



U.S. Department of Justice

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May 12, 2014

William L. Taylor
Sideman & Bancroft LLP
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Re: Grand Junction Regional Airport Authority- Non-Prosecution Agreement

Dear Mr. Taylor:

On the understandings and in exchange for the pledged conduct specified below, the U.S. Attorney's Office, District of Colorado (hereinafter "USAO"), enters into this Non-Prosecution Agreement ("the Agreement") with the Grand Junction Regional Airport Authority (hereinafter "GJRAA"), the governing body responsible for managing the business and affairs of the Grand Junction Regional Airport (together "the Parties"), and agrees that the USAO will not criminally prosecute the GJRAA for any federal crimes (except for criminal tax violations, if any, as to which the USAO does not make any agreement) regarding potential violations of fraud statutes (including related public corruption, procurement integrity, false statement violations, or any related offenses) committed prior to the date of execution of this Agreement arising from and related to the ongoing federal fraud investigation into conduct at the Grand Junction Regional Airport (hereinafter "Airport"), and any other conduct relating to fraud or corruption disclosed by the GJRAA to the USAO as a part of this Agreement.

The USAO enters into this Agreement based, in part, on the following factors: (a) the GJRAA's timely, voluntary, and complete disclosure of the conduct; (b) the GJRAA's extraordinary real-time cooperation with the USAO; and (c) the GJRAA's remedial efforts already undertaken and to be undertaken, including changes in structure, checks and balances, whistleblower procedures, and other measures as described in Attachment A.

This Agreement does not provide any protection against prosecution for any crimes except as set forth above, and applies only to the GJRAA and not to any other entities or to any individuals, including individual members or past members of the GJRAA Board or past or present employees of the Airport. The Parties to this Agreement also understand and acknowledge that, in the event of non-performance of this Agreement, the United States may, in its discretion, seek specific performance in federal court, and that the 11th Amendment to the United States Constitution is not a bar to such an action.

The GJRAA's obligations under this Agreement shall exist until the conclusion of the criminal investigation and prosecution of any other individuals or entities. It is understood that for the term of this Agreement, the GJRAA shall: (a) commit no felony under U.S. federal law; (b) truthfully and completely disclose non-privileged information with respect to the activities of the GJRAA, its directors, employees, and others concerning all matters about which the USAO inquires of it, which information can be used for any purpose, except as otherwise limited in this Agreement; and (c) bring to the USAO's attention all conduct by, or criminal investigations of, the GJRAA, any of its employees, or the Airport's employees, relating to any felony under U.S. federal law of which it is aware or that come to the attention of the GJRAA, including its Board or representatives thereof, as well as any administrative proceeding or civil action brought by any governmental authority that alleges fraud or corruption by or against the GJRAA.

Until the date upon which all investigations and any prosecution arising out of the conduct described in this Agreement are concluded, the GJRAA shall, subject to applicable laws or regulations: (a) cooperate fully with the USAO, the Federal Bureau of Investigation ("FBI"), the Department of Transportation-Office of Inspector General ("DOT-OIG"), and any other criminal law enforcement agency designated by the USAO regarding matters arising out of the conduct covered by this Agreement; (b) assist the USAO in any criminal investigation or prosecution arising out of the conduct covered by this Agreement by providing logistical and technical support for any meeting, interview, grand jury proceeding, or any trial or other court proceeding; (c) use its best efforts promptly to secure the attendance and truthful statements or testimony of any officer, director, agent, or employee of the GJRAA or Airport at any meeting or interview or before the grand jury or at any trial or other court proceeding regarding matters arising out of the conduct covered by this Agreement; and (d) provide the USAO, upon request, all non-privileged information, documents, records, or other tangible evidence regarding matters arising out of the conduct covered by this Agreement about which the USAO or any designated criminal law enforcement agency inquires.

It is understood that the GJRAA will strengthen its compliance, bookkeeping, and internal control standards and procedures, as set forth in Attachment B. It is further understood that the GJRAA will report to the USAO periodically regarding remediation and implementation of the compliance program and internal controls, policies, and procedures, as described in Attachment B.

It is understood that, if the USAO in its sole discretion determines that: (a) the GJRAA has committed, after the date on which this Agreement is signed, any felony under U.S. federal law; (b) that the GJRAA has deliberately given false, incomplete, or misleading testimony or information at any time in connection with this Agreement; or (c) the GJRAA otherwise has violated any provision of this Agreement, the GJRAA shall thereafter be subject to prosecution for any violation of federal law which the USAO has knowledge, including perjury and obstruction of justice. By signing this agreement, the GJRAA agrees that the statute of limitations with respect to any such prosecution shall be tolled for the term of this Agreement plus one year.

