
November 10, 2016

The Board of Commissioners of the Arapahoe County Public Airport Authority, Arapahoe County, Colorado, held a regular meeting open to the public at Centennial Airport, Control Tower / Administration Complex, 7800 South Peoria St., Englewood, Colorado, located within the County, on November 10, 2016 at 3:00 p.m.

The following members were present:
Commissioner Doubek, Chairman
Commissioner Bagnato
Commissioner Holen
Commissioner Sharpe
Commissioner Sieber
Commissioner Huffman

The following members were absent, but excused:
Commissioner Doty
Commissioner Weaver

Each Commissioner was notified of the date, time and place of the meeting and the purpose to which it was called. At least three (3) days prior to the date of the meeting, Public Meeting notices were posted at the Administration Buildings of Arapahoe County, Douglas County, Greenwood Village, City of Centennial; the courthouses in Arapahoe County and Douglas County; and at least three places on the Airport. At least 24 hours prior to the meeting, an agenda was posted on the Authority's website and in the window of the door at the base of the Control Tower/Administration Complex at 7800 South Peoria Street.

Call to Order & Pledge of Allegiance

Chairman Doubek called the meeting to order at 3:01 PM and recited the Pledge of Allegiance.

Public Comment

No public comment.

Amendments to the Agenda

Business Item 5 was removed from the Agenda. A letter outlining the issues was delivered to Arapahoe County on 11/9/2016 and is being reviewed by County counsel. See Attachment on pages 2606-2612.

Next Meetings

- December 7, 2016 @ 6:30 p.m. – Noise Roundtable Meeting – Ramada Hotel and Suites
- December 8, 2016 @ 3:00 p.m. – Regular Board Meeting – Wright Brother's Room

CONSENT AGENDA

1. **Approve Minutes of October 13, 2016** **Gwen Balk**
Recommendation: Motion to approve the minutes of October 13, 2016 and authorize the Chair to sign.
2. **Consent to Sublease Amendment between Denver jetCenter, Inc. and Mayo Aviation, Inc.** **Gwen Balk**
Recommendation: Motion to approve the Consent to Sublease between Denver jetCenter, Inc. and Mayo Aviation, Inc. and authorize the Chairman and Clerk to sign.
3. **Approval of Consent Agenda** **Robert Doubek**
Action: Approval of the Consent Agenda passed unanimously on a motion by Commissioner Holen, seconded by Commissioner Bagnato.

BUSINESS AGENDA

4. **Items Moved to the Business Agenda** **Robert Doubek**
None
5. **Resolution 2016-05 – Request Related to Final Lease Payment to County** **Robert Olislagers**
Action: Item withdrawn.

REPORTS

6. **September 2016 Financial Report** **Roxana Hahn**
Recommendation: Advisory

Ms. Hahn presented the September Financial Report. Ms. Hahn and Mr. Fronapfel, the Director of Planning and Development, fielded questions from the Board.

7. Fuel and Operations Report for September 2016

Marissa Jones-Flaget

Recommendation: Advisory

Ms. Jones-Flaget stated the following:

- YTD Operations: Up 6.7% from 2015 at 292,553
- Monthly Operations October: Down 2.3% from 2015 at 29,152
- YTD Fuel Totals: Down .1% from 2015 at 11,147,895
- Monthly Fuel Totals October: Up 2.6% from 2015 at 1,210,966
- Monthly Jet Fuel Sales October: Up 2.9% from 2015 at 1,162,695
- Monthly AvGas Sales October: Down 4.4% from 2015 at 48,271
- Monthly Market Share for AvGas and Jet Fuel Combined October: DjC: 38.6%; TAC Air: 29.98%; Signature: 22.68%; X-Jet: 8.62%; Heliplax: .12%

8. Noise Update

Aaron Repp

Recommendation: Advisory

Mr. Repp presented statistics on the October 2016 noise complaints. He stated the following:

- There were 959 complaints from 46 households.
- With the top household removed, there were 230 complaints.
- Year-to-Date there are 8917 complaints from 233 households.
- With the top household removed, there were 2709 year-to-date complaints.
- There were 898 daytime complaints.
- There were 61 nighttime complaints.
- The Top 5 households comprise 82% of year-to-date complaints.
- The Top 1 household comprises 70% .
- The Radar Track Density Map was updated and showed a decrease over Chatfield State Park, but other locations remain the same.
- The spike in military operations in June was due to poor weather conditions at the Air Force Academy training facility.

