



APPENDIX I

Rocky Mountain Metropolitan Airport Compliance Issues

Prepared for:

ROCKY MOUNTAIN METROPOLITAN AIRPORT

By:

ROCKY MOUNTAIN METROPOLITAN AIRPORT

With Input From:

REYNOLDS, SMITH AND HILLS, INC.

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Appendices

Appendix A - Airport Sponsor Assurances

AIRPORT COMPLIANCE ISSUES

When an airport applies for grants and receives funds through the Federal Aviation Administration (FAA) Airport Improvement Program (AIP), the airport sponsor is contractually obligated to comply with the assurances and other conditions contained in the grant application package. The FAA enforces these obligations and conditions through the Airport Compliance Program.

The purpose of this section is to examine existing and potential compliance issues at Rocky Mountain Metropolitan Airport in an effort to meet standards and avoid any noncompliance issues. A thorough review of the Airport's Minimum Standards, FAA Rules and Regulations, leases, easements, budget, permits, etc. was conducted to ascertain consistency with the FAA assurances. The following compliance issues were identified:

1.1 CONSISTENT MARKET RATE AVIATION LEASES

According to Airport Assurance 22, *Economic Nondiscrimination*, any rates and fees charged are uniformly distributed and "without discrimination to all types, kinds, and classes of aeronautical activities."

Additionally, Airport Assurance 24, *Fee and Rental Structure*, requires that the Airport is to "maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking in to account such factors as the volume of traffic and economy."

Rocky Mountain Metropolitan Airport annually adjusts current aviation market rate (dollars per square foot of land per year) for new leases, by the Consumer Price Index (CPI) for July. The majority of the airport ground leases include the footprint of their improvements, as well as additional land for apron, parking, etc. Almost all Rocky Mountain Metropolitan Airport aviation ground leases contain an annual CPI adjustment, which keeps rates consistent with the Airport's current aviation rate schedule for new leases. Finally, Airport owned t-hangars, conventional hangars, and office space should have rates generally consistent with comparable office/hangar space in this region based on quality and location. This consistency is necessary to comply with the FAA's "fair market value" standard.

1.1.1 Current Compliance Issues:

In analysis of the Airport's current rates, the following potential issues were identified.

- Current T-Hangar Monthly Rental Rates may be below regional market rates.

- The Airport currently leases two t-hangars to a non-profit organization that does not pay market rent for the facilities.
- A large aviation ramp lease with a Federal entity appears below market rate and does not allow for annual adjustment. Rather, the lease has fixed rate increase over the life of lease.
- One corporate aviation ground lease is falling below market rate and the lease provisions do not allow for any lease rate adjustment over the life of the lease.
- Three aviation ground leases are set to adjust once every three years, versus an annual adjustment for other ground leases. However, the rental rate is increased by the CPI compounded annually. This adjustment will ensure the lease rate will remain near market rate, but, it is believed, the lessee pays less rent over the course of three years, versus a lessee with an annual increase.
- Nine aviation ground leases are significantly over, in some cases double, the current average aviation market rate for the airport. This is the result of the leases including only the footprint of the building and not requiring the lessees to build or maintain a ramp. This building-only type lease results in a higher lease rate versus the majority of lessees that do build or maintain additional ramp space.

1.1.2 Recommendations:

The following are the initial recommendations of this analysis.

- At the point of renewal for all leases, an amendment to include an annual CPI adjustment (similar to the increase on the ground lease rate) should be considered.
- Non-profit agreements that do not pay rent for facilities can be acceptable when the organization provides a commensurate service or product back to the Airport. In cases where no equitable service is provided, fair market rent should be charged.
- Any lease rates falling below market, with lease provisions which do not allow for any lease rate adjustment over the life of the lease, need to be amended at the point of renewal to include such provisions for rate adjustments.
- Any aviation ground leases which do not include annual rate adjustments should be amended at the point of renewal to allow for annual rate adjustments versus an adjustment compounded over three years.
- Aviation ground leases in the future should include all improvements; ramp, parking, walkways, and landscaping within the entire lease parcel and not just the footprint of the building. At the point of renewal on the leases, which include only the footprint of the building, the lease should be amended to include rental and maintenance of the additional ramp space.

1.2 CONSISTENT MARKET RATE NON-AVIATION LEASES

The Airport has several parcels of land that cannot be accessed or used for aviation purposes. The revenue from these parcels facilitates the Airport's ability to maintain a self-sustaining operation. Much like aviation ground leases, Airport Assurance 24, *Fee and Rental Structure*, indicates the Airport is required to charge rates uniformly and should base these rates by taking in to account the "volume of traffic and economy" at the Airport.

1.2.1 Current Compliance Issues:

Rocky Mountain Metropolitan Airport has seven non-aviation agreements in place. Three of these entities do not pay a rental rate to the airport, but rather exchange agreed services that benefit the Airport and its tenants.

- North Metro Fire – provides structural and aircraft and firefighting services to the Airport, responds to emergencies with Airport staff and assist in emergency response training.
- City and County of Broomfield – provides water to the Airport and its tenants at in-city rates. These rates are lower than what is typically charged for this location.
- McKay Grazing – provide vegetation and pest management to Airport acreage that is currently unused.

On April 6, 2004, the FAA Denver Airports District Office conducted a land use review and concluded that the entities listed above provide valuable services to the Airport in exchange for not paying a consistent rental rate to the airport.

