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AUDIT

BUREAU OF AUDIT

June 4, 2018

By Electronic Delivery

Mr. Ronald Ricciardi
President, Saker Aviation Services, Inc.
Pier 6, East River
New York, NY 10004

Re: Letter Audit Report on the Compliance of FirstFlight Heliport, LLC d/b/a Saker Aviation Services, Inc. with Its Concession Agreement (Audit Number FN18-073AL)

Dear Mr. Ricciardi:

This Letter Report summarizes the findings of our audit on the compliance of FirstFlight Heliport, LLC (FirstFlight), d/b/a Saker Aviation Services, Inc. (Saker), with its obligations under its concession agreement with the City of New York (the City). The objective of this audit was to determine whether FirstFlight complied with the major terms of its concession agreement, including whether FirstFlight accurately collected and reported revenue derived from its operation of the Downtown Manhattan Heliport (the Heliport), paid the required fees to the City, expended the required amounts on capital improvements, and adhered to certain provisions of the agreement that limit the number of tourist flights and require FirstFlight to mitigate noise pollution and air quality issues.

Background

In 2008, the City, acting by and through the Department of Small Business Services (DSBS), entered into a 10-year concession agreement with FirstFlight to operate the Heliport (the Concession Agreement). The New York City Economic Development Corporation (EDC) administers the Concession Agreement for the City.¹ Under the Concession Agreement, FirstFlight is tasked with the day-to-day management of the Heliport and various administrative responsibilities, such as billing and collection of revenue, and ensuring compliance with the Concession Agreement and regulatory requirements.

Five helicopter tour companies operate out of the Heliport that FirstFlight manages, offering various services, including tourist and charter flights. FirstFlight also provides jet fuel to helicopters

¹ Pursuant to the annual amended and restated maritime contract between the City and EDC, the City has retained EDC to engage in various activities intended to promote the economic development of the City's waterfront property and related transportation facilities, including the operation of the Heliport, located on Pier 6 in the East River. EDC is the designated Agreement Administrator in the Concession Agreement.

and space at the Heliport for special events, such as film shootings. In addition to providing flight-related services, FirstFlight is required to ensure that the facility is maintained in a clean, safe and operational condition in conformity with federal, state and local laws.

According to the Concession Agreement, FirstFlight is required to pay to the City each year the greater of a minimum annual guarantee amount or a percentage of FirstFlight's gross receipts.² In Calendar Year 2016, FirstFlight reported gross receipts of \$13,076,947 from its operation of the Heliport and remitted a percentage fee of \$2,716,055 to the City.

On February 2, 2016, the City and FirstFlight amended the Concession Agreement to reduce the number of tourist flights at the Heliport by 50 percent as of January 1, 2017, restrict the number of weekend tourist flights to 300 on Saturdays and none on Sundays, and mitigate certain noise and air quality issues at the Heliport.³ Specifically, under the amendment, FirstFlight is required to make its best efforts to limit helicopter-engine idling time at the Heliport to not more than 10 minutes per flight and to actively research ways to further reduce the effects of noise and emissions pollution.

Audit Findings

We found that FirstFlight generally complied with the financial terms of the Concession Agreement. Specifically, based on physical observations and documents provided by FirstFlight, we determined with reasonable assurance that FirstFlight accurately collected and reported revenue derived from the Heliport operations, paid the required fees to the City, and expended the required minimum amounts on capital improvements. In addition, as required by the Concession Agreement, FirstFlight reduced the number of tourist flights and prohibited such flights on Sundays. However, the audit found that FirstFlight failed to demonstrate that it made "best efforts" to limit helicopters' engine-idling times at the Heliport in that it did not have procedures in place to monitor and limit that activity. Furthermore, we observed multiple instances of helicopters' idling in excess of the 10-minute benchmark established by the Concession Agreement.

Under the amendment to the Concession Agreement, FirstFlight is required to "make best efforts to prevent helicopters at the Heliport from idling for a period greater than ten minutes." However, during the three days on which we observed helicopter flights at the Heliport, we observed 23 instances—out of 118 flights that we reviewed for idling time—in which flight operators idled their engines longer than 10 minutes. Of those 23 instances, 11 flights idled from 11 to 15 minutes, 5 flights idled from 16 to 20 minutes, and 7 flights idled for more than 20 minutes, with the longest idling period recorded at 41 minutes. The average idling time for the 23 instances was 19 minutes. In connection with those observations we found that FirstFlight had not established procedures to monitor or enforce flight operators' compliance.