Commissioner Doubek asked what form the majority of complaints are received to which Mr. Repp responded WebTrak. He further advised that the #1 Household submits their complaints through WebTrak.

9. Centennial Airport Community Noise Roundtable Update

Jim Dawkins

Recommendation: Advisory

Jim Dawkins presented the following information from the CACNR meeting on 11/2/16:

- Brad Pierce provided a summary of the communication surrounding the verbal notification by the FAA District Office representative, Linda Bruce, from the CACNR meeting on 10/5/2016 that funding of the roundtable was not authorized; specifically, roundtable activities are considered as revenue diversion.
- Linda Bruce was not able to provide a timetable for the FAA written response or if clarification of what is and is not considered revenue diversion will be included.
- Community outreach, Fly quiet and Noise Monitor committees have not yet met.

Jim Dawkins expressed concerns about the operation of the roundtable due to distractions from the issue of no longer receiving funds from the Authority.

10. Legislative Report

Robert Olislagers

Recommendation: Advisory

Mr. Olislagers discussed the recent election and President-elect Trump's plans to invest in infrastructure improvements, including airports. He advised there are conflicting reports on whether ATC Reform will be in the Reauthorization Bill and further advised we will wait and see what the new administration will look like. Mr. Olislagers also expressed congratulations to Commissioner Holen on his re-election.

Public Comment

No public comment.

Comments from Board or Staff

Mr. Olislagers mentioned the XB-1 Supersonic Demonstrator by Boom Technology will have a roll out event, by invitation only, on November 15th at 6:00PM. He further advised it will only be flown subsonic while at Centennial Airport and supersonic at Edwards Air Force Base.

Commissioner Huffman asked when the Indemnification Resolution previously discussed would be presented. Director of Administration, Gwen Balk, responded it would be presented to the Board at the February 2017 meeting.

Adjournment

The meeting was adjourned at 3:48 PM.

Robert Doubek

Execution of Documents

Gwen Balk

Approved:



Robert Doubek, Chairman



CENTENNIAL AIRPORT
ARAPAHOE COUNTY PUBLIC AIRPORT AUTHORITY

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Englewood, Colorado 80112
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November 8, 2016

Board of County Commissioners
Arapahoe County
5334 S. Prince St.
Littleton, CO 80166

RE: Final Lease Payment

Dear Board of County Commissioners,

At the November 10 meeting of the Arapahoe County Public Airport Authority ("Authority"), staff will once again request that Arapahoe County ("County") request that US Bank release the balance of the Reserve Funds held by US Bank relative to The Arapahoe County Colorado Lease Purchase Agreement with Arapahoe County Building Finance Corporation Refunding Certificate of Participations Series 2002 (the "Reserve Fund") to reduce the County's final payment which would in turn reduce our final rental payment required under the 1993 Airport Ground Lease, as defined hereunder.

Below, please find an Executive Summary, as well as more detailed information prepared by staff with assistance from Kurt Kaufmann, bond counsel with Sherman & Howard on certain of the matters presented below.

EXECUTIVE SUMMARY

Authority staff has a responsibility to advise you that it is our assessment that the Reserve Fund may be used to pay off the certificates of participation, but should the Reserve Fund not be used to pay off the 1993 Airport Lease, the balance of the Reserve Fund is owed to the Authority.

