

U. S. Department of Transportation



**For the Participation of
Avon Park Executive Airport,
Highlands County, Avon Park, Florida
In the Airport Investment Partnership Program
FAA Docket 2023-1724
[Date]**

I. Introduction

This Record of Decision (ROD) sets forth the basis for the Federal Aviation Administration (FAA) decision to approve the application filed jointly by the City of Avon Park, Highlands County, Florida, airport sponsor, and Florida Airport Management KAVO, L.L.C., (FAM KAVO) for the participation of Avon Park Executive Airport (AVO/Airport) in the Airport Investment Partnership Program (AIPP). The FAA issues this decision including certain exemptions from existing requirements under the authority of Title 49 United States Code (U.S.C.) § 47134 (Section 47134). Approval of the exemption of Avon Park from certain federal obligations and the approval of FAM KAVO, for a limited exemption from existing airport revenue use restrictions, and the transfer and assumption of the operation of the Airport is made under the authority of Sections 47101 *et seq.*, 47133, 47134, 47151, 47152, and 47153 of Title 49 U.S. Code, and the AIPP:

Application Procedures, 86 Federal Register (FR) 20586, (April 20, 2021) (Application Procedures).¹ The Application Procedures and the complete Final Application (AIPP Final Application) for AVO are available for review at www.regulations.gov under FAA Docket 2023-1724.

Section 47134, as amended, authorizes the Secretary of the United State (U.S.) Transportation, and through delegation, the FAA Administrator (Administrator), to exempt a public sponsor of a public use airport that has received federal assistance, from certain federal requirements, in connection with the privatization of the airport by sale or lease to a private party. Specifically, the Administrator may exempt the sponsor from all or part of the requirements to use airport revenue for airport- related purposes (for a non-primary airport, after the airport has consulted with at least 65 percent of the owners of the aircraft based at that airport).

If the revenue use exemption is granted to a sponsor, the Administrator will grant an exemption to the sponsor to the extent necessary to waive any obligation of the sponsor to repay federal grants or return airport property deeded by the Federal Government. Additionally, if the revenue use exemption is granted to a sponsor, the Administrator will grant an exemption to the private purchaser or lessee from the requirement to use all airport revenues for airport-related purposes, to the extent necessary to permit the purchaser or lessee to earn compensation from the operation of the airport.

References to statutes, rules, regulations, guidelines, and circulars shall include the referenced citations as they may be amended, modified, supplemented, renewed, or replaced, and would thus include any successor thereto.

¹ See FAA Reauthorization Act of 2018, 115 H.R. 302, § 160, Pub. L. No. 115-254.

II. Background and Procedural History

The Airport is a general aviation airport in Highlands County, Florida, owned by the City of Avon Park (City) and operated by Florida Airport Management, LLC (FAM) under a management agreement. FAM KAVO is a limited liability company, organized under the laws of the State of Florida. FAM KAVO is a subsidiary of FAM and was created as a special purpose entity for this transaction.

On July 7, 2023, the City and FAM KAVO filed the AIPP Final Application for the privatization of AVO, under which the City will lease the Airport to FAM KAVO to operate the Airport. The City, the airport sponsor, selected FAM KAVO as the private operator and negotiated a draft Agreement of Lease (Lease), to assume operating and maintenance responsibility for the existing aeronautical facilities at the Airport. The Lease, Operating Agreement, and other related documents are in the AIPP Final Application under FAA Docket 2023-1724.

On September 22, 2023, the FAA published a notice in the Federal Register acknowledging the receipt and availability of the AIPP Final Application for AVO. The notice also commenced the 60-day public review and comment period. The public comment period closed on November 21, 2023.

On November 21, 2023, the City and FAM KAVO filed an updated Lease with exhibits for the Airport, as part of its AIPP Final Application.

On July 22, 2024, the City and FAM KAVO filed a Supplement to the Final Application (Final Application Supplement), in response to the FAA's request for additional information that was made on June 14, 2024.

Public Comments

The FAA received five public comments to the Federal Register Notice, as posted in FAA Docket 2023-1724 on www.regulations.gov. A summary of the comments and their responses are published in Attachment 1 to this decision.

III. The Proposed Privatization Transaction

Summary

FAM KAVO proposes to lease AVO from the City for 30 years. (*See Lease, Section 3.1*). Subject to certain conditions (including benchmarking and performance standards) and City Council approval, FAM KAVO may renew the Lease for two option terms of ten and nine years, for a total potential lease term of forty-nine years. (*See Lease, Sections 3.2 and 3.3*). FAM KAVO may terminate for its convenience within the first ten years of the Lease. (*See Lease, Section 5.15*). The City may also terminate the Lease for convenience at any time, subject to certain buyout requirements. (*See Lease, Section 21.3*).

Under the Lease, FAM KAVO would take possession to operate and maintain the Airport. FAM KAVO would be considered the Airport Sponsor for receipt of federal grants under the Airport Improvement Program (AIP), in the event federal grants are awarded to the Airport. The City will assign its existing leases at the Airport, with the exception of three -- the leases for the Classic Caladium, the Water Treatment Facility (including two pump stations), and the Ballfield area. FAM KAVO will assume operating and maintenance responsibility for the existing aeronautical facilities at the Airport and obtain title to certain existing equipment currently owned by the City and used at the Airport.

This ROD for privatization under the AIPP is independent of any future AIP funding determination. Approval of the privatization is not an indication that AIP funds will be awarded.

Parties to the Transaction

City of Avon Park
110 East Main Street
Avon Park, Florida 33825

Florida Airport Management KAVO, L.L.C.
1535 FL-64. Suite 101
Avon Park, Florida 33825

AVO is a small general aviation airport within the City of Avon Park, Florida. The City represents it has the authority to lease AVO to a private entity, and that its actions comply with applicable law. The City relies on the following City and State laws as support of its authority:

City Law - Article II, Division 3, Section 2-330 adopts the City's Procurement Code into the City Code by Ordinance 14-15:

City Law requires that leases of the City real estate for periods in excess of five years must [be] by ordinance. Therefore, when the proposed Florida Airport Management, LLC ("FAM") Lease document(s) are in final order for approval by the City Council, they must be attached to an ordinance approving such lease document(s) at two readings, including a public hearing for final reading.

State Law - Florida State Constitution, section 2(b) Article VIII:

City has the general legal authority to sell, lease, or otherwise dispose of Avon Park Municipal Airport under its "governmental, corporate, and proprietary powers to enable [it] to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law."

The City confirms that the City Charter and Procurement Code provide no impediment to the long-term lease of the Airport to FAM KAVO, except as to the procedural requirements detailed above. The City also confirms it has State authority to enter the long-term lease under constitutional and statutory home rule powers under Florida law so long as it does not violate

constitutional prohibitions on engaging in joint ownership of a project with a private entity or pledging new credit on behalf of a private entity. The City also confirms it has not engaged in joint ownership with FAM KAVO through the Lease and that it has not promised to pledge any new credit on behalf of FAM KAVO. (*See City's Statement of Legal Authority in AIPP Final Application*).

Airport Property

AVO is in the City of Avon Park, in the northwest corner of Highlands County, Florida. The Airport is a general aviation airport located two nautical miles west of the central business district of the City of Avon Park. AVO opened as a civil airport in April 1940. The United States Army Air Forces leased the Airport starting on October 4, 1941. Subsequently, AVO was declared surplus property and turned over to the Army Corps of Engineers in September 1945. The Corps eventually discharged the airport to the War Assets Administration, whereupon the airfield returned to its original status as a civil airport. In March 1947, the City was deeded the property via a Quit-Claim Deed for use as an airport under the Surplus Property Act of 1944. Federal grant funds were used to acquire airport land in 1989 for approaches, and in 1992 for airport development and runway extension.

The Airport Master Record dated June 27, 2024, indicates the existing airport property covers 321 acres of land. Part II of the AIPP Final Application includes a legal description and map of the Airport property to be leased from the City to FAM KAVO. As stated above, the City will retain three parcels of land and related leases for the Water Treatment Plant, the Ballfield area, and the Classic Caladium area. The legal description and map of the Airport including the three retained parcels are in the AIPP Final Application and as exhibits to the Lease.

In addition, there is a small parcel commonly referred to as the “donut hole” on the Airport. This property, the “donut hole,” is an approximately 0.5-acre inholding parcel privately owned property within the exterior boundaries of the Airport. The “donut hole” is an inaccessible area on the west side of the Airport, is vacant and has no relationship to aeronautical operations. The City is currently conducting a title search to identify and locate the legal owner and will attempt to negotiate a resolution. If this isn't possible, the City will take appropriate judicial steps to acquire this parcel. The City and FAM KAVO expect resolution could take at least a year. Upon acquisition of the “donut hole” the City and FAM KAVO will amend the lease to add this parcel to the Demised Premises. (*See Lease, Section 19.9, and Final Application Supplement*).

In 1974, with FAA approval, the City traded the property now underlying Building 11 to a private individual in exchange for a different inholding on the Airport. (*See AIPP Final Application and Final Application Supplement, Attachments 1, and 2*). Building 11 remains under private ownership today, with the private owner conducting an aeronautical business. This private owner utilizes “through-the-fence” access to the Airport from this private property. In addition, they also rent a portion of the ramp on the Airport and immediately adjacent to building 11 from the City. Building 11 is not included in this transaction.

The Airport has two asphalt paved runways with lengths of 5,374 feet (runway 5/23) and 3,844 feet (runway 10/28). Accompanying taxiways consist of Taxiway A, C, D, E, F, and G.² There is one apron area with tie down locations. The Airport averages 88 flights per day and has 48 based aircrafts which includes single-engine, multi-engine, jet, and helicopter aircraft. The Airport is surrounded by a perimeter fence and six main access gates.

Per the terms of the Lease, the equipment detailed in the AIPP Final Application under Exhibit E of the Lease will be transferred to FAM KAVO, who then will be responsible for repair, maintenance, and upkeep. FAM KAVO may not sell, dispose, or remove equipment without the City's permission.

