March 16, 2017, the Airport Manager recommended that six of the seven 75x75 foot hangars be released for bid. City Council directed that he proceed with plans to do so after the completion of a market value review.

The Sponsor further explained that the City was unable to proceed with the transaction of the 100x100 foot hangar due to ongoing negotiations with respect to the original owner's contractual rights of the hangar and not related to the type of aircraft that OK3 AIR might wish to store within.

FAA Grant Assurance #22 “Economic Nondiscrimination”

“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”

Analysis of Issue #4

The Sponsor held off on releasing the seven 75x75 hangar sites for bid until it was able to adopt a new, uniform ground lease. This new ground lease was adopted in September 2017; environmental coordination with FAA was completed early in 2018. The Sponsor put six sites out for bid in February 2018 and awarded two 75x75 sites to the highest bidders. The City will issue another request for bids on the remaining four sites at an as-yet undetermined time, but will consider unsolicited proposals in the meantime.

Initial Determination of Issue #4

The Sponsor has not violated Grant Assurance #22. The Sponsor’s development of a current ground lease, necessary environmental coordination, and solicitation and award of the hangar sites was done in accordance with making the airport available for public use on reasonable terms.

Restricted Access Due to Snow Removal Operations – Issue # 5

Did the Sponsor violate its grant assurances when it failed to adequately plow the runway and associated areas on Thanksgiving and Christmas?

OK3 AIR alleges that the Airport Manager restricted access when he failed to adequately plow snow from the runway and associated areas on Thanksgiving and Christmas, in spite of having the resources to do so. The conditions on the runway resulted in at least one larger aircraft to divert to Salt Lake City. The airport manager used the NOTAM system to limit operations including a 6-hour closure of the runway on Thanksgiving morning. This NOTAM was not removed until the owner of a based aircraft complained to OK3 AIR.

The Sponsor explained that at many small airports with limited resources, snow events are bound to be operationally disruptive. The City is committed to responding to snow events in the safest and most expedient manner possible given these constraints. The Sponsor also responded that while at least one aircraft may have diverted to another airport on those days, a good deal more than one did land at the airport including ARC C-II aircraft.

FAA Grant Assurance #19 “Operation and Maintenance”

"The airport and 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 maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions.

FAA Grant Assurance #22 "Economic Nondiscrimination"

"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"

Analysis of Issue #5

Grant Assurance #19 further states that an airport "...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." It appears that during the identified snow events, the airport manager issued a NOTAM during which time snow removal operations were conducted. While the specific dates of the events (Thanksgiving and Christmas) were two of the largest arrival periods for the Heber City Municipal Airport, unlike Part 139 commercial service airports which have required snow and ice plans, there is no mandated timeframe for snow removal operations at general aviation airports.

Initial Determination of Issue #5

The Sponsor has not violated Grant Assurances #19 and #22. Since the airport receives snow and icy conditions during the winter, FAA strongly suggests the Sponsor consult with all of their airport tenants and users to help identify concerns and discuss possible plans and procedures that could benefit the entire airport during various weather events.

Minimum Standards related to Dave's Custom Sheetmetal/Aircraft – Issue #6

Did the Sponsor violate its grant assurances related to Dave Hansen's Application to be a Special Air Service Operator (SASO) on the airport?

OK3 AIR alleges that the Sponsor failed to apply its minimum standards fairly and equally to all based operators at the airport when they approved a one year lease on June 16, 2016, for Mr. Hansen to operate as a SASO even though Mr. Hansen's application did not meet the minimum requirements.

The sponsor responded that although their current 2010 Minimum Standards are comprehensive, they are frequently far more demanding than a particular situation warrants and, in other cases, too

ambiguous to ensure quality services at the airport. The Sponsor indicated as part of their upcoming changes to the minimum standards, they fully intended to consider and resolve outstanding disputes as to the services and facilities provided by OK3 AIR and other airport tenants.

FAA Grant Assurance #22 "Economic Nondiscrimination"

"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"

"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."

