May 31, 2016

Mr. David Bean
Director of Research and Technical Activities
Governmental Accounting Standards Board
401 Merritt 7
Norwalk, CT 06856-5116

RE: Lease Exposure Draft (Project 3-24E)

Dear Mr. Bean:

I am writing to offer comments on behalf of the Albany County Airport Authority (the Authority) in regard to Governmental Accounting Standards Board (GASB) Exposure Draft titled Leases. The Authority operates the Albany International Airport, under a forty-year lease with Albany County in New York. The Authority is a component unit of Albany County. I am pleased to see GASB proceeding with the development of a new standard on lease accounting that is consistent with its unique conceptual framework which is being recognized in a separate Concept Statement project.

I have followed the development of the current exposure draft since the issuance of the Preliminary Views document and was pleased to see the inclusion of language to address Certain Regulated Leases at Paragraph 36 and have the following experience and suggestion to share. During 2015 the Authority negotiated and implemented a new Airline Use and Lease Agreement using a law firm nationally recognized in drafting Airline Use and Lease Agreements (AUA) for Airports. The Authority’s AUA is considered a “hybrid agreement” whereby Airlines pay the net cost of using the airfield, the actual net operating and debt service costs after subtracting other revenue and funding sources for the space they occupy in the terminal and Airport equipment they use, and share annual net revenues calculated under the AUA. Under the AUA signatory airlines may also be required to provide funding required by the Airport to meet its debt service bond covenant ratio. I have informally asked the lead counsel responsible for drafting the Authority’s AUA if they felt the Authority’s AUA meets the criteria to be included among “Certain Regulated Leases” defined at Paragraph 36 of the Exposure Draft. Their feeling was the Authority’s AUA’s did not meet this definition because the AUA was a mutual agreement to establish Airline Rates and Charges as an alternative to DOT regulations governing Airport Rates and Charges and which the signatory Airlines and Airport have mutually agreed not to be bound by when signing the AUA. For example the Authority’s AUA includes or allows the following items to be included in the annual rates and charges: a stated minimum annual discretionary Airline Capital project contribution; the potential to impose additional capital recovery costs; and extraordinary debt service coverage if needed. These items would not be among the items of net costs allowed by DOT regulations absent an
Airport/Airline agreement. Because DOT regulations do not require Airports to share non-airline revenue with Airlines, signatory Airlines generally enter into AUA’s with the reasonable expectation it will lower their net Airport Rates and Charges after revenue sharing to below what DOT regulations would otherwise allow, though it is not guaranteed to do so and at times may not at individual airports. The Authority’s AUA is coterminous among all signing parties and generally puts all signing airlines on rates and charges parity while requiring all other aeronautical users of the same Airport facilities to pay a twenty-five percent premium rate above the signatory Airline rate. In such cases the DOT provides policy guidance that such Airport rates and charges established by the AUA shall not result in unjust economic discrimination to other aeronautical users and provide reasonable accommodation to non-signing airlines. Albany’s current AUA provides for a Low-Volume Carrier (LVC) Per Use Turn Rate using a calculation that would most likely produce LVC Airport charges exceeding that of signatory AUA airlines by at least twenty-five percent. By signing the AUA, signatory airlines have relinquished their right to challenge the LVC rates but other non-signatory airlines, including LVCs, being accommodated under the terms of the AUA have retained their right to challenge Airport rates and charges they may come to believe result in unjust economic discrimination under DOT policies.

Because I believe it was the intent to exclude airport AUA’s and other similar agreements I suggest the following edits:

36. For leases for which external laws, regulations, or legal rulings (a) either establish or would otherwise establish the costs or net costs that may be recovered through lease payments and (b) significantly limit the ability of the lessor to unjustly set rates in excess of the lease rates those costs for other users, the lessor should not apply the general recognition and measurement provisions of this Statement. For example, the U.S. Department of Transportation regulates aviation leases between airports and airlines. For such leases, the lessor should recognize an inflow of resources (for example, revenue) based on the payment provisions of the contract and provide the disclosures in paragraph 51.

I also suggest a change to Paragraph 38 which would require recognition of a receivable for the Minimum Annual Guaranteed (MAG) Revenues from Leases that include an embedded Concession Agreement. I believe revenues derived from a concessions contract are future inflows/revenues related to an intangible asset - the right to do business on the airport premises. During 2015 Concession Revenue comprised 16.4% of all Airport Revenue with on-airport Car Rental Concession fees typically producing more than 10% of all Airport Revenue. The on-airport Car Rental Operator Concession fee is established at 10% of Gross Car Rental Revenue and was not determined by negotiation or by competition but rather by a unilateral term imposed by the Airport as a requirement of any proposal received for on-airport car rental. Off-airport Car Rental Operators possessing a permit for on-airport customer pickup, which do not rent space at the Airport, must also pay 10% of their Gross Revenue from any customers arriving through the airport as a privilege fee. The MAG offered in a concession RFP is a financial guarantee for the right to conduct business on the Airport premises and reflects a tangible commitment for an intangible right. The event that gives rise to the recognition of concession revenue is not the provision of the on-airport space, but the completion of future rental transactions. In all Airport concession agreements, the embedded concession fee is presented as a component separate from rent and the terminal rent is adjusted each year to one-half the signatory airline rental rate for all non-aeronautical space rentals which currently is $38 per square foot annually. All on-airport car rental companies sign identical
coterminous agreements at the same time and are on parity with each other in respect to their right to use the Airport. The MAGs associated with each car rental proposal accepted for on-airport car rental concession is not on parity but a reflection of what each operator reasonably expects and contractually commits to generate for the airport based upon the uniform concession fee which is on parity with the off-airport car rental operators and off airport parking operators airport privilege fees. Accordingly I suggest modifying Paragraph 38 as follows to exclude concession agreement MAGs:

38. Variable payments based on future performance of the lessee or usage of the underlying asset should not be included in the receivable. Those payments should be recognized as an inflow of resources (for example, revenue) in the period to which those payments relate. However, any component of those variable payments that is fixed in substance should be included in the lease receivable, other than concession fees related to embedded concession agreements. For example, if a lease rental payment is based on a percentage of sales but has a required minimum payment, that required minimum payment is fixed in substance. Similarly, payment of a residual value guarantee is fixed in substance if it stipulates the underlying asset will be sold at the end of the lease term, with the lessee assuming a liability for any shortfall if the sales price is less than an agreed-upon minimum amount.

Thank you for your consideration of my comments.

Sincerely,

William J. O’Reilly, CPA, CGFM
Chief Financial Officer,
Albany County Airport Authority