Lease Term

The City and FAM KAVO submitted the Lease for the property that includes a term of 30 years, with options for two extensions. Subject to certain conditions (including benchmarking and performance standards) and City Council approval, FAM KAVO may renew the Lease for two option terms of ten and nine years, for a total potential lease term of forty-nine years. (*See Lease, Sections 3.1, 3.2, and 3.3*). FAM KAVO may terminate for its convenience within the first ten years of the Lease. (*See Lease, Section 5.15*). The City may also terminate the Lease for convenience at any time, subject to certain buyout requirements. (*See Lease, Section 21.3*).

Lease Payments

The City will receive annual base lease payments of \$84,000 in year one of the Lease; the base rent amount will be increased annually by the Consumer Price Index (CPI) – General. Once every five years the market rate will be revisited, and the rent adjusted based on an updated market analysis. The City may request an appraisal in the interim if major improvements or new additions are added to the Airport funded by government grants that would increase the value of the annual rent. (*See Lease, Article 4, and Final Application Supplement*).

Additional Rent

FAM KAVO will also pay the City certain Additional Rent, which includes repayment of amounts advanced to the Airport by the City in prior years and any in future years. (*See Lease, Section 4.3*).

FAM KAVO as the Lessee may receive rent credits for investments into aeronautical facilities that are made with FAM KAVO funds. FAM KAVO is proposing to earn a reasonable return on investment as outlined below and in more detail in the Lease (*See Lease, Article 4*).

The portion of Net Revenues available to Lessee under the Lease is as follows:

- For all Net Revenue between One Dollar (\$1.00) and Two Hundred Fifty Thousand Dollars (\$250,000), FAM KAVO shall be entitled to retain ninety percent (90%) of such Net Revenues;

² Taxiway B (Bravo) was decommissioned and is marked closed.

- For all Net Revenue between Two Hundred Fifty Thousand and One Dollars (\$250,001) and Five Hundred Thousand Dollars (\$500,000), FAM KAVO shall be entitled to retain eighty percent (80%) of such Net Revenues;
- For all Net Revenue between Five Hundred Thousand and One Dollars (\$500,001) and One Million Dollars (\$1,000,000), FAM KAVO shall be entitled to retain sixty percent (60% of such Net Revenues);
- For all Net Revenue between One Million and One Dollars (\$1,000,001) and Two Million Dollars (\$2,000,000), FAM KAVO shall be entitled to retain fifty percent (50%) of such Net Revenues;
- For all Net Revenue between Two Million and One Dollars (\$2,000,001) and Three Million Dollars (\$3,000,000), FAM KAVO shall be entitled to retain thirty percent (30%) of such Net Revenues; and
- For all Net Revenue above Three Million and One Dollars (\$3,000,001), FAM KAVO shall be entitled to retain fifteen percent (15%) of such Net Revenues.

The Lease requires that the Net Revenues that are not retained by FAM KAVO pursuant to the clauses above must be deposited in a special account and expended by FAM KAVO (or the City) in accordance with the FAA Revenue Use Policy and subject to FAA financial reviews. Therefore, these funds will be used solely for the capital and operating costs of the Airport, or other local facilities owned or operated by the City or FAM KAVO and directly and substantially related to the air transportation of passengers or property. Upon expiration or earlier termination of the Lease, all Net Revenue in the special account shall become the property of the City. (*See AIPP Final Application and Lease, Section 4.8*).

Source of Lease Payments

Lease payments commencing on the first anniversary of the Lease will be made from revenue generated from the operation of the airport. FAM KAVO must provide a bond for the amount of one year of operating budget. FAM KAVO is also prioritizing the development of revenue-generating assets to further increase the financial stability of the Airport. In addition, FAM KAVO anticipates private equity funding to be accessed throughout the term of the Lease. (*See AIPP Final Application and Final Application Supplement*).

IV. Qualifications of the Private Operator

General

A complete description of airport management operations key personnel experience is included in the AIPP Final Application and can be reviewed as part of the Docket. FAM KAVO has submitted documentation stating it has the legal authority and the capacity to comply with the existing FAA grant assurances. FAM holds a current management agreement and has been operating AVO for the past two years.

FAM KAVO submitted a Capital Improvement Plan (CIP) to the City and will implement as the Sponsor on all identified airport improvements within a commercially reasonable time period.

This includes the execution of the City's most recent CIP as identified in the AVO Airport 2014 Master Plan. FAM KAVO will prioritize the 5-Year CIP for projects according to these categories as follows: safety and security; deferred maintenance; life cycle renewal and replacement; and cosmetic improvements.

There remains a total of 13 projects from the City's originally identified 17 CIP projects to be funded and performed totaling \$14,366,000 in 2015 dollars. The City's and FAM KAVO's original application indicated that a large portion of the funding for the 5-year CIP at the Airport would be through Florida Department of Transportation (FDOT) grants or state discretionary funding. FDOT has determined that under current Florida law, it will be unable to issue grants to support the Airport after the AIPP process is completed. (*See AIPP Final Application*). The City and FAM KAVO are currently pursuing a change in state law to resolve this issue, and both parties expect that the change will be passed and effective as of July 1, 2025.

Under the existing management agreement, the City and FAM KAVO have taken several steps to align project timelines with the anticipated change in law and ensuring that the Airport is appropriately funded even in the absence of FDOT grants. First, the CIP has been modified to postpone planned FDOT-funded projects. This modification still prioritizes critical safety and security projects but will also ensure that FDOT funding is not involved until after the anticipated change in law is finalized.

Second, sufficient funding remains available from other sources in the short and medium term. The State has appropriated \$3 million to the Airport, which is not subject to the FDOT restrictions and will remain available following the AIPP Lease execution. The City has budgeted approximately \$1.3 million for the current fiscal year for the Airport and additionally holds approximately \$250,000 in a Community Reinvestment Act fund, both of which are available for use on Airport capital projects as needed (including as matches for grant-funded projects).

FAM KAVO anticipates that the FAA will consider supporting airfield and infrastructure projects with discretionary dollars as well as annual entitlement dollars to overcome shortfalls should FDOT funding not occur. FAM KAVO anticipates that it will also secure funding from banks and other private capital lenders as necessary to overcome shortfalls in funding, including a working capital line of credit.

Third, following the completion of essential safety and security projects, FAM KAVO intends to prioritize the completion of revenue-producing projects (e.g., new hangars). FAM KAVO expects that these projects could instead be funded through a portion of the general appropriation or private funds, if necessary, which FAM KAVO expects will provide increased airport revenues. Increased operational revenue will provide an additional backstop against the possible unavailability of FDOT funds. FAM KAVO anticipates that, as an asset in a rural county, FDOT will waive the need for match funding on CIP Projects. FAM KAVO anticipates no debt financing at this point. (*See Final Application Supplement*).

Thus, FAM KAVO has a plan to manage the transition of the Airport from public to private control, satisfies the requirement of the private operator's airport management and operations

experience, and has available financial resources. (See AIPP Application, Lease, and Final Application Supplement).

Airport Security Program

Title 49 CFR § 1542, which proscribes security rules for airports serving certain aircraft operations, does not apply since AVO is a general aviation airport. However, FAM KAVO states a plan for compliance with 49 CFR § 1542 is approved by FDOT, and that maintenance of airport safety and security will consist of inspections and/or repairs to the perimeter fence to help ensure positive access control.

AIP Sponsor Qualifications

As part of its evaluation of the capabilities of FAM KAVO, the City has confirmed the capability of FAM KAVO to assume the airport sponsor's obligations under the grant assurances. Under Article 5, Section 6, Article 25, and Article 19 of the Lease, and subject to the terms of the Lease, the City assigns FAM KAVO, and FAM KAVO assumes and agrees to be bound by, each FAA grant agreement. FAM KAVO shall be responsible for performing all obligations of the City under each FAA agreement to the extent arising from and after the Commencement Date. FAA agreements are defined as all agreements with respect to AVO between the City and the FAA and between the City and the FAA, including AIP grant agreements and the associated FAA grant assurances; and all amendments, modifications, supplements, renewals subject to any exemptions granted by the FAA pursuant to 49 U.S.C. § 47101, *et seq.* Additionally, the Lease is subject and subordinate to any and all applicable provisions of the grant agreements.

The AIPP Final Application details FAM KAVO's experience complying with existing grant assurances including the assurance of compatible land use around the airport; the protection of navigational aids; approach lights, runway safety, and runway protection zones; and the continuation and extension of aviation easements, as these are on-going required grant obligations.

For the purpose of AVO's participation in AIPP, the City is released from its status as an FAA-obligated airport sponsor, but it will remain responsible for its obligations in the Quit-Claim Deed, and compliance with Grant Assurance 4, *Good Title*, Grant Assurance 31, *Disposal of Land*, and Grant Assurance 35, *Relocation and Real Property Acquisition*. The City will also be obligated for Grant Assurance 20, *Hazard Removal Mitigation*, and Grant Assurance 21, *Compatible Land Use*, on adjacent property owned by the City for the life of the Lease term. The City will also remain obligated for the retained parcels for the Water Treatment Plant, the Ballfield area, and the Classic Caladium area.

Additionally, there is no limit on the duration of the grant assurances regarding *Exclusive Rights*, *Civil Rights*, and *Revenue Use*, which remain in effect so long as AVO is used as an airport. Although the City of Avon Park is no longer the sponsor of AVO, it is obligated for the specified obligations set forth above and in 49 U.S.C. § 47134(c), which the FAA may enforce by means of the third-party beneficiary rights granted in the Lease and confirmed in the AIPP Final Application.

FAM KAVO assumes all grant assurances as a private sponsor. FAM KAVO's 30-year leasehold interest in AVO qualifies the company as the "private sponsor" for the purpose of complying with Grant Assurance 2, *Responsibility and Authority of the Sponsor*, and represents "good title" for the purpose of complying with Grant Assurance 4, *Good Title*.

As provided in 49 U.S.C. § 47115 as amended and § 47134 (g), FAM KAVO as the private sponsor is not prohibited from applying for and receiving discretionary and entitlement funds under §§ 47114 and 47115, subject to FAA approval. This ROD neither provides nor guarantees federal financial assistance. AIP discretionary funds are available on a competitive basis, up to 70 percent federal share of eligible costs for projects that the FAA can fund. (49 U.S.C. §§ 47109(a)(4), 47115). Entitlement funds shall be available in accordance with 49 U.S.C. § 47114.

