



MARK R. BAKER  
President and CEO

October 9, 2023

Ms. Francie Jacober, Chair  
Pitkin County Board of County Commissioners  
530 E. Main Street, Suite 302  
Aspen, Colorado 81611

Dear Chair Jacober:

I have been contacted by aircraft owners and pilots at Aspen-Pitkin County Airport regarding concerns with respect to the impending FBO lease and lease extension between Pitkin County and Atlantic Aviation. I, too, have reservations about the costly impact this proposal will have on both based and transient pilots.

As you and the Board of County Commissioners are aware, the Airport Layout Plan (ALP) appears to reflect sufficient land at KASE which could be used to accommodate more than one FBO and it is concerning that the County is seemingly stifling competition by pursuing a lease agreement with only one FBO.

In addition, the proposed lease terms, as reported by The Aspen Times on September 14, 2023, appear to require an even more egregious FBO fee model for pilots, which could place the County, as the airport sponsor, in violation of federal requirements to ensure fees collected at airports are fair and reasonable. Since the County has accepted more than \$77 million in federal Airport Improvement Program (AIP) funds, grant assurance requirements must be considered.

It would be interesting to see public data outlining the increase in fees pilots will be charged when the annual base rent is proposed to increase from \$211,829 to \$1.75 million along with the Minimum Annual Guaranteed fuel flowage fees growing from \$120,000 to \$12 million in the first year and \$18 million in subsequent years. This represents an egregious increase in annual base rent and an unbelievable 100-fold increase in fuel flowage fees in 2023 alone.

Thousands of pilots from across the country have complained about egregious fees being imposed by some FBO operators. For example, a pilot was charged over \$300 just to park his small single engine turboprop aircraft for 1 hour at an airport very similar to KASE. Because he had refueled before he arrived, he could not take the minimum fuel required to waive the handling fee. This pilot would be charged the same fee at KASE.

Again, egregious fees are in violation of law, rule, regulation, and guidance requiring fair and reasonable fees collected at public-use airports and it is the responsibility of the airport sponsor, Pitkin County, to ensure compliance.

Should the FBO lease be executed as reported, the County will collect at least \$558 million - more than half a billion dollars - over the term of the lease.

The proposed lease criteria will undoubtedly set the airport on a path toward substantially higher fees for airport users, which will require intolerable and incalculable price increases to be passed down to based and transient aircraft owners and operators.

The purpose of an airport is to serve the aeronautical users and provide needed services to the flying public. By fulfilling that role and contributing to the safe, efficient operation of the airport, the FBO is serving the community as well. We simply want all sectors of our aviation eco-system, airports, FBOs, and users, to work together in a fair, reasonable, and transparent manner.



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The Board should recognize the FAA cautions airports against accumulating an excessive surplus of revenue. If such a surplus exists, the FAA may question whether the airport is being made available to users on fair and reasonable terms pursuant to Grant Assurance 22 – Economic Nondiscrimination.

Pilots have also informed us that the incumbent FBO at KASE imposes a “habitat fee”. We understand it is collected by the FBO for the sole purpose of supplementing employee wages due to the area’s high cost of living. This is mindboggling when the company is making significant profits.

The Board should also be aware that pilots are already paying unfair and unreasonable FBO parking fees at KASE. For example, the Atlantic Aviation website advertises facility fees for a Beech King Air 250, including a Facility Fee of \$550, a Security Fee of \$45, and a Habitat Fee of \$25. The Facility Fee is waived if the pilot purchases 140 gallons of Jet-A fuel at \$9.76 per gallon (\$1,366 fuel bill). This fuel price is over \$2 per gallon above other similar airports in Colorado.

Pilots confronted with these exceedingly high fees are finding a clear lack of FBO competition at KASE and their access to this public-use facility is being denied or limited by the imposition of egregious fees. This is, unfortunately, a growing problem throughout our national system of airports.

I have attached a document, which identifies several areas the Board should consider when entering into leases with FBOs. The intent of the provisions are to ensure access to public-use airports on fair and reasonable terms, protect the consumer, in this case pilots and aircraft owners, and at the same time ensure airport sponsors and businesses on airports remain successful.