² Pursuant to the Concession Agreement, the minimum guarantee amounts for the period from May 2016 through April 2017, and May 2017 through April 2018, were \$814,855 and \$848,098, respectively. The percentage rent payment is paid at the rate of 18 percent of the first \$5 million of FirstFlight's gross receipts from operation of the Heliport (the "base receipts") and then 25 percent of gross receipts collected in excess of the "base receipts."

³ The 50 percent reduction in tourist flights is based on prior years' recorded number of flights. Since the number of flights varies from month to month, the amendment includes a schedule showing the maximum number of tourist flights allowed for each calendar month.

Based on FirstFlight's lack of procedures for monitoring engine idling times at the Heliport and the substantial amount of excessive idling our auditors observed, we have determined that FirstFlight has not taken sufficient action to prevent helicopters at the Heliport from idling for a period greater than 10 minutes as required by the amended Concession Agreement.

FirstFlight's Response: In its response, FirstFlight officials stated, "We were pleased with the output of the audit and appreciate the thoughtful and courteous approach of the CAT [Comptroller's Audit Team] to understanding our business and interacting with our personnel. [...] Saker performed an analysis of the time period observed by the CAT. Setting aside any other possible cause for idling in excess of 10 minutes, we identified 18 refueling operations during the CAT's review period. As a refueling operation would rarely, if ever, be completed within 10 minutes, we don't believe that it would or should be considered an event of idling in excess of 10 minutes."

Auditors' Comment: We disagree with FirstFlight's assertion that 18 of the 23 instances of excessive idling as cited in this report were primarily due to refueling. Based on our review of FirstFlight's daily flight logs and fuel meter readings, we have determined that only 9 of the 23 instances were associated with refueling, leaving 14 unexplained instances of excessive idling. Moreover, the amended Concession Agreement signed by FirstFlight does not include any exceptions which would allow FirstFlight to circumvent the agreement's idling requirements. Thus, the identified instances of excessive idling still indicate that FirstFlight has not taken sufficient action to prevent helicopters at the Heliport from idling for a period greater than 10 minutes.

Recommendation

FirstFlight should develop and implement procedures to limit helicopters' idling time at the Heliport.

FirstFlight's Response: "We concur with the Audit's sole recommendation regarding procedures to limit helicopter idling time at the Heliport. As we shared with the CAT, however, we believe those procedures were and are in place from a practical standpoint. The recommendation of the Audit simply caused us to codify our previous practices in connection with this activity.

We further intend to review with NYCEDC the efficacy of implementing an 'idling fee' in conjunction with our next review of fees and charges."

Scope and Methodology

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was conducted in accordance with

the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope of this audit covered the period January 1, 2016 through September 30, 2017. To obtain an understanding of FirstFlight's responsibilities, we reviewed and abstracted the Concession Agreement, including the February 2016 amendment. Based on the requirements stated in the amended Concession Agreement, we observed the physical conditions of the Heliport to determine whether FirstFlight properly maintained the facility. To obtain a better understanding of the Heliport operation, we interviewed FirstFlight officials regarding the operation of the Heliport and the accounting procedures in use. In addition, we reviewed FirstFlight's SEC filings and observed its billing practices. We also conducted walk-throughs with EDC officials to gain an understanding of their oversight functions and practices.

To determine whether FirstFlight accurately recorded the flight activities at the Heliport, we conducted unannounced observations of the Heliport on September 16, 24, and 25, 2017. We documented the flight activity and then compared our observations with FirstFlight's daily flight logs. To determine whether FirstFlight properly billed its clients, we obtained 176 invoices, totaling \$368,381, generated from September 13 through 26, 2017, which included the three dates of our observations, and compared the landings, helicopter-parking, passenger counts, and fuel sales that were recorded on FirstFlight's daily flight logs and summary schedules with (1) FirstFlight's billing records; and (2) our observations. We also determined whether FirstFlight's invoices were consecutively numbered and whether the invoiced amounts were accurately recorded in FirstFlight's general ledger.