It is understood that, if the USAO in its sole discretion determines that the GJRAA has committed any felony under U.S. federal law after signing this Agreement, that the GJRAA has given false, incomplete, or misleading testimony or information in connection with this Agreement, or that the GJRAA otherwise has violated any provision of this Agreement: (a) all statements made by the GJRAA to the USAO or other designated law enforcement agents, including Attachment A hereto, whether before or after the execution of this Agreement, and any leads from such statements, shall be admissible as evidence in any criminal proceeding brought against the GJRAA; and (b) the GJRAA shall assert no claim under the United States Constitution, any statute, Rule 410 of the Federal Rules of Evidence, or any other federal rule that such statements or any leads therefrom are inadmissible or should be suppressed. By signing this Agreement, the GJRAA waives all rights in the foregoing respects.

In the event that the USAO determines that the GJRAA has breached this Agreement, the USAO agrees to provide the GJRAA with written notice of such breach prior to instituting any prosecution resulting from such breach. The GJRAA shall, within thirty (30) days of receipt of such notice, have the opportunity to respond to the USAO in writing to explain the nature and circumstances of such breach, as well as the actions the GJRAA has taken to address and remediate the situation, which explanation the USAO shall consider in determining whether to institute a prosecution.

It is understood that this Agreement does not bind any prosecuting authority other than the USAO. However, the USAO will bring the cooperation of the GJRAA to the attention of other prosecuting and investigative offices, if requested to do so by the GJRAA.

It is further understood that the GJRAA and the USAO may disclose this Agreement to the public.

With respect to this matter, from the date of execution of this Agreement forward, this Agreement supersedes all prior, if any, understandings, promises and/or conditions between the USAO and the GJRAA. No additional promises, agreements, or conditions

have been entered into other than those set forth in this Agreement and none will be entered into unless in writing and signed by all Parties.

Sincerely,

Signature on File

MICHELLE M. HELDMYER
Assistant United States Attorney
District of Colorado
United States Department of Justice

AGREED AND CONSENTED TO:

Grand Junction Regional Airport Authority

Date: _____ BY: Signature on File

STEVE WOOD
Board Chairman
Grand Junction Regional Airport Authority

Date: _____ BY: Signature on File

RICK WAGNER
Board Commissioner
Grand Junction Regional Airport Authority

Date: _____ BY: Signature on File

WILLIAM L. TAYLOR
Sideman & Bancroft, LLP
Attorney for
Grand Junction Regional Airport Authority

ATTACHMENT A

REMEDIAL EFFORTS UNDERTAKEN BY THE GJRAA SINCE NOVEMBER 2013

The following is a non-exhaustive list of remedial measures undertaken by the Grand Junction Regional Airport Authority (GJRAA) and its Board of Commissioners (the Board) in order to restore the Grand Junction Regional Airport (the Airport) to a status of compliance with federal law, to implement an effective compliance and ethics program, and to establish and fortify internal financial and governance controls since the Airport became aware in November 2013 of the federal investigation being conducted of the Airport's business affairs by the U.S. Department of Justice (DOJ), the Federal Bureau of Investigation (FBI), and the U.S. Department of Transportation – Office of Inspector General (DOT-OIG).

- 1) On November 19, 2013, the GJRAA retained independent outside counsel (William Taylor, Esq., now of Sideman & Bancroft LLP) to conduct an internal investigation into matters potentially related to and giving rise to the federal investigation, and to coordinate the GJRAA's cooperation and compliance with the federal investigation.
- 2) Simultaneously, the Board established a Special Litigation Committee (the SLC) consisting of two Board Commissioners (one attorney and one non-attorney) to oversee the conduct of the independent investigation, to receive reports from outside investigative counsel, and to report back to the Board as a whole, as appropriate.
- 3) On the recommendation of investigative counsel, the SLC thereafter authorized the engagement of, and the GJRAA engaged former FBI Special Agent Jane Quimby as private investigator to assist investigative counsel.
- 4) Outside investigative counsel conducted an initial phase of the internal investigation, including conducting witness interviews, preserving and gathering relevant documents, and reporting back to the Board on December 3, 2013, with preliminary recommendations for investigative action and interim administrative remedial measures.
- 5) Outside counsel simultaneously engaged with the federal prosecutor and investigative agencies to ensure complete preservation and production of relevant documents and data to the government.
- 6) On December 3, 2013, in order to implement immediate interim enhancement of internal financial controls at the GJRAA, the Board adopted a resolution requiring Board designee signature on any checks in amounts greater than \$500 issued by the GJRAA.
- 7) On December 3, 2013, the Board placed the Director of Aviation on administrative leave with pay. Two weeks later, on December 17, 2013, the Board terminated the Director's employment. The Board appointed an Interim Director of Aviation the same date.
- 8) Coincident with the appointment of an Interim Director of Aviation, in order to encourage open communication of information concerning potential compliance issues or other problems not only to the new Interim Director, but also directly to the Board, and in order to foster a new atmosphere of transparency at the GJRAA, the Board implemented direct reporting to GJRAA Board by key staff.

