



April 16, 2019

VIA EMAIL

Mr. Matthew Brower  
Heber City Manager  
Heber City, Utah  
75 North Main Street  
Heber City, Utah 84032  
Email: [mbrower@ci.heber.ut.us](mailto:mbrower@ci.heber.ut.us)

Re: Heber Valley Airport (HCR)

Dear Mr. Brower:

This responds to your April 5, 2019 letter regarding the Heber City Council's decision to adopt Resolutions 2019-08 and 2019-09 (the "Resolutions"). We note that on behalf of the City, which owns and operates the Heber Valley Airport ("Airport"), you "share AOPA's concern about the fuel prices and other services offered by the incumbent FBO, as well as AOPA's belief that enhanced competition is an effective means of addressing this concern." This concurrence on the part of the City is well and good, but actions speak louder than words, and the City's actions in enacting the Resolutions are entirely at odds with the goals of more reasonable, competitively based fuel prices and enhanced competition at the Airport.

As stated in your letter, the City Council has "restore[d] the 2016 Airport Minimum Standards and suspend[ed] consideration of certain airport development pending completion of an Airport Master Plan." AOPA was greatly encouraged in 2017 by the specific pro-competitive actions taken by the City when it adopted revised Minimum Operating Standards. The standards adopted at that time opened the door to competition by a second FBO, and made provision for a stand-alone, self-service facility. A Request for Proposals for a second FBO was, in fact, issued. The City has now repealed or rescinded all of these actions and reverted to the former anti-competitive standards.

AOPA is in favor of airports updating their master plans and we do participate in the updating of these plans in appropriate circumstances. Heber is a public-use airport, which has received millions of Federal dollars. There are important legal obligations that go along with this. It is not appropriate for master plan development to serve as an excuse or mask for allowing an unlawful exclusive right enjoyed by a monopoly position FBO to continue unabated. AOPA cannot and will not support master plan development at the Airport when the apparent motivating factor is to cement in place a monopoly position and provide cover for continuing violations of the grant assurances.

The City's own outside counsel, the law firm of Kaplan, Kirsch, Rockwell, has publicly acknowledged in a court filing that the "restored" Airport Minimum Standards were drafted at

least in part by OK3 to maintain and enhance its monopoly position. Specifically, the City's counsel stated, among other things:

- "OK3 AIR and its owner, Nadim AbuHaidar, were actively involved in drafting and advocating for revisions to the Minimum Standards in 2010";
- "The 2010 revisions to the Minimum Standards made it substantially more difficult, if not impossible, for newcomers to compete with OK3 AIR";
- "Among other items, the 2010 revisions to the Minimum Standards increased the minimum requirements to become an FBO, and therefore compete with OK3 AIR. In particular, the 2010 revisions increased the minimum land that an FBO must lease from 25,000 square feet to 348,480 square feet";
- "In recent years, the City has received many complaints from airport users about the quality of service provided by OK3 AIR including the prices charged for such services. The City also received complaints from the community regarding the City's lack of oversight of OK3 AIR's activities at the Airport"; and
- "OK3 AIR has vigorously opposed the City's . . . efforts to professionalize the management of the Airport and open it up to greater competition among FBOs and other types of commercial operators, because OK3 AIR fears it will lose its virtual monopoly on providing services at the Airport."<sup>1</sup>

Such recognition that the sole FBO is prompting "many complaints about the quality of service" and the "prices charged," and otherwise thwarting competition at the Airport simply cannot be squared with the Airport's newly adopted position to let the exclusive right continue unchecked at the Airport for some undefined future.

Since the City has received in nearly \$17 million in Airport Improvement Program (AIP) grants, the City is clearly obligated under the federal grant assurances. Under FAA Order 5190.6B, in considering whether an Airport is in compliance with its obligations the "FAA will consider the sponsor's willingness to make the airport available to additional reasonably qualified providers." § 8.6. The Resolutions demonstrate the lack of such willingness by the Airport. Moreover, FAA is clear that the "airport sponsor cannot, as a matter of convenience, choose to have only one fixed-base operator (FBO) to provide services at the airport regardless of the circumstances at the airport." *Id.* 8.9(b). Yet that is precisely what is occurring here. The Airport, out of a desire to ward off or soften the impact of lawsuits, is choosing as a matter of convenience to permit a single FBO to perpetuate its monopoly position and prices. Notably, the City has not demonstrated that the continued exclusive right enjoyed by OK3 AIR is authorized by 49 U.S.C. § 40103, or FAA Order 5190.6B, § 8.9(c).

Finally, during the April 2 Council meeting, the City Manager stated that the Denver ADO had "threatened" to withhold discretionary grants until such time as the city updated the 2003 master

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<sup>1</sup>Heber City/Godfrey Answer/Godfrey Counterclaim, *AH Aero Service, LLC dba OK3 v. Heber City, et al.*, No. 2:17CV01118TC, Doc. 57 ¶¶ 8, 10, 11, 12, 18 (D. Utah June 29, 2018).

plan document. Additionally, during the meeting, the City Manager indicated that the City's outside airport counsel, Peter Kirsch, had conversations with the Denver ADO suggesting that FAA would support the Resolutions. To the extent that FAA supports updating the master plan, that is not the same as supporting the continued exclusive right enjoyed by OK3 AIR. In any event, an airport master plan is not a requirement for an AIP grant. Only an FAA approved Airport Layout Plan ("ALP") is required. Heber's ALP was approved by the FAA on March 24, 2014.

The situation at Heber Valley Airport is of the utmost concern to AOPA and its members. We would like to discuss the potential withdrawal of the Resolutions and how to put any Master Plan update on a track that proceeds from a pro-competitive foundation, rather than the current anti-competitive approach. I can be reached at (301) 695-2018 and my assistant Katie Sessoms at (301) 695-2260, to set a time that is convenient for you.

Sincerely,



Ken Mead

Copies:

Heber City Mayor and City Council  
AOPA President and CEO, Mark R. Baker