AOPA urges the Pitkin County Board of County Commissioners to take action to support fair and reasonable FBO charges and fulfill its legal obligations and compliance with FAA rules and regulations.

Sincerely,

cc: Pete Buttigieg, Secretary, U.S. Department of Transportation  
Polly Trottenberg, Acting Administrator, FAA  
Katie Thomson, Deputy Administrator, FAA  
Shannetta Griffin, Associate Administrator of Airports, FAA  
Kevin Willis, Director of Airport Compliance, FAA  
Grady Stone, Northwest Mountain Region Administrator, FAA  
Pitkin County Board of County Commissioners  
Colorado Congressional Delegation  
Members, United States Senate Committee on Commerce, Science, & Transportation  
Members, United States House Committee on Transportation & Infrastructure



IN AOPA'S EXPERIENCE, GOOD FBO LEASE AGREEMENTS COME FROM UNDERSTANDING THE LAW AND YOUR AIRPORT'S NEEDS, THEN DRAFTING AN AGREEMENT TAILORED TO THOSE NEEDS. THIS DOCUMENT PROVIDES EXAMPLES OF TERMS THAT CAN BE INCLUDED IN FBO LEASE AGREEMENTS TO HELP PREVENT AND ADDRESS ISSUES WHICH NEGATIVELY IMPACT AIRPORT SPONSORS AND GENERAL AVIATION CUSTOMERS. PLEASE DO NOT SIMPLY CUT AND PASTE THESE TERMS BUT, RATHER, DISCUSS THEM WITH A QUALIFIED ATTORNEY WHO CAN HELP WITH DRAFTING THE ACTUAL FBO LEASE AGREEMENT. IF YOU WOULD LIKE NAMES OF AVIATION ATTORNEYS IN YOUR AREA, PLEASE LET US KNOW.

## BACKGROUND

*Clearly scoping the roles of the airport sponsor and third party FBO, and ensuring the FBO knows the sponsor is induced to enter into a lease based on the FBO's agreement to requirements, can be helpful in framing expectations and providing additional legal arguments a sponsor can use if the Lessee fails to perform as required.*

### EXAMPLE:

Lessor operates, manages, and controls the **[THE AIRPORT]**. Lessor has determined that fixed base operation aviation services are necessary and essential to accommodate the needs of the general public and Airport users. Lessee is a provider of general and commercial aviation services, and proposes to provide such services at the Airport as a fixed base operator.

In consideration of (i) the premises and mutual covenants and conditions below and (ii) Lessee's agreement to perform under this Lease in strict accordance with its terms as a primary inducement for Lessor to enter into this Lease, **[AIRPORT SPONSOR]** and **[FBO NAME]** agree as follows:

## AGREEMENT

*Defining the service needs of your airport user community and ensuring they are met is important, as is being clear about what an FBO must itself provide and what it can subcontract out to other providers. To comply with federal grant assurances, it helps to clearly state that the FBO does not have any exclusive right to be the sole FBO at an airport. The sponsor retains the ability to assess and address future customer needs.*

*EXAMPLE:*

Permitted Uses.

The Premises may only be used for the purpose of operating a full-service Fixed Base Operation (FBO) and reasonably related functions in accordance with the terms and conditions of this Lease and shall not be used by anyone for any other purpose. Lessee must provide (1) Aircraft Airframe, Engine, and Accessory Maintenance and Repair services in accordance with the current edition of the Airport's Minimum Standards; (2) Ground service equipment (GSE) fueling services; and (3) at least two of the following specialized services either directly or through an approved sublessee:

- a. Aircraft Sales
- b. Aircraft Rental
- c. Flight Training
- d. Avionics, Instrument, Propeller Repair
- e. Aircraft Charter and Air Taxi
- f. Aircraft Storage
- g. Specialized Commercial Flying Services
- h. Pilot Supply Store and Flight Planning Facilities

Lessee is granted the non-exclusive right and privilege to engage in business as a Fixed Base Operator. By providing any of the service(s) described above, Lessee agrees to provide such service(s) to standards consistent with the high quality of facilities and services that may be provided by other operators at the Airport, and in accordance with the current edition of the Airport's Minimum Standards.