The above assessment is based on several key facts as follows:

1. Section 3.08(e) of the 2002 Indenture as defined hereunder stipulates that "the County could use the Reserve Fund to reduce the final payment..." and Section 14.4 of the 1993 Airport Lease states, "It is agreed by the parties that any amounts remaining in any fund or account created hereunder, upon termination of the Lease Term, and after payment in full of all Rentals, shall belong to the Authority". The Reserve Fund is specifically earmarked for debt payment;
2. It has been further determined that all indentures, leases and amendments related to the rental payments are connected and do not alter the obligations thereunder; the Authority makes payments to the County who in turn makes payment to US Bank;

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3. The Reserve Fund was provided by the Authority exclusively;
4. The Authority has made all the rental payments required to date, under the 1993 Airport Lease;
5. The Reserve Fund has an estimated balance of \$1.6 M, which when supplemented by an estimated \$14K from the Authority is sufficient to retire the debt;
6. Staff relied on 3.08(e) of the indenture in preparing the 2016 Authority budget, which was presented in October of 2015 and approved by the Authority Board of Commissioners in December of 2015. The Authority only budgeted funds for the final net payment;
7. The Authority's Audited Financial Statements, which includes the Reserve Fund as an asset have been provided to the County annually since 1992;
8. The County could request the Authority to make the full rental payment in lieu of applying the Reserve Fund, which would not require an amendment to the Authority's budget, as sufficient appropriation exists; however, this will substantially reduce ending net funds available;
9. If, for whatever reason, the Reserve Fund is not used to the benefit of the Authority, the Authority would have to recognize an uncollected debt from the County. This will be required to be noted in the 2016 Audited Financial Statements, including the MD&A and possibly the Single Audit;
10. If this circumstance is noted in The Single Audit, a federal audit may be triggered related to the uncollected funds and be considered "Revenue Diversion" per U.S.C. §§ 47107(b) and 4713 in violation of the "Grant Assurances Airport Sponsors" (the "Assurances");
11. As sponsor of the Authority, the County is signatory on all grants received by the Authority, which includes said Assurances. In the event a violation of the Assurances is not cured, in this case by December 31, 2016, future grant funds may be withheld as was the case from 1999-2003, resulting in an estimated loss of \$8-16M to the Authority.

BACKGROUND

LEASE INFORMATION:

By way of background, Arapahoe County (the "County") and the Arapahoe County Public Airport Authority (the "Authority") entered into an Airport Ground Lease Purchase Agreement between County and Authority dated November 1, 1986 as amended by a First Agreement dated May 1, 1992 and a Second Amendment dated April 1, 1993 (altogether, the "1986 Airport Lease").

The County and Authority entered into, replaced and substituted the 1986 Airport Lease with an Airport Ground Lease Purchase Agreement dated as of April 1, 1993 as amended by First Amendment dated

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January 7, 1997, the Second Amendment dated September 3, 2002, and the Third Amendment dated August 12, 2010 (altogether, the "1993 Airport Lease").

The Second Amendment dated September 3, 2002 that is part of the 1993 Airport Lease replaced the first paragraph of Section 6.2 and introduced the term "*Judicial Complex Lease*" which means the Lease Purchase Agreement dated September 3, 2002 between the County and the Arapahoe County Building Finance Corporation and the term "*Indenture*" which means the Mortgage and Indenture of Trust dated September 3, 2002, between the Arapahoe County Building Finance Corporation and U.S. Bank National Association, as trustee.

It has been our understanding that under both the 1986 Airport Lease and the 1993 Airport Lease that the Authority's rental payments to the County were passed through for the County to make the payments required of it under its Judicial Complex Leases; and that the original reserves came from the Authority in 1986. Since 1992, the Authority was required to show the reserve as an asset on its financial statements.

Section 6.2 of the 1993 Airport Lease (attached hereto as Exhibit A) states,

....Rentals payable by the Authority for the use of the Remaining Premises shall never in any period exceed the net amounts payable by the County pursuant to the Judicial Complex Leases....

This makes it clear that the Authority ground lease rentals are intended to support the Judicial Complex Lease payments.

Section 14.4 of the 1993 Airport Lease that states,

"It is agreed by the parties hereto that any amounts remaining in any fund or account created hereunder, upon termination of the Lease Term, and after payment in full of all Rentals, shall belong to the Authority."

This Section 14.4 was not modified by the Second Amendment of September 3, 2002; however, paragraph 8 of the Second Amendment makes it clear that except as otherwise modified and amended, the 1993 Airport Lease shall continue in full force and effect, unchanged and unmodified. This makes Section 14.4 applicable to the amended Section 6.2.