Competitive Practices

In its review of the AIPP Final Application, 49 U.S.C. § 47134(e) requires the FAA to determine if approval of the AIPP Final Application would result in unfair and deceptive practices or unfair methods of competition. To assist in this review, the FAA requires applicants to provide a description of all charges of unfair or deceptive practices or unfair methods of competition brought against the private operator. FAM KAVO certifies that within the last 10 years, neither FAM KAVO nor its parent corporations, nor any of their respective members have been charged with any unfair or deceptive practices or unfair methods of competition and reports they have had no actions filed against it for any illegal labor practices or actions, as defined by the National Labor Relations Act (NLRA) and/or by Florida labor laws.

FAM KAVO in assuming AVO's grant agreements has agreed to be bound by the requirements of 49 U.S.C. § 40103(e) and corresponding Grant Assurance 23, *Exclusive Rights*. Additionally, FAM KAVO is prohibited under the Lease from taking any action or entering into any agreement that would have the effect of creating an exclusive right on the Airport. In accordance with the AIPP Final Application, FAM KAVO will be permitted to conduct various aeronautical functions and activities at the Airport on a non-exclusive basis. (See AIPP Final Application and Lease, Article 5, Sections 4 and 9).

V. Requests for Exemption under 49 U.S.C. Section 47134

AVO is a general aviation airport owned by the City, and under the terms of the Lease, FAM KAVO agrees to operate the Airport as a public airport pursuant to the terms set forth in the Lease. The City concluded that the Lease is in the best interests of the City and of its citizens and is expected to reduce the need for tax revenues to support the operation of the Airport. The City and FAM KAVO also represents that they desire that the Airport be further developed for other commercial purposes and uses in accordance with law and request certain revenue use exemptions in the AIPP Final Application.

The FAA believes the extensive review of this application demonstrates that the FAA has reasonably exercised its discretion for the privatization application and decided to approve this transaction only after it confirmed that the City and FAM KAVO considered the interests of the

airport, users, and the aviation system. The FAA's consideration of its approval of the three exemptions is premised on the facts and circumstances of this proposed transaction.

Request for Exemption to Use of Revenues under 49 U.S.C. § 47134(b)(1)³

The City requests an exemption under 49 U.S.C. § 47134(b)(1) as follows:

Pursuant to 49 U.S.C. § 47134(b)(1)(A)(ii), the City of Avon Park (the “City”), as the airport sponsor, and Florida Airport Management KAVO, L.L.C., the lessee [FAM KAVO] of Avon Park Executive Airport (KAVO) (the “Airport”), hereby request that the Secretary of Transportation, acting through the Federal Aviation Administration (“FAA”) grant an exception to the City from the provisions of 49 U.S.C. §§ 47107(b) and 47133 (and any other law, regulations, or grant assurances) to permit the City to recover from the lease of the Airport the following amounts: the annual Base Rent to be paid by the Lessee to the City during the term of the lease to be entered into between the City and Lessee of the Airport (the “Lease”), in substantially the form submitted to the FAA with this application under the Airport Investment Partnership Program. The Base Rent payments shall be based upon the fair market value of the land and existing facilities located at the Airport as of the effective date of the Lease and shall escalate annually by the increase in the consumer price index (“CPI”). The City estimates that the Base Rent in year one of the Lease will be \$67,000 (to be updated by a current appraisal reviewed and approved by the FAA prior to lease execution). In addition, the City expects to recover certain amounts advanced by the City in fiscal years 2016 - 2023 from certain other funds of the City to the Airport enterprise fund to pay for operations and maintenance costs not recovered by the City from tenants at the Airport in those fiscal years in the aggregate amount of \$657,924.11.

As required by 49 U.S.C. § 47134(b)(1)(A)(ii), the City has consulted with at least 65 percent of the owners of aircraft based at the Airport regarding the proposed Lease, the Base Rent and the recovery by the City of Base Rent and other funds as described above. The amount in the existing Airport Enterprise Fund as of September 30, 2023, \$975,756. shall be available to be transferred by the City to the appropriate fund that advanced the funds to the Airport. See Appendix Part V.A.⁴

The City and FAM KAVO through the Final Application Supplement indicate that the Base Rent in year one of the Lease is \$84,000. In addition, the City advised the FAA that it still expects to recover certain amounts advanced by the City in fiscal years 2016 – 2023 from certain other

³ 1) Use of revenues.—(A) In general.—The Secretary may grant an exemption to a sponsor from the provisions of sections 47107(b) and 47133 of this title (and any other law, regulation, or grant assurance) to the extent necessary to permit the sponsor to recover from the sale or lease of the airport such amount as may be approved ... (ii) in the case of a nonprimary airport, by the Secretary after the airport has consulted with at least 65 percent of the owners of aircraft based at that airport, as determined by the Secretary. ³ The City did not request an exemption relative to the retained parcels for the Water Treatment Plant, the Ballfield area, and the Classic Caladium area.

funds of the City to the Airport enterprise fund to pay for operations and maintenance costs not recovered by the City from tenants at the Airport in those fiscal years in the aggregate amount of \$648,234.44. This is comprised of the Sanitation Fund Loan Balance of \$336,307.57, the General Fund Loan Balance of \$168,696.29, and the advances to the Airport Fund during the management agreement of \$143,230.58. The City anticipates that these overall numbers will drop based on the loan payments between now and closing, but it will not increase. The Airport Enterprise Fund has been running at a deficit, no funds will be transferred upon signing of the ROD. However, FAM KAVO will have operational control to use funds allocated in the future. (See Final Application Supplement).

This exemption request is subject to confirmation that the City consulted with at least 65 percent of the owners of aircraft based at the Airport. The FAA reviewed the AIPP Final Application with exhibits, and the Final Application Supplement, including the City's certification and tenant survey. These outreach efforts reflect consultation with at least 65 percent of the owners of aircraft based at the Airport.

The Administrator is granting an exemption to the City from the provisions of 49 U.S.C. §§ 47107(b) and 47133 (and any other law, regulation, or grant assurance) to the extent necessary to permit the City to recover an amount of \$84,000 for the first year and then the Base Rent payments as adjusted annually per the terms of the Lease and for the repayment of existing loans, not to exceed \$648,234.44.

Accordingly, the Administrator grants the requested revenue use exemption to the City for the use of the Lease proceeds as stated above.

Request for Exemption to Repay Federal Grant Funds under 49 U.S.C. § 47134(b)(2)⁵

The City requests an exemption under 49 U.S.C. § 47134(b)(2) as follows:

Pursuant to 49 U.S.C. § 47134(b)(2), the City seeks the exemption from the Secretary from provisions of 49 U.S.C. §§ 47107(b) and 47152 (and any other law, regulations, or grants assurance) to the extent necessary to waive any obligation of the City, as airport sponsor, to repay to the Federal Government any grants, or to return to the Federal Government any property, received by the City under Title 471, the Airport and Airway Improvement Act of 1982, or any other law. The City notes that under the most recent amendments to Section 47134, the grant of this waiver is mandatory if the exception requested in paragraph V.A. above is granted by the Secretary.

The City has received the following federal [state] grants:

- Apron Rehab Design (FAA) Grant No. 3-12-0004-021-2021 (\$166,666);
- ACRGP (FAA) Grant No. 3-12-0004-022-2021 (\$13,000);

⁵ (b)(2) Repayment Requirements. If the Secretary grants an exemption to a sponsor pursuant to paragraph (1), the Secretary shall grant an exemption to the sponsor from the provisions of §§ 47107 and 47152 of this title (and any other law, regulation, or grant assurance) to the extent necessary to waive any obligation of the sponsor to repay to the Federal Government any grants, or to return to the Federal Government any property, received by the airport under this title, the Airport and Airway Improvement Act of 1982, or any other law.

- ARPA (FAA) Grant No. \$32,000;
- CARES (FAA) Grant No. 3-12-0004-020-2020 (\$30,000);
- Mowing Equipment (FDOT) Grant No. G1L28 (\$135,383);
- Taxiway F Reconstruction (FAA, FDOT) Grant No. 3-12-0004-019-2019 \$1,429,029/Grant No. G1C48 (\$143,402);
- Runway 523 Rehab (FAA, FDOT) Grant No. 3-12-0004-018-2017 \$1,414,890/Grant No. ARA01 (\$442,666);
- Fuel Farm (FDOT) Grant No. ARN87 (\$454,023);
- Fuel Truck (FDOT) Grant No. G0716 (\$125,000);
- T-Hangar Demo (FDOT) Grant ARB96 (\$137,072) – partially received, grant terminated by FDOT; and
- FEMA Drainage (FEMA, COUNTY) Agreement No. 1561-93R / Project #1 – unknown total amounts awarded project started in 2007 and completed sometime in 2014-2015.

As provided in 49 U.S.C. § 47134(b)(2), if the Secretary grants an exemption with respect to the use of airport revenues under § 47134(b)(1), the Secretary shall grant an exemption from the provisions of 49 U.S.C. §§ 47107 and 47152, (and any other law, regulation or grant assurance) to the extent necessary to waive any obligation of the sponsor to repay federal grants or to return to the Federal Government any property. This exemption is necessary to allow the City to expend the Lease proceeds on the purposes described in Part V of the AIPP Final Application. Since 1985, the City received \$11,770,104.15 in federal financial assistance, including AIP Funds.⁶

The FAA reviewed the list of grants received by the City, as identified above, and the federal financial assistance grants identified in footnote 6. The FAA is including the following list of federal grants with stated projects that align with the City's list and the grants in footnote 6 that fall within the scope of § 47134(b)(2) for an exemption totaling \$11,770,104.15:

- Runway 523 Rehab – Grant No. 018-2017 (\$1,377,980);
- Taxiway Rehab – Grant No. 019-2019 (\$1,073,658);
- Taxiway Light Install – Grant No. 019-2019 (\$300,000);
- Apron Rehab Design – Grant No. 021-2021 (\$149,999);
- Apron Rehab – Grant No. 024-2022 (\$2,292,748);
- CARES Act – Grant No. 020-2020 (\$32,000);
- CRRSA Act Funds – Grant No. 022-2022 (\$13,000);
- General ARPA – Grant No. 023-2022 (\$32,000);
- Conduct Privatization Study Planning – Grant No. 025-2022 (\$432,000); and
- FEMA Drainage (FEMA County) Agreement No. 1561-93R/Project #1 (\$226,108).

