U.S. Department
of Transportation
**Federal Aviation
Administration**

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May 15, 2014

Edward F. Lavallee
City Manager
401 West Venice Avenue
Venice, Florida 34285

Dear Mr. Lavallee:

Over the years we have had a number of meetings and conversations regarding the resolution of specific items in the 2010 Department of Transportation's Office of Inspector General (OIG) Audit Report[1] as well as the Federal Aviation Administration's (FAA) 2009 Land Use Inspection Report. On April 5, 2012, the Orlando Airports District Office (ADO) met with the City of Venice. In this meeting, we discussed how the City can resolve the outstanding issues in the OIG audit report that are specifically related to the City. Based on information provided by the City, and our recent discussions with you and your staff, we are prepared to close the OIG audit recommendations related to the City. The purpose of this letter is to formalize our understanding of the City's proposed actions to resolve the OIG audit recommendations and FAA's Land Use Inspection findings. We are providing the following background for ease in understanding the recommendations and the City's proposed actions.

Background:

The City was conveyed certain properties from the United States under the Surplus Property Act of 1944 through four (4) quitclaim deeds. Each of these quitclaim deeds conveying the parcels required the City, as grantee, to use the surplus property "for public airport purposes."

On June 9, 1998 the City adopted Resolution No. 98-11, acknowledging that the Fishing Pier Fund rented property from the airport, commonly known as the Venice Fishing Pier. The resolution was adopted to ensure the payment of a fair market value payment for the lease identified through an appraisal. In accordance with the resolution, the City is obligated to transfer the fair market rent from the Fishing Pier Fund to the Airport Enterprise Fund. The ADO agreed with the FMV rental of $72,000 per year to be deposited by the City in to the Airport Enterprise Fund. Today, that rent through Consumer Price Index (CPI) adjustments is about $140,000 per year.

However, the FAA's 2009 land use inspection report noted that the Pier Fund sub-leases a portion of this property to a beachfront restaurant, "Sharky's On the Pier" (Sharky's). The land use inspection report also identified several potential issues associated with this leasing structure

[1] The 2010 OIG Audit report had five recommendations; recommendations 2, 3, and 4 were specifically related to the City of Venice.

and the airport's share of the revenues derived from the Sharkey's lease. At approximately the same time as the FAA's 2009 land use inspection, the OIG received a hotline complaint alleging that the City was diverting revenue from the Airport. As a result, the OIG conducted a revenue audit at Venice to determine if the City was illegally diverting airport revenues. In their audit report, the OIG determined that the City underfunded the Airport because the OIG interprets the FAA's Revenue Use Policy to require that the airport sponsor receive fair market value land rent, as well as a percentage of gross receipts if such a sub-leasing arrangement exists between the airport sponsor and sub-lessee, and set out the four recommendations.

The closure of the audit recommendations and land use inspection findings are conditioned upon the City's concurrence and adherence to the terms associated with each of the following recommendations below:

Recommendation 2:
Require the City to complete the independent review appraisal of the property used by Sharky's restaurant if sold, and any subsequent transfers of airport property.

In our April 5, 2012 meeting, the City agreed to do a FMV appraisal of the Sharky's leasehold to include the value of the improvements. The previous lease had language that the improvements revert back to the City at the end of the lease. Since this lease has been renegotiated and extended a number of times over a 30-year period, the appraisal should include the appraised value of the improvements through 2008, which was the last time the lease was renegotiated. The new appraised value should reflect the current value of the parcel, with improvements through 2008, if exposed to sale on the open market today.

The 2008 renegotiation of the Sharky's leasehold did not have the FAA's concurrence. The City is reminded that all non aviation leases, whether new, renegotiated or extended must be consistent with the City's Federal obligations to assure that these leaseholds generate FMV rent to the airport fund. Failure to coordinate non aviation leases in advance with the FAA (whether new, renegotiated or extended) could potentially violate the City's grant assurances and jeopardize Federal funding.

The City completed the appraisal of the Sharky's leasehold in July 2012. The FMV of the land and improvements (through 2008) was $2,200,000. The FAA concurred with this appraisal in 2012. FAA will seek to close this recommendation provided that the City deposits $2,200,000 into the Airport Enterprise fund and a formal Deed of Release is both executed by the FAA and the City for the release of this property from federal obligations.

Recommendation 3:
Assess the revenue diversions or self-sustainability issues involving the distribution of Sharky's lease revenue and parking lot renovation costs and seek full recovery, plus interest on the $493,070 in questioned costs identified by our office and any other improperly allocated revenue identified by FAA.