- 9) Individual Board members undertook personal, regular (sometimes daily) interaction with staff to emphasize culture change, transparency and commitment to compliance.
- 10) The Board, by itself and with outside counsel, sought out resources to educate the Board on best practices, policies and compliance (e.g., FAA guidance, policy documents generated by other airports with a robust compliance program).
- 11) On January 2, 2014, internal investigators presented a report following completion of Phase I of its investigation, recommending additional investigative action and remedial measures.
- 12) On January 14, 2014, the Board voted to rescind AIP-51, the FAA grant application for construction of the Administration Building (previously referred to as "Terminal Expansion, Phase I"), in order to ensure compliance with federal law and regulation in an amended AIP application to be submitted at a later date.
- 13) On February 18, 2014, the Board adopted a new Whistleblower Policy, designed to provide confidential channels and protection for personnel with knowledge of potential violations of statute, regulation or ethics rules of the GJRAA.
- 14) Also on February 18, 2014, the Board adopted a new Asset Disposal Policy, in order to ensure that hereafter any excess property of the GJRAA be disposed of properly.
- 15) Also on February 18, 2014, the Board re-established the Board's audit function by creating and appointing members to a Finance & Audit Committee.
- 16) Also on February 18, 2014, the Board appointed a Manager Search Committee in order to search nationwide for a permanent replacement for the former Director of Aviation.
- 17) In March 2014, the Board and GJRAA staff reviewed and revised the GJRAA's organizational and reporting structure. The new plan implemented fundamental changes to organizational structure, with bifurcated reporting to the Board (elimination of single-path reporting), enhancing transparency and staff accountability to the Board.
- 18) Coincident and consistent with organization changes implemented, the staff and Board reviewed and amended all staff job descriptions in order to align them with the revised organizational structure of the GJRAA.
- 19) At a special meeting of the Board on March 4, 2014, the Board authorized the engagement of a new accounting firm to conduct the 2014 audit for the GJRAA, and to advise on a possible forensic audit of the GJRAA.
- 20) On April 15, 2014, the Board adopted the revised organizational structure for the Airport, a principal aspect of which was creation of a new Finance and Accounting Manager position, with an accompanying job description that included a comptroller function.
- 21) Also on April 15, 2014, the Board adopted a revised Ethics and Conflict of Interest Policy.

- 22) The GJRAA staff, with Board advice, is presently drafting a new Compliance Plan, consistent with federal guidelines and best practices in order to create and maintain an effective compliance and ethics program. As part of this Compliance Plan, the staff and Board have already undertaken the drafting of a new Procurement Policy.
- 23) The Board has undertaken drafting revisions and updates to the GJRAA Board's By-Laws in order to harmonize them with governance and financial controls already implemented and to be implemented.
- 24) Since November 2013, the GJRAA Board has held a total of nine meetings, six of them regularly scheduled meetings, and three of them special meetings called in order to address, *inter alia*, exigent matters arising out of the investigation and to implement urgent remediation.

ATTACHMENT B

ADDITIONAL REMEDIAL MEASURES TO BE UNDERTAKEN BY THE GJRAA

The following is a list of additional remedial measures to be undertaken by the Grand Junction Regional Airport Authority (GJRAA) and its Board of Commissioners (the Board) in order to restore the Grand Junction Regional Airport (the Airport) to a status of compliance with federal law, to implement an effective compliance and ethics program, and to establish and fortify internal financial and governance controls in the future.

- 1) Completion and adoption of a Compliance Plan, including integrated policies to ensure sound procurement practices, well-functioning internal financial and governance controls, effective organizational oversight concerning obtaining and expending federal and state funds, and organizational transparency in order to foster and encourage compliance with law and ethics by GJRAA staff and its Board, consistent with federal law, regulation, and guidance and industry best practices for similarly situated airports.
- 2) Comprehensive revision, amendment, and ratification of the GJRAA's By-Laws, as necessary to establish and maintain sound internal financial and governance controls, and an effective compliance and ethics program at the GJRAA.
- 3) Establishment and implementation of a mechanism for annual feedback to the Board by GJRAA staff, stakeholders, and citizens concerning the GJRAA's operations and governance, by policy or practice.