The City requested a release from a FEMA Hazard Mitigation Grant Program Drainage Grant, Agreement No. 1561-93R / Project #1, that it accepted in 2007. FAA counsel contacted FEMA counsel about a release of this grant. FEMA counsel advised the FAA that

⁶ See Grant History for AVO in Docket No. 2023-1724.

the City as the subrecipient under the grant completed the work for the Hazard Mitigation grant in 2015 and FEMA closed this subgrant in 2016. FEMA counsel further advised the FAA that FEMA no longer has an “interest” in the Airport which would require FEMA to waive the City’s obligations relating to this grant. FEMA counsel stated that the federal regulations applicable to the drainage grant (44 CFR Part 13) do not require disposition instructions for property improvements. No repayment is required, and no action is needed relative to this grant.

The amount of grant funding that can be exempted under this provision is limited to federal grants. From FAA data, since 1985, the City received an estimated \$11,770,104.15 in federal financial assistance including AIP Funds as identified in footnote 6.

As stated above, the exemption under 49 U.S.C. § 47134(b)(1) was granted. Thus, the Administrator hereby grants an exemption to the City of Avon Park from the provisions of 49 U.S.C. §§ 47107 and 47152 (and any other law, regulation, or grant assurance) to the extent necessary to waive any obligation of the City to repay to the Federal Government any grants or to return airport property deeded by the Federal Government under Title 49, the Airport and Airway Improvement Act of 1982, or any other law.

Therefore, under the exemption, the City is not required to repay \$11,770,104.15 for the grants it received. Additionally, the exemption is granted to the extent necessary to waive the City’s obligation to return federally obligated airport property.

With regard to the “donut hole” property and the three retained parcels – the Water Treatment Plant, the Ballfield area, and the site of the Classic Caladium lease, the FAA has the right to exercise its third-party beneficiary rights to seek compliance by the City or FAM KAVO in the event AVO operations are impacted by changes, developments or any other conduct, action or inaction, on or related to any of these parcels.

In granting this exemption under 49 U.S.C. § 47134(b)(2), the Administrator notes the following:

- 1) The federal investment is protected since the Airport will continue to function as an airport and all the facilities and improvements previously financed with AIP grant funds will continue to be used for the purposes of the original grants.
- 2) The federally conveyed property comprising the Airport will continue to function as an airport consistent with the surplus property restrictions, including the right to revert the property.

Request for Exemption of FAM KAVO to Earn Compensation under 49 U.S.C. § 47134(b)(3)⁷

FAM KAVO requests an exemption under 49 U.S.C. § 47134(b)(3) as follows:

Pursuant to 49 U.S.C. § 47134(b)(3), [FAM KAVO] requests an exemption from the provisions of 49 U.S.C. §§ 47107 and 47133 and any other law, regulation, or grant assurance to the extent necessary to allow [FAM KAVO] to earn compensation from the operation of the Airport, including the ability to earn, retain, and use for purposes of payment of debt, distributions to equity holders, payments under the Lease Agreement, or otherwise, all of the compensation and/or net revenues from airport operations that it earns in accordance with the Lease and including a reasonable rate of return on the private operator's investment and risk undertaken in operating AVO. [FAM KAVO] notes that under the most recent amendments to Section 47134, grant of this waiver is mandatory if the exception requested in paragraph V.A above is granted by the Secretary. [FAM KAVO] will be able to earn a reasonable return on investment as outlined in the draft lease agreement as outlined below and in more detail in the draft lease agreement.

The portion of Net Revenues available to [FAM KAVO] shall be as follows:

- For all Net Revenue between One Dollar (\$1.00) and Two Hundred Fifty Thousand Dollars (\$250,000), [FAM KAVO] shall be entitled to retain ninety percent (90%) of such Net Revenues;
- For all Net Revenue between Two Hundred Fifty Thousand and One Dollars (\$250,001) and Five Hundred Thousand Dollars (\$500,000), [FAM KAVO] shall be entitled to retain eighty percent (80%) of such Net Revenues;
- For all Net Revenue between Five Hundred Thousand and One Dollars (\$500,001) and One Million Dollars (\$1,000,000), [FAM KAVO] shall be entitled to retain sixty percent (60%) of such Net Revenues;
- For all Net Revenue between One Million and One Dollars (\$1,000,001) and Two Million Dollars (\$2,000,000), [FAM KAVO] shall be entitled to retain fifty percent (50%) of such Net Revenues;
- For all Net Revenue between Two Million and One Dollars (\$2,000,001) and Three Million Dollars (\$3,000,000), [FAM KAVO] shall be entitled to retain thirty percent (30%) of such Net Revenues; and
- For all Net Revenue above Three Million and One Dollars (\$3,000,001), [FAM KAVO] shall be entitled to retain fifteen percent (15%) of such Net Revenues.

The Net Revenues that are not retained by [FAM KAVO] pursuant to the clauses above shall be deposited in a special account and expended by [FAM KAVO] (or the [City]) solely for the capital and operating costs of the Airport or other local facilities owned or operated by the [City] or [FAM KAVO] and directly and substantially related to the air

⁷ (b)(3) Compensation from Operations. If the Secretary grants an exemption to a sponsor pursuant to paragraph (1), the Secretary shall grant an exemption to the corresponding purchaser or lessee from the provisions of §§ 47107(b) and 47133 of this title (and any other law, regulation, or grant assurance) to the extent necessary to permit the purchaser or lessee to earn compensation from the operations of the airport.

transportation of passengers or property. (*See* AIPP Final Application, Lease, and Final Application Supplement).

As provided in the Lease, FAM KAVO agrees to operate and manage the Airport as a public use airport in accordance with the required grant assurances in the existing Grant Agreements and any future Grant Agreements. FAM KAVO also agrees to maintain, improve, and modernize the Airport and keep the Airport in compliance with all applicable federal requirements and will maintain a five-year capital improvement plan. (*See* Lease, Article 5). The anticipated revenue sources for airport operations include revenues from the aeronautical and nonaeronautical uses at the Airport, except the three leases the City is retaining. FAM KAVO is prioritizing the development of revenue-generating assets to further increase the financial stability of the Airport. In addition, FAM KAVO states it will seek FAA funding for eligible costs, including through discretionary funding, and non-primary entitlement funds.

The FAA notes that FAM KAVO intends to adopt the City's rates and charges for the general aviation facilities at AVO at the time that the private operator acquires the Airport. FAM KAVO also confirmed in its requested exemption under 49 U.S.C. § 47134(b)(3) that net revenues that it does not retain will be deposited in a special account and expended by FAM KAVO (or the City) solely for the capital and operating costs of the Airport or other local facilities owned or operated by the City or FAM KAVO and directly and substantially related to the air transportation of passengers or property.

The FAA is expressly made a third-party beneficiary in the Lease at Article 40 Section 13. The third-party beneficiary rights are enforceable by the FAA and the agency relies on these rights to ensure that the statutory objectives of § 47134 are satisfied.

The FAA has the right to perform compliance and land use inspections and may conduct financial audits or initiate a Notice of Investigation under 14 CFR Part 16 if FAM KAVO, as the airport sponsor, were to violate any of the conditions or grant assurances. In addition, the Administrator may revoke the exemption if the conditions under § 47134 or this ROD are violated.

The FAA found FAM KAVO's anticipated percentage portion of net revenues is not unreasonable for a general aviation airport, subject to the limitations discussed under this exemption.

As stated above, the exemption under 49 U.S.C. § 47134(b)(1) was granted. Thus, the Administrator hereby grants FAM KAVO an exemption from the provisions of 49 U.S.C. §§ 47107(b) and 47133 (and any other law, regulation, or grant assurance) to the extent necessary to permit FAM KAVO to earn compensation from the operations of the Airport, including a reasonable rate of return on the private operator's investment associated with the operation of the Airport.

This exemption is subject to the terms and limitations of 49 U.S.C. § 47134 and does not exempt the amount of compensation from review for compliance with §§ 47107(a)(1), 47107(b) and 47133 and associated grant assurances. In addition, this exemption is not unlimited since

compensation at any level is only available after FAM KAVO has met its obligations for investment in the Airport operations and capital development under the grant assurances, the AIPP Final Application, and the Lease.

Accordingly, the Administrator grants the request from FAM KAVO for an exemption to permit it to earn compensation from the operations of the Airport subject to the terms and limitations of 49 U.S.C. § 47134 and compliance with the terms of this ROD.

Other Requests

Florida Airport Management, KAVO, L.L.C. Business Information

FAM KAVO requests that certain business information be treated as confidential business information. FAM KAVO contends that disclosure of certain sensitive and highly confidential business and financial information would cause substantial competitive harm to its parent FAM's ability to undertake future airport acquisitions in pursuance of its long-term business model. FAM KAVO further asserts that it believes that FAM's commercial leasing model and other related commercially sensitive information or intellectual property should be treated as trade secrets and confidential commercial or financial information, and, therefore, this information should be confined to the use of the Secretary and the FAA under the AIPP regulations, and not be made available for public disclosure other than as otherwise currently required by law. In support, FAM KAVO references FS 688 USTA, FS Chapter 288 Commercial Development and Capital Improvements, FS Chapter 119 Public Records, and FS Section 119.0711.c, 119.0713., 119.0714.

Grant Assurance 26(b) requires the airport sponsor to make all airport records including deeds, leases, operation and use agreements, and regulations available for inspection by the FAA upon reasonable request.

Freedom of Information Act Exemption 4, 5 U.S.C. § 552(b)(4), does permit an agency to withhold trade secrets and commercial or financial information obtained that is privileged or confidential. Under Exemption 4, one of the standards for assessing the confidentiality of information that parties are required to submit to the government is whether disclosure of the information is likely to cause substantial competitive harm to the competitive position of the person from whom the information was obtained.