The final net rental amount to be payable by the Authority should match the final net rental amount paid by the County under its Judicial Complex Lease. The most efficient way to accomplish this is to have the County request the Trustee to apply the balance of the Reserve Fund to the County's final payment. If the County chooses to pay the full rental payment and then receive an overpayment refund from the Trustee, it is our position based on the authorities provided herein and elsewhere, that in effect the County would have made a net payment that should be passed on to the Authority or the difference reimbursed to the Authority.

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AUTHORITY CONTRIBUTIONS:

Cash Contributed by the Reserve Fund

Authority staff prepared a chronology of the contributions to the Reserve Fund, including supporting documentation. Based on this chronology, the Reserve Fund was provided by the Authority exclusively. This chronology and supporting documentation was reviewed by outside bond counsel who concurred with the information. The final closing memorandum related to the 2002 Refunding Certificates of Participation refers to the Reserve Fund as a "Debt Reserve Fund" evidencing that the intent of the fund was for debt service. The Indenture also makes it clear that the Reserve Fund is security for the payment of debt service of the Certificates. Counsel calculated that over \$2,000,000 of Authority funds have been contributed to the Reserve Fund via the various bond issues since 1975 (in addition to annual rental payments made by the Authority). This amount exceeds the approximately \$1,600,000 presently contained in the Reserve Fund.

Ground Lease Payments

The Authority has made the ground lease payments to the County on time and without fail since the inception of the lease. The Authority has also paid the paying agent fees directly to the paying agent annually without fail. The excess reserve (i.e. investment income on the Reserve Fund moneys) calculated by US Bank has been applied to the ground lease payment invoice semi-annually since 2002. This is consistent with Section 6.2 of the 1993 Airport Lease related to Rentals and treating the Reserve Fund as an asset of the Authority.

FINANCIAL INFORMATION:

Authority Financial Statement Impacts

The Reserve Fund has been listed as an asset on the Authority's audited financial statements since 1992. These audited financial statements have been accepted by the current Authority Board and its predecessors. Three voting members of this Board are also County Commissioners. These funds were confirmed by US Bank to the auditors. The audited financial statements, which have been provided to the County annually, have included the following statement since 1992:

Capital Lease

Because of the interrelationship between the County and the Authority in this financing arrangement, all transactions incurred by the County relating to this financing are recorded in the accompanying financial statements as if they were incurred by the Authority.

If the County were to not convey these funds to the Authority, the funds would become a receivable from the County and would have to be written off as bad debt of at least \$1,576,000. This would significantly affect the net assets of the Authority for 2016. This write off will have to be presented as a financial highlight in the Management Discussion and Analysis of the 2016 audited financial statements.

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The auditors will also investigate the write off as a possible diversion of revenue as it relates to the Authority's 2016 Single Audit. This could have serious financial consequences to the Authority and to the County. This is discussed in this letter under Diversion of Revenue Information.

Arapahoe County Colorado Comprehensive Annual Financial Report ("County CAFR")

The 2015 County CAFR includes the Authority as a component unit and includes the Reserve Fund as an asset of the Authority in section C-1.

Authority 2016 Budget

The Authority Board of Commissioners were informed that the Authority planned to use the balance of the Reserve Fund to pay the final ground lease payment. This was highlighted in the presentation of the budget both at the October 2015 and December 2015 Board meetings. The Authority Board of Commissioners approved the 2016 budget that anticipated the final lease payment would be primarily covered by the balance of the Reserve Fund. Three voting members of the Authority's Board are also County Commissioners.

This bad debt expense may need to be included in the 2017 budget cover letter.

DIVERSION OF REVENUE INFORMATION:

In the event that the Authority pays the County the full rental payment, but the balance of the Reserve Fund does not, or is not allowed to accrue to the Authority (e.g., the County keeps the funds), then the Authority will have to account for the unbudgeted expense of \$1.6M as well as document the loss of \$1.5M as uncollected debt from the County. Both will be documented in the 2016 Audited Financial Statements and the Single Audit. The Single Audit is required of all U.S. federal grant recipients who receive \$600,000 or more from the federal government. Both the Authority and the County are signatories under these grants.