*It can be helpful to prohibit specific actions that FBOs sometimes place in hangar lease agreements that lead to grant assurance issues (i.e. self-servicing) or illegal trade practice issues (i.e. tying agreements requiring fuel purchases). FBOs may not be fully familiar with the operational implications of grant assurance requirements. While most FBO lease agreements contain a term requiring compliance with all applicable laws and federal grant assurances, the language below addresses issues observed in hangar and tie down agreements provided to AOPA by its members and in airport litigation and in Part 13/16 matters that AOPA monitors.*

*EXAMPLE:*

Right to Self-Service.

Lessee shall not take any actions that restrict or that could have the effect of preventing any person, firm, or corporation operating aircraft on the Airport from performing any services on its own aircraft with its own employees [including, but not limited to maintenance, repair, and fueling] that the operator may choose to perform.

If Lessee controls hangars and/or tie-downs on the Premises, Lessee shall not restrict users of these hangars and/or tie downs from performing any services on their own aircraft. Additionally, Lessee

shall not require said users to purchase goods or services, such as fuel, from the Lessee.

*Some agreements provided to AOPA by its members have language requiring insurance coverage types and amounts that are unreasonable or even unobtainable. The issues typically arise in FBO hangar and tie down leases when the same coverage types (i.e. smooth coverage with no sub-limits) and amounts are expected of a tenant with a Cessna 172 as a tenant with a Global Express. Just as an airport sponsor is required to have reasonable requirements, grant assurances require an FBO providing services on behalf of the sponsor to do the same.*

*EXAMPLE:*

#### Customer Insurance Requirements.

Lessee may require its customers using hangars, tie-downs or other aircraft parking and storage areas on the Premises to obtain insurance in kind or coverage amount that is reasonably obtainable. Lessee shall not impose insurance requirements that are unreasonably costly or duplicative of insurance that Lessee must maintain in accordance with this Lease.

*Some agreements provided to AOPA by its members have excessive risk shifting terms that are inconsistent with similar terms in the lease between the airport sponsor and FBO. Issues typically arise when terms require hangar/tie down tenants or even transient customers to waive subrogation in all circumstances and assume full liability for damages caused by an FBO – even if there was gross negligence or willful misconduct by the FBO such as an FBO fuel truck running into a parked aircraft! Waiver of subrogation eliminates an insurer's right to sue a reckless third party of damages the insurance company pays out under its policy. FBOs should bear reasonable risk, particularly for their own operations and errors. Customers who do seek and obtain waiver of subrogation from their underwriters typically pay 10% of premium to do so. Customers who agree to subrogation of risk without underwriter approval become "self insured" (often unknowingly), as their policy won't provide coverage if the FBO causes damage to their aircraft.*

*EXAMPLE:*

#### Waiver of Subrogation Against Customers.

To the fullest extent permitted by applicable law, Lessee, on behalf of itself and its insurance carriers, waives all rights against its customers leasing hangar space, tiedowns or other aircraft parking and storage from Lessee, for damages to the extent covered by any insurance maintained pursuant to this Agreement, except in the case of willful misconduct of the customer. All insurance policies maintained pursuant to this Lease shall accomplish this waiver of subrogation by endorsement or otherwise.

*When an airport sponsor receives customer complaints about unreasonable charges or has concerns about payments due under the lease to the sponsor, it needs to have access to FBO data in sufficient detail to effectively assess and investigate the concern.*

*EXAMPLE:*

#### Lessor's Right to Audit.

The Lessor shall have the right, upon reasonable written notice to Lessee from the Airport Director to examine or designate a representative to examine the books and records of Lessee which relate to its operations on the Premises to determine the correctness of amounts paid by Lessee to the Lessor and the types, amounts, and disclosure of fees and expenses billed to customers. Lessor's rights under this provision shall survive the expiration or earlier termination of the term of this Lease. In the event of any conflict between any provision of this Lease and generally accepted auditing standards, the provisions of this Lease shall control. Without limitation, Lessee shall maintain all records required under this Lease to the full extent required hereunder, even if some or all of such records would not be required under such general principals or standards. Lessee shall also provide information requested by Lessor if such information is useful in compiling reports and data for the Lessor Board or Federal Aviation Administration, or in assessing and responding to concerns raised by the Federal Aviation Administration or airport users.