The burden is on FAM KAVO, in its request for confidential treatment, to persuade the FAA that the information should not be disclosed as consistent with existing law. The FAA believes FAM KAVO has met its burden and finds that the commercial and financial information of FAM KAVO as a private firm, should not in all cases be subject to the same level of public access as the records of governmental agencies. The FAA recognizes that certain information requested from FAM KAVO, and its parent FAM, may need to be confidential commercial and financial business information and is part of the record for this ROD but will be withheld from the Docket.

Should FAM KAVO wish to request confidential treatment in the future, it may submit the information with a request for confidentiality, and the FAA will consider the request under FOIA

5 U.S.C. § 552(b). In limited cases, information may be reviewed by the FAA in FAM KAVO offices without the need for submission of documents to the agency.

Information on the operation of the AVO will continue to be made available to the public, including reports requested by the FAA on airport finances and payments, and information on the costs of any airport services and facilities that are included in the rate base of aeronautical users of the Airport. We expect FAM KAVO to establish aeronautical fees consistent with Grant Assurances 22, Economic Nondiscrimination and 24, Fee and Rental Structure, and in consultation with the Airport's aeronautical users, in accordance with DOT/FAA's Policy Regarding Airport Rates and Charges. (*See* 78 FR 55330, par. 1.1, *et seq.*)

Comments on Other Grant Assurances

FAM KAVO must maintain a current Airport Layout Plan (ALP) in conformity with all applicable FAA design standards and criteria. FAM KAVO must also maintain a current airport property map (Exhibit A) for submittal with all grant applications, should grants be awarded.

VI. Consultation with General Aviation Users

Among the requirements outlined in the FAA's Application Procedures, is that the applicants must detail the proposed private operator's intentions regarding consultation with general aviation users about both the planned privatization of the airport and the projected effect on general aviation of the proposed changes in operation and management of the airport. Additionally, as discussed above in Section V, Requests for Exemption under § 47134, the City of Avon Park was required to consult with at least 65 percent of the owners of aircraft based at the Airport. Correspondingly, Grant Assurance 8, Consultation with Users requires an airport sponsor to undertake particular types of outreach toward the local community, namely airport tenants and users, when planning certain types of airport development.

FAM KAVO and the City took several steps to ensure the general aviation community at AVO understands the proposed plans for the Airport. FAM has been operating AVO under a Management Agreement since April 2022. During this time there have been routine interactions with tenants and discussions with FAM and the processes for moving AVO forward. FAM KAVO and the City contacted 87.8% of the general aviation community users.

FAM KAVO and the City provided a list of names and dates of who they contacted for review, and advised that the general aviation tenants were contacted:

- Via telephone;
- Leaving a voice mail;
- Call back/additional calls; and
- Survey.

The City of Avon Park City Council provides advance notice of public council meetings that include the meeting agendas. The City Council held public meetings to discuss various elements

of the proposed public-private partnership, lease, financial terms, and related elements at numerous public meetings over the past two years.

FAM KAVO submitted their plans for the development of general aviation, noting that since FAM's management commenced in April 2022, safety, security, and operations at the Airport have improved. As stated in the AIPP Final Application, FAM KAVO is focused on implementing the AVO Master Plan to provide more opportunities for items such as:

- Increase available services at the FBO;
- Develop more aircraft hangars to base more aircraft at AVO;
- Increase alternative tenants at AVO;
- Promote Intermodal Logistics for tenants;
- Develop Public Private Partnerships (P3) to foster a growing workforce; and
- Develop Avionics and Tech-Based Businesses at AVO.

The FAA reviewed the AIPP Final Application with exhibits, the Final Application Supplement, meeting minutes, and public websites, and confirmed that adequate consultation with general aviation users at the Airport was conducted.

VII. Airport Operation and Development

Capital Improvements

FAM KAVO will be required to undertake capital construction as shown on the Airport's Master Plan, which may be updated by FAM KAVO with the approval of the City. With the City's assistance, FAM KAVO may apply for grant funds to assist with this construction. FAM KAVO will be permitted to undertake additional construction at its own cost provided that the title to any such improvements revert to City ownership at the end of their useful life or the expiration of the Lease.

FAM KAVO confirms it will prioritize projects in this order: 1. Safety and security 2. Deferred maintenance 3. Life cycle renewal and replacement 4. Cosmetic improvement. FAM KAVO is also committed to continue to improve the general aviation operations at AVO. FAM KAVO emphasized that it is prioritizing the development of revenue-generating assets to further increase the financial stability of the Airport. (*See AIPP Final Application*).

VIII. Agency Findings and Determination Record

This ROD consists of the AIPP Final Application with exhibits and the Final Application Supplement with Attachments. The documents and comments are posted in the FAA Docket 2023-1724. The FAA considered the comments received in the Docket in making this determination.

Findings

49 U.S.C. § 47134(c) requires that the Administrator make certain findings before issuing an exemption under § 47134 for the privatization of an airport. In consideration of information

furnished by the City of Avon Park and FAM KAVO in the application process, and comments filed in Docket 2023-1724, the Administrator determined that the Application and the Lease and operation of Avon Park Executive Airport by FAM KAVO, as the airport sponsor, is consistent with the statutory requirements of 49 U.S.C. § 47134.

Specifically, the Administrator finds the following:

(1) The airport will continue to be available for public use on reasonable terms and conditions and without unjust discrimination.

FAM KAVO will provide continued access to the airport on fair and reasonable terms, without unjust discrimination in accordance with 49 U.S.C. § 47134(c)(1).

By its assumption of the grant assurance obligations, FAM KAVO has committed to make the airport available for public use on terms that are fair, reasonable, and applied without unjust discrimination to airport users and those users seeking to provide aeronautical services.

Specifically, terms under Article 5 of the Lease, memorialize FAM KAVO's agreement to operate the Airport for the use and benefit of the public and to make the Airport available to the public on fair and reasonable terms and without unjust discrimination.

We find that the proposed Lease includes provisions to ensure that the Airport will continue to be available for public use on reasonable terms and conditions and without unjust discrimination.

(2) The operation of the airport will not be interrupted in the event that the sponsor becomes insolvent or seeks or becomes subject to any State or Federal bankruptcy.

The operation of the Airport will not be interrupted in the event the sponsor becomes insolvent or seeks or becomes subject to any State or Federal bankruptcy.

The application of the City and FAM KAVO may be approved only if the Secretary finds that the Lease includes provisions satisfactory to the Secretary to ensure that the operation of the Airport will not be interrupted in the event of FAM AVO bankruptcy or other financial or legal impairment.⁸

The parties through the AIPP Final Application, the Final Application Supplement, and the Lease provide a plan to ensure that the operation of the Airport will not be interrupted if the sponsor experiences bankruptcy or other financial difficulty. Under the Lease, FAM KAVO acknowledges and agrees that the continuous operation of the Airport as a public airport is necessary to protect general public safety, health, and welfare, to effectuate public policy, including without limitation, the requirements of 49 U.S.C. §47134(c)(2). The parties acknowledge that the City, acting pursuant to its police powers under applicable laws, must have

⁸ The Administrator may approve an application only if the Administrator finds that the sale or lease agreement includes provisions satisfactory to the Administrator to ensure the operation of the airport will not be interrupted in the event that the purchaser or lessee becomes insolvent or seeks or becomes subject to any State or Federal bankruptcy, reorganization, insolvency, liquidation, or dissolution proceeding or any petition or similar law seeking the dissolution or reorganization of the purchaser or lessee or the appointment of a receiver, trustee, custodian, or liquidator for the purchaser or lessee or a substantial part of the purchaser or lessee's property, assets, or business. 49 U.S.C. § 47134(c)(2). See also 86 FR 20586.

the right to enter and operate the Airport in the event that FAM KAVO becomes incapable of doing so due to FAM KAVO's bankruptcy or insolvency.

A condition of this ROD is that the City of Avon Park asserts its police or regulatory powers, under the Bankruptcy Code,⁹ to enforce its rights to gain access to exercise control over the Airport property and operate the Airport, to ensure uninterrupted operation of the Airport under 49 U.S.C. § 47134(c)(2). In the event of bankruptcy, the City will assume responsibility for AVO's federal obligations.

We find that the AIPP Final Application, the Final Application Supplement, and the Lease of AVO between the City of Avon Park and FAM KAVO sets out a plan for the continued operation of the Airport in the event of bankruptcy or other financial or legal impairment of FAM KAVO.

(3) The purchaser will maintain, improve, and modernize the facilities of the airport through capital investments and will submit to the Secretary a plan for carrying out such maintenance, improvements, and modernization.

In accordance with 49 U.S.C. § 47134(c)(3), the lease arrangement between the City and FAM KAVO will "maintain, improve, and modernize" airport facilities through capital investments.

Specifically, terms under Article 5 of the Lease memorialize FAM KAVO's obligation to maintain, improve and modernize the Airport.

Based on FAM KAVO personnel's 30 years of experience with Capital Improvement Projects at similar airports, FAM KAVO anticipates that these projects will be funded from Federal, State, and local resources. FAM KAVO anticipates private equity funding to be accessed throughout the terms of the Lease. Although FDOT has determined that under current Florida law, it will be unable to issue grants to support the Airport after the AIPP process is completed, the City and FAM KAVO are currently pursuing a change in state law to resolve this issue. Both parties expect that the change will be passed and effective as of July 1, 2025.

Funding remains available from other sources in sufficient amounts in the short and medium term. The State has appropriated \$3 million to the Airport, the appropriation of which is not subject to the FDOT restrictions and will remain available following the AIPP Lease execution. The City has budgeted approximately \$1.3 million for the current fiscal year for the Airport, and additionally holds approximately \$250,000 in a Community Reinvestment Act fund, both of which are available for use on Airport capital projects as needed (including as matches for grant-funded projects). (*See* Final Application Supplement).

⁹ Bankruptcy Code 11 U.S.C. § 362(a), (b), provides for an automatic stay (Automatic Stay) to protect the debtor and also provides that the Automatic Stay does not bar a governmental unit from enforcing its police and regulatory power.

In accordance with 49 U.S.C. § 47107(a)(15), and Grant Assurance 26, FAM KAVO is required to annually submit a special airport financial and operations report to the FAA identifying how it maintained, improved, and modernized the Airport, together with information related to capital investments made in carrying out the Airport maintenance, improvements, and modernization. The annual report will be due 90 days after the close of FAM KAVO's fiscal year.