To determine whether FirstFlight properly recorded revenue during Calendar Year 2016, we: (1) judgmentally selected 15 out of 333 customers for whom FirstFlight's customer listing generated from its accounting software appeared to be missing information, such as the customer's address or account number, or reflected higher-risk transactions, such as cash sales; (2) randomly selected 10 percent of the remaining 318 customers (i.e., 32 customers); and (3) obtained FirstFlight's sales reports for the 47 sampled customers. We then traced the sales report information to FirstFlight's general ledger.

To determine whether the invoices FirstFlight billed to the five main flight operators conducting business at the Heliport were properly recorded in FirstFlight's general ledger we randomly selected April 2016 for further testing. For that period, we obtained copies of all the invoices FirstFlight issued to those operators, traced the invoiced amounts to various revenue accounts in FirstFlight's general ledger, and determined whether the revenue was accurately recorded in the general ledger.

To determine whether FirstFlight properly reported its revenue collections to EDC, we randomly selected the month of June 2016, obtained various types of payment records generated that month, and traced all payments from the credit card remittance report, copies of customers' checks, and records of electronic wire transfers to FirstFlight's deposit summary reports and bank statements. We then traced the payments to the cash receipts journal and a monthly deposits control sheet. We also compared the total amount from the monthly deposit control sheets with the amount FirstFlight

reported to EDC. We then determined whether FirstFlight accurately paid EDC the percentage of FirstFlight's gross receipts payable under the Concession Agreement and whether the payments were timely.

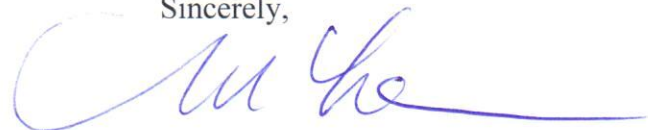
To determine whether FirstFlight was compliant with the terms of the amended Concession Agreement related to flight-limitation and idling restrictions, we reviewed FirstFlight's daily flight logs for the period from September 13 through 26, 2017 and observed the number of tourist flights conducted on September 16, 24, and 25, 2017. Specifically, we determined whether the number of tourist flights exceeded the contractually-established limitations (i.e., fewer than 2,744 tourist flights for the month of September, fewer than 300 tourist flights for each Saturday, and no tourist flights on Sunday). We also determined whether the idling times of the 118 helicopters we reviewed exceeded, by one minute or longer, the 10-minute benchmark established in the amended Concession Agreement.

To assess FirstFlight's compliance with its other major obligations under the Concession Agreement, we reviewed the security deposit requirements and determined whether FirstFlight's letter of credit was adequate. We also obtained all insurance policies for Calendar Years 2016 and 2017 and determined whether the insurance types and coverages amounts were sufficient based on the requirements of the Concession Agreement. To determine whether FirstFlight complied with the capital improvements requirement, we obtained a list of completed capital improvements from EDC and randomly selected 11 items, totaling \$601,515, to verify the payments and the description of the work performed.

The results of our audit tests, while not projectable to their respective populations, provided a reasonable basis for us to assess FirstFlight's compliance with the major terms of its Concession Agreement.

The matters covered in this report were discussed with FirstFlight and EDC officials during and at the conclusion of this audit. A preliminary letter report was sent to FirstFlight and EDC on April 16, 2018 and was discussed at an exit conference held on April 26, 2018. On May 1, 2018, we submitted a draft letter report to FirstFlight and EDC with a request for comments. We received a written response from FirstFlight on May 14, 2018. In its response, FirstFlight generally agreed with our recommendation to develop and implement procedures to limit helicopters' idling times at the Heliport. EDC did not provide a written response. The full text of FirstFlight's response is included as an addendum to this letter report.

Sincerely,



Marjorie Landa

- c: James Patchett, President, Economic Development Corporation
- Spencer Hobson, Executive Vice President of Finance, Economic Development Corporation
- Emily Newman, Acting Director, Mayor's Office of Operations
- George M. Davis III, Deputy Director, Mayor's Office of Operations

Saker Comments to Comptroller's Audit

We commend the Comptroller's Audit Team ("CAT") for their approach and conduct during the Audit. We found the CAT to be unfailingly professional and the Audit to be comprehensive in scope and complete in execution. We were pleased with the output of the audit and appreciate the thoughtful and courteous approach of the CAT to understanding our business and interacting with our personnel.