Three of the remaining four non-aviation leases that do pay rental rates to the airport are significantly below market rate. These three leases all have rate adjustments as follows: one lease adjusts every year by CPI, one adjusts every five years with a 3 percent increase compounded annually, and the last is adjusted every 10 years by a set "not to exceed" rental rate amount. Under these current adjustments, all of the leases will remain under market value over the life of the lease.

1.2.2 Recommendation:

It is recommended when non-compliant leases at point of renewal be renegotiated to bring Airport rate and leasing policies in full compliance with FAA standards.

1.3 LENGTH OF LEASE TERM

Airport Assurance 5, *Preserving Rights and Powers*, requires that the Airport preserve its rights, powers, and interest of Airport owned land shown on the Exhibit A. Long term leasing or perpetual leasing gives rights and claims to the lessee that may interfere with the Airport's performance under the grant assurances.

1.3.1 Current Compliance Issues:

The Airport currently has one non-aviation ground lease that is equivalent to a 100-year total term with options.

1.3.2 Recommendation:

Avoid non-aviation ground leases with a 100-year total term and when the existing lease is at the point of renewal, amend the lease to not include the 100-year term.

1.4 AVIATION LEASES HAVE AVIATION USE

Airport Assurance 19, *Operation and Maintenance*, states that the Airport and its facilities will be to serve aeronautical users. The Airport "will not cause or permit any activity or action thereon which would interfere with its use for airport purposes."

1.4.1 Current Compliance Issues:

One aviation ground lease allows for a portion of the improvements to be used for non-aviation purposes.

1.4.2 Recommendation:

Avoid aviation ground leases that allow for improvements to be used for non-aviation purposes. When the existing lease is at the point of renewal, amend the lease to not include non-aviation uses.

1.5 PRIMARY GUIDING DOCUMENT COMPLIANCE

According to Airport Assurance 22, *Economic Nondiscrimination*, when the Airport enters into any agreement, contract, or lease, or grants any person or entity the right to conduct or engage in an aeronautical activity, the Airport must enforce the provisions that require each entity to operate in a reasonable, and not “unjustly discriminatory,” basis to all users. The Airport Primary Guiding Documents provides the same advantages or opportunities by requiring that all users, non-commercial operators, and commercial operators, meet the same Airport Minimum Standards and basic rules.

1.5.1 Current Compliance Issues:

One aviation ground lease does not have language that requires the lessee to comply with the Airport’s current primary guiding documents. This has resulted in the lessee paying a different rate structure for self-fueling. In addition, three corporate aviation ground leases have “grandfathered” lease language, which supersedes the Airport Minimum Standards and allows them to store and fuel aircraft, other than that which is owed by the Lessee. This violates the non-commercial self-fueling definition.

1.5.2 Recommendation:

The following two recommendations are made.

- When leases without language requiring the lessee to comply with the Airport Primary Guiding Document expire, amend the lease to include adherence to comply with the Airport Primary Guiding Document.
- Avoid any “grandfathered” lease language, which supersedes the Airport’s Minimum Standards. Any such “grandfathered” leases should be amended to include this lease language at the point of renewal or any other modification of the lease.

1.6 ENVIRONMENTAL ISSUES

It is in the best interest of the Airport to minimize environmental hazards and take appropriate action to ensure that all Airport property is protected from future hazards. The Airport and Fire District recommend, for both environmental and fire safety reasons, that airport fuel farms should be consolidated to a central location.

1.6.1 Current Compliance Issues:

The airport has eight corporate aviation ground leases that allow the lessee to maintain a private fuel farm on their lease parcel. It is recommended that all future fuel tanks, approved under the definition of non-commercial self-fueling, will be located in the Airport's centralized fuel farm location. These eight leases are currently "grandfathered" and therefore do not meet the current Minimum Standards for a centralized fuel facility on the airport. This subsequently jeopardizes the economic balance on the Airport by providing these eight operators a competitive advantage over other commercial operators that are authorized to dispense fuel.

1.6.2 Recommendation:

At the point of renewal, all corporate aviation ground leases should be amended to not allow the lessee to maintain a private fuel farm on their lease parcel. All fuel tanks should be required to be located in the Airport's centralized fuel farm.

1.7 IMPORTANCE OF COMPLIANCE

It is vital to the success of the Rocky Mountain Metro Airport for Airport management to make a continued effort to educate the Airport sponsor, the general public, surrounding municipalities, Airport tenants, lease holders, etc. on the components of airport FAA compliance issues. Possible strategies to communicate the importance of compliance with FAA Grant Assurances and other obligations include:

- Airport management should annually review FAA Grant Assurances or obligation documents and continually evaluate if the Airport is maintaining lease and rate guidance consistency.
- Any Airport documents, including all standard leases, should be the most current available to ensure the information is accurate and any new obligations are not overlooked.
- The Airport should conduct annual reviews of all agreements to aid efforts in complying with incurred Federal obligations.
- Airport management and consultants should attend annual training classes or seminars to make certain the most current FAA guidance information is utilized.
- Airport management should facilitate relationships with surrounding municipalities to continue education of the importance of the Airport Compliance Issues.
- Airport management should continue education efforts with Airport tenants, elected officials, and the public of the importance of the Airport Compliance Issues by making the Airport Assurances and any other pertinent obligations available on the Airport website.
- The public and citizens of Jefferson County should be aware of the availability for public comment at the Jefferson County Board of County Commissioners meetings. Public comment is the first item on the agenda; it is a time when any citizen can bring up a concern about county matters, including Airport Compliance Issues.