Additionally, in order to ensure an orderly transition at the end of FAM KAVO's 30-year term the City must develop and submit a transition plan in the 25th lease year to the FAA. Submission of a transition plan five years prior to the termination date should reflect careful planning, coordination of efforts, and consideration of all requirements to guard against the airport premises being in a state of disrepair at the end of the term.

We find that the Lease includes provisions to ensure that the sponsor will maintain, improve, and modernize the facilities of the Airport and develop the General Aviation Airport through capital investments and will submit to the Secretary a plan for carrying out such maintenance, improvements, and modernization.

(4) Every fee of the airport imposed on an air carrier on the day before the date of the lease of the airport will not increase faster than the rate of inflation unless a higher amount is approved.

(5) The percentage increase in fees imposed on general aviation aircraft at the airport will not exceed the percentage increase in fees imposed on air carriers at the airport.

The provisions under § 47134(c)(4) and (5) are not applicable since Avon Park Executive Airport is a general aviation airport. However, we find that there are sufficient provisions in the Lease, the AIPP Final Application, and the Final Application Supplement to ensure that fees imposed on general aviation aircraft will be set in a fair and reasonable manner as required by the grant assurances, § 47107(a)(1)(13), and the FAA Policy on Airport Rates and Charges.

Moreover, the Lease requires FAM KAVO to ensure that the aeronautical rates and charges are reasonable and not unjustly discriminatory to all users. The FAA notes that FAM KAVO intends to adopt the City's rates and charges for the general aviation facilities at AVO at the time that the private operator acquires the Airport.

(6) Safety and security at the airport will be maintained at the highest possible levels.

The provisions under § 47134(c)(6) require that safety and security at the airport will be maintained at the highest possible levels. This requirement is met in the Lease through FAM KAVO's obligation to maintain the safety and security of the Airport at the highest possible levels and ensure that all Airport tenants, users, and the general public are aware of and comply with all applicable safety and security measures undertaken by FAM KAVO or required by law.

FAM KAVO agrees to consult regularly with the FAA and TSA regarding the maintenance of safety and security standards. Additionally, FAM KAVO states that maintenance, safety, and security at the Airport will consist of inspections and/or repairs to the perimeter fence to help

ensure positive access control. Attention will be given regarding gaps under the fence, chains, and locks on all non-electric gates, monitoring excess separation between gates to minimize wildlife and unauthorized access to the airfield environment, as well as maintaining all electronic gate access for proper operation.

Changes in control of the Airport could impact the safety and security of the Airport and are thus being addressed under this section. The Lease at Article 38 recognizes that a change in control through an assignment or sublease of FAM KAVO's rights under the Lease may be subject to the FAA's approval.

FAM KAVO must provide the FAA with a 60-day notice of intent to transfer its interest, either in whole or in part, including any action affecting direct ownership interests in FAM KAVO that would result in a transfer or change of control. Before exercising such a transfer or change in control, FAM KAVO and the proposed transferee must respond to the FAA information requests on relevant financial terms and qualifications of the transferee, such as those listed in the Application Procedures, 86 FR 20586 (April 20, 2021). The FAA will then have the ability to opine on whether it needs to approve an airport sponsor change if members of FAM KAVO or a successor entity change. The FAA must approve any change of the airport sponsor or the airport management firm operating the Airport.

We find that the Lease includes provisions to ensure safety and security at the airport will be maintained at the highest possible levels.

(7) The adverse effects of noise from operations at the airport will be mitigated to the same extent as at a public airport.

In accordance with § 47134(c)(7), the Lease contains a provision that requires FAM KAVO to mitigate the adverse effects of noise from operations at the Airport.

Specifically, under Article 5 of the Lease, FAM KAVO is required to take reasonable actions as may be appropriate or necessary to mitigate the adverse effects of noise from Airport operations as would be required of a public airport and respond to complaints regarding Airport noise within forty-eight (48) hours.

As the Airport develops and grows, mitigation of adverse effects of noise from Airport operations will be addressed in all future Master Plans, as needed, based on planned strategic development and/or increased aircraft operations as well as the size of aircraft utilizing AVO. There is also a Voluntary Noise Abatement Plan (VNAP) for Avon Park Executive Airport.

We therefore find that the Lease sufficiently ensures that the adverse effects of noise from operations at the Airport will be mitigated to the same extent as at a public airport.

(8) Any adverse effects on the environment from airport operations will be mitigated to the same extent as at a public airport.

In accordance with § 47134(c)(8), the Lease contains a provision requiring FAM KAVO to mitigate the adverse effects on the environment from Airport operations at the airport to the same extent as at public airports.

Specifically, under Article 5 of the Lease, FAM KAVO is required to take such reasonable actions as may be appropriate or necessary to mitigate the adverse effects on the environment from Airport operations to the same extent as at a public airport.

FAM KAVO confirms in the AIPP Final Application that mitigation of adverse effects on the environment from Airport operations will be addressed through daily inspections to identify any potential issue, e.g., fuel leaks/spills from aircraft and around the fuel farm in conjunction with the implementation of a Spill Prevention Control and Countermeasure (SPCC) Plan.

We therefore find that the Lease sufficiently ensures that the adverse effects on the environment from operations at the Airport will be mitigated to the same extent as at a public airport.

(9) Any collective bargaining agreement that covers employees of the airport and is in effect on the date of the sale or lease of the airport will not be abrogated by the sale or lease.

The provision under § 47134(c)(9) is not applicable since no collective bargaining agreement covers employees of AVO.

(10) General aviation user interests

In accordance with § 47134(f), the interests of general aviation users are not adversely affected by the privatization.

As stated above, the Airport will continue to be available for general aviation activities on reasonable terms and conditions without unjust discrimination. Importantly, FAM KAVO commits to continue to improve the general aviation operations at AVO and confirmed that its requested exemption will not have any effect on the Airport's aeronautical user fees.

(11) Effect on competition

In accordance with § 47134(e), approval of the transfer will not result in unfair and deceptive practices or unfair methods of competition.

FAM KAVO agrees to comply with statutory provisions regarding exclusive rights and the other federal obligations through its assumption of the City's grant assurance obligations.

FAM KAVO has not indicated any intent to offer aeronautical services on a proprietary exclusive basis. Additionally, under the Lease, FAM KAVO confirms that it will not take any action nor enter into any agreement or sublease which would have the effect of creating a prohibited exclusive right on the Airport.

The FAA finds that the approval of the AIPP Final Application will not result in unfair and deceptive practices or unfair methods of competition.

(12) Private Operator's Fitness

The FAA finds that FAM KAVO has met the requirements for a finding of fitness to operate an airport under the AIPP. The company has demonstrated that it has airport management and operations experience. It has identified the responsibility, experience, and expertise of its personnel who will handle the transition of the Airport from public to private control. FAM KAVO is eligible to be an airport sponsor; it will comply with the sponsor grant assurances and the applicable statutory and regulatory requirements.¹⁰

The FAA's finding of fitness for FAM KAVO is limited specifically to the AVO AIPP Final Application. This finding of fitness does not apply to any other applications FAM KAVO has filed or may file with the FAA or other offices of the Department of Transportation. Each year, 90 days after the close of FAM KAVO's fiscal year, FAM KAVO will submit to the FAA Airport Financial Compliance Division financial statements, including a balance sheet and income and cash flow statements prepared in accordance with Generally Accepted Accounting Principles, with all footnotes applicable to the financial statements.

(13) Private Sponsor and Good Title

FAM KAVO as the private sponsor is required to provide evidence of good title for the Avon Park Executive Airport to the Airport District Office. As stated above, FAM KAVO's 30-year leasehold interest in AVO represents "good title" for the purpose of complying with Grant Assurance 4, *Good Title*.

FAM KAVO must show documentation to the Airport District Office that it recorded copies of the grant agreements it assumes or is awarded, including the grant assurances, in the public land records of the Highlands County Courthouse in order that requirements, encumbrances and restrictions on the obligated land are legally enforceable.

Enforcement

Appropriate enforcement authority exists to resolve any future compliance issues involving the above findings.

The City of Avon Park and FAM KAVO agree to confer third party beneficiary rights on behalf of the FAA to enforce the nine specified obligations set forth in 49 U.S.C. § 47134(c). FAM KAVO must also comply with the statutory objectives under § 47134 and all grant assurances as a condition of Avon Park Executive Airport's participation in the AIPP. In addition to the process and sanctions available for enforcement of obligations under the grant assurances,

¹⁰ Sponsor obligations include but are not limited to federal procurement requirements under 2 CFR Part 200, Disadvantaged Business Enterprise Program requirements, and nondiscrimination requirements.

§ 47134 provides for revocation of the exemptions granted in this ROD upon a finding of knowing violation of the terms of the exemption.

Additionally, the City under the Lease, retains its regulatory approval, enforcement rights and obligations, and other governmental authority as they may relate to laws or regulations, which may govern the Airport, any improvements thereon, or any operations or activities at the Airport.

Per 49 U.S.C. § 47134(i), the FAA is permitted to revoke the exemptions after notice and the opportunity for a hearing, if the FAA determines that the private operator has knowingly violated any of the conditions specified in § 47134(c). As the operator of a federally obligated airport and a private sponsor, FAM KAVO is obligated to comply with the requirements of the FAA's Airport Compliance Program and is subject to enforcement action conducted under 14 CFR Part 16, Rules of Practice for Federally Assisted Airport Enforcement Proceedings.

As a first recourse to correct specific problems, the FAA will continue to rely on its statutory authority and processes identified in FAA Order 5190.6B, its existing airport compliance program and third-party beneficiary rights identified in the Lease. Compliance and enforcement action would be exercised before recourse to revocation of the private sponsor's exemption.

Periodic Audits

The City and FAM KAVO acknowledge the right of the FAA under § 47134(k) to conduct periodic audits of the financial records and operations of the Airport. FAM KAVO may reserve the right to request confidential treatment of this information under the Freedom of Information Act.

Financial Audits required by this ROD are to be conducted by independent auditors in accordance with generally accepted auditing standards covering financial audits and standards presented in accordance with 2 CFR Part 200.