FAA Order 5190.6B

Chapter 10. Reasonable Commercial Minimum Standards

10.2 FAA Recognition of Minimum Standards

- a. Apply to all providers of aeronautical services, from full service fixed-base operators (FBOs) to single service providers.
- b. Impose conditions that ensure safe and efficient operation of the airport in accordance with FAA guidance when available.
- c. Are reasonable, not unjustly discriminatory, attainable, uniformly applied and reasonably protect providers of aeronautical services from unreasonable competition.
- d. Are relevant to the activity for which they apply.
- e. Provide the opportunity for others who meet the standards to offer aeronautical services.

FAA Advisory Circular 150/5190-7

Minimum Standards for Commercial Aeronautical Activities

1.3 Minimum Standards Apply by Activity. Difficulties can arise if the airport sponsor requires that all businesses comply with all provisions of the published minimum standards. An airport sponsor should develop reasonable, relevant, and applicable standards for each type and class of service.

Analysis of Issue #6

While Mr. Hansen did not appear to have a lease agreement with the airport from July 2014 – May 2016, he did file a SASO application with the Airport Advisory Board. This application did not meet several of the required items associated with 2010 Minimum Standards for a SASO including customer

or administrative areas, public restrooms, apron or aircraft parking, public parking and access, and insurance requirements.

During the investigation of this issue, Mr. Hansen passed away and his business has dissolved. The hangar was sold to another individual that is using it for private aircraft storage (not operating as a SASO).

Initial determination on Issue #6

The Sponsor had violated Grant Assurance #22 when they entered into a SASO lease agreement with Mr. Hansen. His application and business did not meet the established minimum standards at the time. FAA would have provided the Sponsor an opportunity to cure the violation by requiring the business be brought into compliance with all applicable minimum standards or by terminating the lease. Therefore, as a result of Mr. Hansen's passing, the lease being terminated, and the hangar sold, FAA considers this issue to be resolved.

Minimum Standards related to Barry Hancock and Worldwide Warbirds and Pilot Makers – Issue #7

Did the Sponsor violate its grant assurances by not requiring Mr. Hancock to lease apron associated with his SASO business?

OK3 AIR alleges that the Sponsor failed to apply its 2010 Minimum Standards fairly and equally to all based operators at the Airport when they entered into a SASO agreement in 2014 with Mr. Hancock. This concern was raised at several Airport Advisory Board Meetings, and the City is aware that Mr. Hancock does not have adequate apron space, even though there is available apron space for Mr. Hancock to lease.

The sponsor responded that although their current 2010 Minimum Standards are comprehensive, they are frequently far more demanding than a particular situation warrants and, in other cases, too ambiguous to ensure quality services at the airport. The Sponsor indicated as part of their upcoming changes to the minimum standards, they fully intended to consider and resolve outstanding disputes as to the services and facilities provided by OK3 AIR and other airport tenants.

FAA Grant Assurance #22 "Economic Nondiscrimination"

"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"

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Analysis of Issue #7

The 2010 Minimum Standards clearly state that SASO lease an apron or paved tie downs that is "...adequate to accommodate the total number of aircraft in the operator's fleet at the airport. Further, if the operator has a hangar, the apron area shall be equal to the hangar square footage or adequate to accommodate the movement of aircraft into and out of the hangar, staging, and parking... whichever is greater."

Initial determination on Issue #7

The Sponsor had violated Grant Assurance #22 when they entered into a SASO lease agreement with Mr. Hancock by not including in the lease the required apron as outlined in the 2010 Minimum Standards. Per an email dated March 29, 2018, from Mr. Osit (counsel representing the Sponsor), FAA was notified that Mr. Hancock was now leasing 12,705 square feet of apron space directly in front of his two hangars, in compliance with the minimum standards. This lease agreement was for one year at the current apron rate of \$0.06 per square foot. At the end of this short term lease, Mr. Hancock will have a right to renew the lease at the then prevailing rates and terms. Since Mr. Hancock is currently leasing the necessary apron and is in compliance with the current minimum standards, FAA considers this issue to be resolved.

SUMMARY

Upon consideration of the information submitted by both OK3 AIR and the Sponsor and based on several potential violations being resolved, it appears that the Sponsor is not currently in violation of its grant assurances. In reviewing all the supporting documentation, it appears many of the issues raised resulted from poor communication. We strongly recommend the Sponsor work with the Airport Advisory Board, Airport Manager, and all airport users to better provide clear, timely, and transparent procedures for airport related matters.

This is an internal review and not a final agency action subject to adjudication.