The FAA's Revenue Use Policy requires that the Fishing Pier Fund pay fair market value rent to the Airport Fund for the City's non-airport related use of the premises, and the proceeds then are used for the operation, maintenance and development of the Airport. The FAA had originally concluded that the City met this requirement through its payment of fair market rent (adjusted annually by the CPI) from the Pier Fund to the Airport Enterprise Fund. However in 2008, the

City renegotiated the lease and did not seek FAA concurrence. The payment to the airport from the Pier Fund increased by approximately $40,000 a year between 2008 and 2009. The OIG has revisited this issue and determined that the underpayment in rent to the airport was $195,210 between 2004 and 2009 instead of $493,070 as originally calculated. This new amount was based on the approximate $40,000 increase in 2009 and adjusting back to 2004 using the CPI. This reflected increase was due to the renegotiation of the lease in 2008. The City disagrees with the OIG's finding and does not believe that the Sharkey's lease arrangement resulted in the diversion of any airport revenues. However, as a demonstration of good faith, the City has agreed to pay the $195,210 to the Airport Enterprise fund to resolve this matter and move forward.

The FAA partially concurred with the recommendations proffered by the OIG related to these two matters. The FAA recognized that it should re-assess the questions of revenue diversion and/or self-sustainability involving the Sharky's sub-lease arrangement. Since it is unlikely that the Sharky's property will ever be needed for aeronautical development, the FAA believes that the best long term solution for the Airport, with respect to the Sharkey's property, is for the property to be released from its federal obligations and disposed of. Therefore, the City should request a release of the Federal obligations associated with the Sharky's property through the FAA Orlando Airports District Office (ADO). Once the release is approved by the ADO, the City can complete the release and disposal of the Sharkey's property by depositing the FMV of $2,200,000, as well as the $195,210 into the Airport Enterprise fund. Once the City provides documentation of transferring the funds into the Airport Enterprise Fund, the FAA will seek to close this recommendation

<u>Recommendation 4:</u>
Work with the City of Venice to develop an appropriate allocation of future rent revenue from Sharky's over the remaining term of the lease and the cost of subsequent capital improvements such as parking lot renovations, that protects the self-sustainability of the airport.

If the City agrees to the resolution as discussed above in Recommendations 2 and 3, then the FAA will seek to close this recommendation upon receipt of documentation that the FMV of $2,200,000, as well as the $195,210 was deposited into the Airport Enterprise Fund as well as a formal deed of release executed by both the City and the FAA. There will be no need to develop an appropriate allocation of future rent revenue from the restaurant lease.

<u>FAA's Land Use Inspection</u>:

The 2009 Land Use Inspection report also identified a 48 acre tract of land that the FAA released from aeronautical use in 1963. This land is not contiguous to the airport operations area and is located across the Intracoastal Waterway. In 1963 the City quitclaimed the parcel to the West Coast Inland Navigation District (WCIND) for "canal purposes" until such time it is not needed for that purpose. At that time the 48 acre tract of land would revert back to the City for public airport purposes. Sometime in the 1990's, the WCIND allowed Sarasota County to construct a Senior Friendship Center (SFC) on 2 of the 48 acres. Since this use was not consistent with "canal purposes", the 2 acres should have reverted to the City for public airport purposes.

In order to resolve the issue with the City, the City at the request of FAA, completed a FMV appraisal of the 48 acre parcel. The FMV of the land was $475,000. The FAA concurred with this appraisal in 2013. It is recommended that the City reimburse the Airport Enterprise Fund the FMV of $475,000 to formally release the 48 acres from all federal obligations. The appraisal included the buildable value of the 2 acres for the SFC as well as the remaining 46 acres with restrictions. The FAA will consider this issue closed when documentation on the transfer of funds is received, and a formal deed of release is executed by both the FAA and City. As a condition of the release, all of the terms and conditions in the quitclaim deed dated April 9, 1963 between the City and the WCIND and its successors and assigns will be included in the FAA's deed of release.

We appreciate your patience and cooperation over the last several years in addressing and bringing these issues to closure.

Please provide your formal concurrence with the aforementioned terms so that we can close the OIG audit recommendations as well as the FAA Land Use Inspection report.

Should you have any questions, please feel free to contact me at (407) 812-6331, ext. 127.

Sincerely,

Bart Vernace, P.E.
Manager

cc: Chris Rozansky, VNC Airport Manager
ASO-600
ACO-100