We concur with the Audit's sole recommendation regarding procedures to limit helicopter idling time at the Heliport. As we shared with the CAT, however, we believe those procedures were and are in place from a practical standpoint. The recommendation of the Audit simply caused us to codify our previous practices in connection with this activity.

We further intend to review with NYCEDC the efficacy of implementing an "idling fee" in conjunction with our next review of fees and charges. This may allow us to address the differing standards of the Amendment's 10-minute idling process and our current 15 minute free parking policy. This 16th minute parking fee is one that we adopted from Port Authority upon the changeover in November 2018 and, to the best of our knowledge, is also consistently applied by the operators of the other two NYC heliports.

Before addressing issues of perspective related to helicopter idling, we want to address the associated passage in the Amendment. The sole sentence on this topic reads that Saker is required to "make best efforts to prevent helicopters at DMH from idling for a period greater than ten minutes." It is our belief that this language is ambiguous as to expectations and reflects a lack of understanding of regular Heliport operations. Our focus in that sentence is and has always been on "best efforts," while the CAT seemed to focus primarily on the results of those efforts.

It's important to note that Saker's role in connection with helicopter activity at the Heliport is exclusively directional or advisory. We provide input (availability of landing spot, wind speed and direction) that allows the pilot to execute the safe operation and movement of their helicopter. But in all circumstances, that movement is ultimately initiated/completed at the pilot's sole discretion. In that context, we believe our "best efforts" in connection with the Amendment can only be advisory in nature. Our practice, which is now codified as a result of the Audit recommendation, was/is to notify the pilot that their helicopter had idled for 10 minutes. It is our belief that this practice meets the intent of the Amendment.

The period a helicopter may idle are manifold. A 10-minute period in the context of operations at the Downtown Manhattan Heliport are prejudiced by a number of factors. There are three main helicopter missions supported by the Heliport – tourism, corporate/charter, and emergency/governmental. While the Amendment was negotiated against the backdrop of tourist flights, the idling criteria was presumably to be applied to all helicopter missions.

As tourist operations are the main driver of activity at the Heliport, we believe it's prudent to understand factors that may impact idle times in excess of 10 minutes. These include:

- Pilot reiteration of passenger safety briefing (a safety issue)

- The prevention of simultaneous takeoffs and landings (a safety issue)
- The walking distance between the terminal and aircraft along with the related exchange of exiting and entering passengers (a safety issue)
- A swap of pilot in connection with duty times and/or operating schedules (a safety issue)
- The (rare) need to disembark a passenger, after boarding, who has had second thoughts about completing the flight

And the most frequent reason:

- Refueling of the helicopter

According to the CAT's observations, there were 23 instances of idling in excess of 10 minutes across the 118 flights that were reviewed. That means that 95 of 118, over 80%, of observed flights idled less than 10 minutes.

Saker performed an analysis of the time period observed by the CAT. Setting aside any other possible cause for idling in excess of 10 minutes, we identified 18 refueling operations during the CAT's review period. As a refueling operation would rarely, if ever, be completed within 10 minutes, we don't believe that it would or should be considered an event of idling in excess of 10 minutes.

We consequently believe that subtracting those 18 refueling operations from the 23 instances is reasonable and prudent. Doing so would reduce to 5 the instances of idling in excess of 10 minutes during the CAT's window of observations. On this basis, almost 96% (113 of 118) of observed flights did not idle more than 10 minutes. Excluding fueling operations from the denominator would translate to 95% (95 of 100) of observed flights idling 10 minutes or less.

In closing, we understand that the CAT had no choice other to audit against the language memorialized in the Amendment. We respectfully believe that our practices met/meet the definition of "best efforts." Further, we submit that excluding refueling operations meets a standard of reasonableness. In that context, to manage idling in excess of 10 minutes into a range of 4% - 5% would also, from our perspective, translate to "prevention" of idling as suggested in the Amendment.