In accordance with 49 U.S.C. § 47107(a)(15), and Grant Assurance 26, FAM KAVO shall annually submit to the Airport District Office a special airport financial and operations report to the FAA identifying how it maintained, improved, and modernized the Airport, together with information related to capital investments made in carrying out the Airport maintenance, improvements, and modernization. The report is due 90 days after the close of FAM KAVO's fiscal year.

Environmental Review

In the case of privatization, the FAA's responsibilities under the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321, 4331-4336, are generally fulfilled through the issuance of a categorical exclusion described in section 5-6.1(m) of FAA Order 1050.1F, *Environmental Impacts: Policies and Procedures* ("FAA administrative actions associated with transfer of ownership or operation of an existing airport, by acquisition or long-term lease, as long as the transfer is limited to ownership, right of possession, and/or operating responsibility.").

The FAA interprets this provision to categorically exclude the acquisition of publicly owned airports as long as the acquisition only involves a change in ownership or a lease to a private

party. This would be considered an administrative action for which there is no reasonable expectation of extraordinary circumstances nor significant environmental impacts resulting therefrom.

We have therefore determined that the FAA action approving the Final Application submitted by the City and FAM KAVO for the participation of Avon Park Executive Airport in the FAA Airport Investment Partnership Program is categorically excluded.

The FAA's decision does not contain any kind of approval or commitment concerning: (1) current or planned airport development, (2) Airport Improvement Program (AIP), or (3) further amendments to the Airport Layout Plan (ALP). NEPA review and associated findings would be appropriate when FAM KAVO actually proposes airport development requiring FAA approval of AIP or amendments to the ALP.

IX. DECISION AND ORDER

In consideration of the above, the FAA takes the following action on the application of the City of Avon Park and FAM KAVO for the Lease of the:

1. The Final Application filed jointly by the City and FAM KAVO for the participation of AVO in the Airport Investment Partnership Program is approved. The FAA finds that the Lease, AIPP Final Application with exhibits, and the Final Application Supplement include provisions sufficient to demonstrate that the private ownership and operation of the Airport meets the terms and conditions in 49 U.S.C. § 47134(c), (e), and (f), subject to the conditions stated in the Record of Decision.

2. Under 49 U.S.C. § 47134(b)(1), the FAA grants the following exemption:

The City is exempted from the provisions of 49 U.S.C. § 47107(b), § 47133 and grant assurances issued under 49 U.S.C. § 47101 *et seq.*, from the prohibition on the use of airport revenue for purposes other than for the Airport. The FAA finds that exemption for use of the Lease proceeds in the amount of \$84,000 for the first year and ongoing Base Rent payments as adjusted annually per the terms of the Lease and the repayment of existing loans, not to exceed \$648,234.44 meets the requirements of 49 U.S.C. § 47134 (b)(1)(A).

3. Under 49 U.S.C. § 47134(b)(2), the FAA grants the following exemption:

The City is exempted from the provisions of 49 U.S.C. §§ 47107 and 47152 (and any other law, regulation, or grant assurance) to the extent necessary to waive any obligation of the City to repay to the Federal Government any grants, or to return to the Federal Government any property received by the City under Title 49, the Airport Improvement Act of 1982, or any other law upon the Lease of AVO to FAM KAVO in accordance with the Lease.

The FAA finds that the exemption from the obligation to repay \$11,770,104.15 for the federal grants it received, and from the obligation to return federally conveyed airport property to the Federal Government meets the requirements of 49 U.S.C. § 47134(b)(2).

4. Under 49 U.S.C. § 47134(b)(3), the FAA grants the following exemption:

FAM KAVO is exempted from the provisions of 49 U.S.C. §§ 47107(b) and 47133, and grant assurances issued under 49 U.S.C. § 47101 et seq., to the extent necessary to earn compensation from the operation of the Airport, including a reasonable rate of return on the private operator's investment associated with the operation of the Airport. This exemption is subject to the terms and limitations of 49 U.S.C. § 47134 and does not exempt the amount of compensation from review for compliance with § 47107(a)(1), § 47107(b) and § 47133 and associated grant assurances. In addition, this exemption is not unlimited since compensation at any level is only available after FAM KAVO has met its obligations for investment in the Airport operations and capital development under the grant assurances, § 47134, the AIPP Final Application, and the Lease.

5. In the event of bankruptcy, the FAA requires the City to assert its police or regulatory powers, under the Bankruptcy Code to enforce its rights to gain access to exercise control over the Airport and operate the Airport, to ensure uninterrupted operation of the Airport under 49 U.S.C. § 47134(c)(2). In the event of bankruptcy, the City will assume responsibility for FAM KAVO's federal obligations.
6. In accordance with 49 U.S.C. § 47107(a)(15), and Grant Assurance 26, FAM KAVO shall annually submit an audited special airport financial and operations report to the FAA identifying how it maintained, improved, and modernized the Airport, together with information related to capital investments made in carrying out the Airport maintenance, improvements, and modernization. The report will be due three months after the close of FAM KAVO's fiscal year.
7. In accordance with 49 U.S.C. § 47107(a)(15), and Grant Assurance 26, each year, 90 days after the close of FAM KAVO's fiscal year, FAM KAVO will submit to the FAA Airport Compliance Division financial statements, including a balance sheet and income and cash flow statements prepared in accordance with Generally Accepted Accounting Principles, with all footnotes applicable to the financial statements.
8. FAM KAVO must provide the FAA with a 60-day notice of intent to transfer its interest, either in whole or in part, including any action affecting direct ownership interests in FAM KAVO that would result in a transfer or change of control. Before exercising such a transfer or change in control, FAM KAVO and the proposed transferee must respond to the FAA information requests on relevant financial terms and qualifications of the transferee, such as those listed in the Application Procedures, 86 FR 20586. The FAA will then have the ability to opine on whether it needs to approve a sponsor change if members of FAM KAVO or a successor entity change. The FAA must approve any change of the airport sponsor or the airport management firm operating the Airport.
9. The FAA's approval of this Record of Decision is subject to the following conditions related to the transaction and the Lease for the transfer of the Airport. The City and FAM KAVO must meet the following conditions:

- a) FAM KAVO agrees to implement certain projects as soon as possible and no later than within two years of execution of the Lease, depending on grant funding. These include new perimeter fencing, new gates, and replacement of the rotating beacon.
- b) FAM KAVO shall provide executed copies of the Lease and Assignment and Assumption Agreement to the FAA within 10 days of execution of the Record of Decision.
- c) The City will provide evidence of Florida Department of Transportation approval of the Lease as required by Florida Statute, Title XXV Aviation, Chapter 332, Airports, and Other Air Navigation on Facilities, Section 332.08 (3), Fla. Stat. within 30 days of execution of the Record of Decision.
- d) The City must develop and submit a transition plan in year 25 of the Lease to the FAA to ensure an orderly transition at the end of FAM KAVO's 30-year Lease term.
- e) In the event that any term in a document is materially changed, FAM KAVO shall notify the FAA in writing of such change and any such change shall be subject to the approval of the FAA. Submission of the executed documents containing material changes from the unexecuted versions contained within the Final Application will not constitute satisfaction of this condition unless FAA approval of the changes has been obtained.

The approval of the Final Application does not constitute a commitment of Federal funds, including, any category of Airport Improvement Program funds, for the development of the Airport or its infrastructure or facilities.

This Record of Decision of the U.S. Department of Transportation, Federal Aviation Administration approving the application of Avon Park Executive Airport in the Airport Investment Partnership Program filed in FAA Docket 2023-1724 is issued by:

Sincerely,

SHANNETT
A R GRIFFIN

Digitally signed by
SHANNETTA R GRIFFIN
Date: 2024.10.29
09:56:28 -04'00'

Shannetta R. Griffin, P.E.
Associate Administrator
for Airports

Attachment

Attachment 1

FAA Response to Comments Regarding the Participation of AVO in AIPP

The FAA received comments from five commentors about AVO's AIPP Final Application (FAA 2023-1724). These comments were docketed on www.regulations.gov. The following are organized by commentor, not by comments. The summary of these comments is intended to represent the general divergence of the views on various issues. It is not intended to be an exhaustive restatement of the comments received. All comments received were considered by the FAA, even if not specifically identified in this response.

Comments

1. Submitted Anonymously

The security access gates to the airport do not work; all 3 airport access gates remain open 24/7. The gate key fobs to operate the gates never worked.

Response: The FAA was advised that the City and FAM KAVO acknowledge that the gates remain an ongoing issue. The gates are largely non-functional, and the existing systems are no longer serviceable and require replacement.

The FAA agrees this is an issue and is including a condition in the ROD requiring that FAM KAVO agrees to implement the new perimeter fencing, new gates, and replacement of the rotating beacon projects as soon as possible and no later than within two years of execution of the Lease, depending on grant funding.

2. Submitted Anonymously

- a) The lock on my hangar door does not work. FAM said they would change the lock, but never did.

Response: The FAA was advised that the City and FAM KAVO believe this issue has been resolved, though because the comment is anonymous, that cannot be confirmed.

The FAA notes the comment and believes that once the Lease is executed, FAM KAVO should take steps for appropriate engagement with its tenants.

- b) The AWOS [Automated Weather Observing System] system went down shortly after FAM took over and has never worked since. For a while even the windsock was nothing but wires on the end of a pole, luckily, they did eventually buy a new sock to go over the wires.

Response: The FAA was advised that the City and FAM KAVO acknowledge that the AWOS has been an ongoing issue. Repairs were recently completed and the AWOS is currently

functional; however, an upgrade of the AWOS system is a priority project, and a contractor has been secured to replace the AWOS display. The windsock issue has been corrected.

The FAA notes the comment, and it appears the appropriate steps have been taken to address the issue.

- c) Pilot operated runway lighting does not work.

Response: The FAA was advised that as of the Airport's most recent annual FDOT inspection in July 2023, all runway and taxiway lights were operational. There have been isolated incidents of lights not working or bulbs needing replacement, but those issues are promptly resolved. A complete lighting and signage overhaul is a priority project.

The FAA notes the comment and believes that once the Lease is executed, FAM KAVO should take steps to initiate the lighting and signage overhaul as a priority project.