Based on our research, the Reserve Fund was funded entirely by the Authority and all rental payments were made by the Authority to the County. Any and all funds retained by the County past December 31, 2016 may be considered "Revenue Diversion" under U.S.C. §§ 47107(b) and 4713.

As sponsor of the Authority, the County is signatory on all grants received by the Authority, which includes said Assurances. As stated, in the event a violation of the Assurances is not cured, future grant funds may be withheld as was the case from 1998-2003, resulting in an estimated loss of \$8-16M.

CONCLUSION

In conclusion, it is our strong desire to maintain our excellent working relationship with the County, and while staff does not suggest that the County plans on keeping any funds related to the 1993 Airport Lease, nor does staff assert any wrong-doing on the part of the County or the Authority, it is nevertheless our responsibility to inform you of the potential consequences of doing so. We are

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encouraged by the email from Deputy County Attorney John Christofferson to Authority Counsel Brian Magoon, dated October 21, 2016, which states; "We agree that the 2002 Indenture provides in Section 3.08 Use of the Moneys in the Reserve Fund subsection (e) that at the County's option, the County could use the Reserve Fund to reduce the final payment of the Base Rentals payable under the Lease Purchase between the Building Finance Corporation and the County. This is an option and not a requirement. To date, the County has not exercised this option." Mr. Christofferson indicates that the County has not made a final decision about their right to exercise the option. The information in this letter should give the County sufficient support for exercising the option to use the Reserve Fund to reduce the final payment.

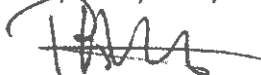
If the County were to keep the Reserve Fund and/or any overpayments, we believe both the Authority and the County may suffer significant negative impacts both financially and in terms of noncompliance with our respective federal grant assurances.

The Reserve Fund was paid for by the Authority and the Authority has made the ground lease rental payments on time and without fail—as will be the case with its final rental payment. We request that the County reduce the final invoice by directing the Trustee to apply the balance of the Reserve Fund and any interest in order to maintain the "net" rental position between the County and Authority as described in Section 6.2 of the 1993 Airport Lease.

Thank you very much for your time and consideration, and please accept our apologies for the length of this memorandum; however, we believe it deserves the appropriate attention due to its importance.

In closing, staff has background and research material available for your review.

Respectfully Yours,



Robert Olislagers
Executive Director



Gwen C. Balk
Director of Administration



Roxana Hahn
Chief Financial Officer

Attachment - Exhibit A

Cc: Airport Authority Board of Commissioners (Voting Members)
John Christofferson, Deputy County Attorney
Kurt Kaufmann, Sherman and Howard
Brian Magoon, General Counsel

Exhibit A – 1993 Airport Lease – Current Section 6.2

Since April 1, 1993, Section 6.2 of the 1993 Airport Lease was amended only once and by the Second Amendment dated September 3, 2002 and that amendment replaced the first paragraph only. The complete current Section 6.2 would read, as follows:

Section 6.2. Rentals. The Authority shall pay Rentals to the County or to the Trustee, as determined by the County, on the due dates set forth in Exhibit B to this Lease. The Rentals shall be in the amounts in the "Total Rentals" column, as set forth in Exhibit B to this Lease, provided that, for so long as the Judicial Complex Lease is in effect or the Certificates are outstanding, the Rentals payable by the Authority for the use of the Remaining Premises shall never in any period exceed the net amounts payable by the County pursuant to the Judicial Complex Lease for the corresponding period of use of the Project plus the amounts of \$590,000.00 on November 15, 2002, and \$930,000.00 on November 15, 2003. In the event that the Judicial Complex Lease shall be terminated by reason of the occurrence of an Event of Nonappropriation or an Event of Default (as defined therein), the Authority shall pay as additional rentals, the amounts set forth on Exhibit B-1 hereto, which amounts shall be paid on the dates set forth in such exhibit to the Trustee.

In the event of any prepayment of Rentals by exercise of the Authority's purchase option pursuant to Article XI hereof, the remaining Rentals shall be recalculated so that the Rentals payable shall be reduced proportionately to amounts equal to the amounts necessary to pay the remaining principal components allocable to Rentals and the interest components relating thereto.