*FBO leases typically have long durations and, decades after a lease was entered into, an airport sponsor the terms may no longer reflect market realities or allow the sponsor pathways to raise and address existing concerns. At the same time, there has been a steady increase in FBO acquisitions and consolidations, which are effected in a variety of ways. When such changes in control occur, they are an opportunity for the sponsor to bring the parties to the table to reconsider terms and address outstanding concerns if sufficient change in control language is in the lease.*

*EXAMPLE:*

#### Lessee's Change of Control

A "Change in Control" means a merger of Lessee with another company, a sale of all or a substantial portion of Lessee's assets, a change in more than 50% of the board members of Lessee during any 12 month period, a change in ownership of or power to vote a majority of the outstanding ownership interest in Lessee from the owners of such interest or those controlling the power to vote such interest as of the Effective Date of this Lease. Any Change in Control requires the prior written consent of the Lessor, with such approval not to be unreasonably withheld. The Lessor reserves the sole right to modify or change the terms of this Lease when a Change in Control occurs. Approvals required under this Paragraph shall be in writing. Any assignment or sublease, which is not in strict compliance with the terms and conditions of this Lease, shall be void ab initio and shall be of no force or effect whatsoever. Lessee agrees to reimburse the Lessor for its reasonable Attorneys' Fees and costs actually incurred in determining whether to give its consent to any proposed sublease or assignment, whether or not such consent is given, and the negotiation and preparation of any documents with respect to such sublease or assignment.

*Airport sponsors enter FBO leases to ensure airport users are able to obtain services, but often lack tools to address concerns with quality of service. As a result, airport sponsors sometimes are put in the difficult position of fielding significant customer complaints impacting the reputation of the airport without an ability to remedy the situation unless it the conduct is clearly illegal. This is an issue that other industries have addressed through quality requirements in contracts, and airport sponsors can benefit from doing the same.*

**EXAMPLE**

Operational and Other Requirements. During the Term, Lessee agrees to do the following (many of which requirements are also addressed in greater detail elsewhere in this Lease):

- (1) Have its employees and approved independent contractors satisfactorily complete all required training programs and ensure that a trained management and operations staff who devote full time to their duties at the FBO, is in place at the FBO at all times, as it is responsible for management of the FBO;
- (2) Maintain the Premises in first class condition and in a clean, safe and orderly manner;
- (3) Provide efficient, courteous, competent, prompt and high-quality service to the public while maintaining a high moral and ethical standard and atmosphere at the FBO;
- (4) Operate the FBO **[insert required hours of operation i.e. “twenty-four (24) hours a day, every day”]**;
- (5) Strictly comply in all respects with all laws, rules, regulations and requirements, as modified over time, including:
  - a. Paying all taxes when due,
  - b. Filing and maintaining trade or fictitious name registrations,
  - c. Filing and maintaining all licenses and permits necessary to operate the FBO, and
  - d. Permitting Lessor’s representatives to inspect or audit the FBO at any time
  - e. Federal Aviation Administration Grant Assurances, if applicable to Airport.
- (6) Use its best efforts to create a favorable user response to the Airport and its name;
- (7) Promptly pay Lessor when due all amounts owed under this Lease or any related agreement;
- (8) Honor nationally recognized credit cards;
- (9) Notify Lessor in writing within ten (10) days after it receives information about any threatened or actual lawsuit, action, or proceeding, or the issuance of any injunction, decision, award or degree of any court, quasi-judicial body, or governmental agency that might affect Lessee, its ability to perform obligations under this Lease, or its financial condition; and
- (10) Promptly send Lessor a copy of any notice of default Lessee receives from any lender and, at Lessor’s request, any additional information Lessor requests concerning any alleged default or any subsequent action or proceeding in connection with any alleged default.
- (11) On a monthly basis, send Lessor a copy of all customer complaints received by Lessee in connection with the FBO and whether they were resolved.