- d) The airport beacon does not work.

Response: The FAA was advised that the City and FAM KAVO acknowledge that the beacon is not functional. This is a priority project and will be replaced in the next year, depending on grant funding availability.

The FAA agrees this is an issue and is including a condition in the ROD requiring that FAM KAVO agrees to implement the new perimeter fencing, new gates, and replacement of the rotating beacon projects as soon as possible and no later than within two years of execution of the Lease, depending on grant funding.

- e) The new terminal building is usually closed, locked down tight, and only opens when one of FAM employees decides to show up. Of course, the bathrooms are in the terminal, as are the computers to file flight plans and get the weather.

Response: The FAA was advised that the terminal is open during regular business hours, as was the case prior to FAM's management of the Airport. Keypad access to the pilot's lounge is available 24/7, and restrooms and flight planning stations are available in that facility.

The FAA notes the comment, and it appears the appropriate steps have been taken to address the issue.

- f) Keypad access to the pilot's lounge has never worked since FAM took over, bathrooms are inside.

Response: The FAA was advised by FAM that this issue has been resolved, and keypad access to the pilot's lounge is currently available 24/7.

The FAA notes the comment, and it appears the appropriate steps have been taken to address the issue.

g) For the last 2 months, the gas pumps don't even work.

Response: The FAA was advised by FAM that this issue has been resolved, and there have been no further reports of inoperable gas pumps.

The FAA notes the comment, and it appears the appropriate steps have been taken to address the issue.

3. Submitted Anonymously

a) Under FAM's management all three gates have been wide open day and night for about a year now. (24/7) They have been unwilling to address the issue even though many of us voiced their concerns and dissatisfaction about this situation. In the post 9/11 world this is unacceptable.

Response: The FAA notes the comment, which is addressed above

b) They neglected to maintain important airport equipment, such as the rotating beacon that has been out of commission now for many months.

Response: The FAA notes the comment, which is addressed above.

c) AWOS automated WX has not been working for many months now and no word on when it will be repaired.

Response: The FAA notes the comment, which is addressed above.

d) Taxiway E lights are out of service and not being repaired.

Response: The FAA notes the comment, which is addressed above.

e) Fuel self service regularly of (out of) service.

Response: The FAA notes the comment and directs the commenter to the Airport Compliance Manual (ACM), September 15, 2023, Chg. 3, Ch. 11 for the FAA definition of Self-Service. https://www.faa.gov/airports/resources/publications/orders/compliance_5190_6/.

f) No access to a bathroom on the entire airport after 5 pm on weekdays and on weekends after 12:00 noon Saturday until Monday morning 8:00 am. This is because the keypad to the pilot's lounge broke many months ago and it has never been fixed since. Tenants and visitors have only access to the bathroom when an FBO worker is present.

Response: The FAA notes the comment, which is addressed above.

- g) Even though they are collecting hanger rent from tenants, necessary repairs are not being made such as the hangar access door not working electricity out, etc.

Response: The FAA was advised by FAM that the City and FAM KAVO respond promptly to tenant requests for service.

The FAA notes the comment and believes that once the Lease is executed, FAM KAVO should take steps for appropriate engagement with its tenants.

- h) Utterly incompetent or dishonest accounting: Regularly trying to charge tenants late hangar payment fees even though the payment was received well ahead of the due date. (Even threatening with interest charges on the late fees if they are not paid.)

Response: The FAA was advised by FAM KAVO that for a variety of reasons, inconsistencies and errors occurred during the early stages of the management agreement. As of today, the majority of tenant billing issues have been resolved, and the City and FAM KAVO are working to resolve the remainder.

The FAA notes the comment and believes that once the Lease is executed, FAM KAVO should take steps for appropriate engagement with its tenants.

4. AG Flying Services

- a) The gates have been broken and remain OPEN at all times. This puts my inventory and equipment and employees at risk along with all of the other tenants.

Response: The FAA notes the comment, which is addressed above.

- b) The agreement with FEMA post Hurricane Ian in 2022 to utilize the airport as a base of operations brought numerous heavy equipment in that damaged the asphalt and specifically damaged it in front of my hangar. They stationed heavy equipment right next to my equipment putting it at risk. To this day the asphalt has not been repaired. This should have been handled with a memo and or email to each tenant. They lack basic organizational skills.

Response: The FAA was advised that the City and FAM KAVO do not agree with this comment. While FEMA did utilize the Airport during Hurricane Ian, the equipment was not located on any tenant leasehold and did not unreasonably impede movement of any aircraft. The pavement was not damaged. All tenants were informed of the FEMA activities through newsletters posted on hangar doors.

The FAA notes the comment, and it appears the appropriate steps have been taken to address the issue.

- c) At present time the rotating beacon, AWOS, and parts of the taxiway lights on the

runway are inoperable and pose a dangerous threat and risk for those flying in and out and the tenants and employees.

Response: The FAA notes these comments, which are addressed above.

- d) They would never answer how they came up with the amount I was being charged. Accounts Payable should never be an issue with a management company. My company should not have to go over every statement with a fine-tooth comb. To my knowledge, FAM has no prior experience managing an airport and their company was not created until 12/2020.

Response: The FAA was advised that as noted above, errors did occur in invoicing, but they have been largely corrected.

- e) Then there was a long time with no information about where to send the hangar fees. All communication attempts failed.

Response: The FAA was advised that the City and FAM informed all tenants of the change in payment instructions in July 2022.

The FAA notes the comment, and it appears the appropriate steps have been taken to address the issue.

5. AOPA

- a) Recognizing 70% of tenants surveyed oppose a long-term lease to Florida Airport Management (FAM).

Response: The FAA was advised that the City and FAM KAVO acknowledge that the majority of tenants appear opposed to a long-term lease of the Airport. Many of the tenants have been at the Airports for decades, and both the City and FAM KAVO respect their opinions. The City and FAM KAVO believe that the opposition to a long-term lease stems in large part from a planned (and in some cases already implemented) increase in tenant rental rates. However, those rates had not been increased in many years and did not reflect current market conditions. Overall, the City and FAM KAVO believe that the long-term lease will result in upgraded facilities, increased tenant services, and a more fiscally sound Airport operation.

The FAA notes that the AIPP Application Procedures set out the 9 statutory findings under 49 U.S.C. § 47134 that the agency must make before issuing an exemption for the privatization of an airport. This includes a requirement that the lessee of the airport will maintain, improve, and modernize the facilities of the airport through capital investments and will submit a plan for carrying out such maintenance, improvements, and modernization. The FAA also examines the fitness of the proposed private operator to confirm the company has the capacity to operate an airport under the AIPP, including its airport management and operations experience.

The statute also requires that the interests of general aviation users are not adversely affected by the privatization. The FAA takes carefully into consideration the effect of the transaction on general aviation users to ensure that the interests of general aviation users are not adversely affected by the privatization.

- b) All the aircraft owners' comments should be submitted for FAA consideration, including those "provided through the survey and review" process.

Response: The City provided the FAA with copies of all tenant comments, including through the survey process.

The FAA notes the comment and takes this information into consideration.

- c) The application opens AVO to undermining general aviation users in favor of "corporate users";

Response: The FAA was advised that one objective of the AIPP Lease is to expand the overall mix of aeronautical operations at the Airport. The City and FAM KAVO do not intend to favor one aeronautical group over another, and the AIPP Lease requires that FAM KAVO maintain the Airport for public use, open to all aeronautical users. Planned development at the Airport includes additional T-hangar space to accommodate more GA users.

The FAA takes carefully into consideration the effect of the transaction on general aviation users to ensure that the interests of general aviation users are not adversely affected by the privatization.

- d) Complaints from their members about unreasonable fees and lack of aircraft storage facilities.

Response: The FAA was advised that the City and FAM KAVO acknowledge the current lack of facilities, and additional storage facilities are part of the long-term plan for the Airport under the AIPP Lease. As noted above, while fees have been/will be increased, those fees have not been increased in many years and are far below market rates. FAM KAVO is prohibited from increasing fees beyond CPI (except pursuant to an appraisal process) without City approval. (*See* Lease, Section 5.12).

The FAA notes that FAM KAVO intends to adopt the City's rates and charges for the general aviation facilities at the Airport and intends to prioritize the completion of new hangars.

- e) Need to evaluate the voluntary noise abatement plan, namely the use of operational limitations.

Response: The FAA was advised that the City will evaluate the voluntary noise abatement plan.

The FAA notes the comment, and it appears the appropriate steps will be taken to address the issue.

f) The City should retain approval rights over new Minimum Standards and Rules and Regulations.

Response: The FAA was advised that under the AIPP Lease, the City and FAM KAVO have agreed that FAM KAVO will have the right to establish reasonable Rules and Regulations and Minimum Standards for the Airport, consistent with its role as the operator and sponsor of the Airport. These documents must comply with the grant assurance requirements for reasonable access and prohibition against unjust economic discrimination and exclusive rights. Certain elements of those documents, including any changes to the Airport Rates and Charges Policy, must be approved by the City. (*See Lease, Section 5.12*).

The FAA notes the comment, and it appears the appropriate steps have been taken to address the issue.

g) More detail about the “rationale and authority” of the \$600,000 reimbursement requested by the City.

Response: The FAA was advised that in 2015, the City provided two loans (one from the sanitation fund and another from the general fund) to the Airport fund to pay for remediation costs associated with a spill of agricultural chemicals. These loans were documented at the time they were made, including a specific reimbursement schedule. The remaining reimbursement through the AIPP Lease is consistent with that schedule.

The FAA notes the comment, and it appears the appropriate steps have been taken to address the issue.

h) FAM’s commitment to manage and maintain the airport up to Part 139 standards.

Response: The FAA was advised that the City and FAM KAVO agree that management of the Airport to Part 139 standards is important to the current operation and future growth of the Airport. While Part 139 compliance is not specifically required at this time, FAM KAVO is required to meet certain performance standards under the AIPP Lease that are in many ways very similar to Part 139 standards. (*See Lease, Exhibit R*). Should the mix of traffic at the Airport later require Part 139 certification, FAM KAVO will be responsible for securing such certification.

The FAA notes the comment, and it appears the appropriate steps have been taken to address the issue.